

send it to the Manager, International Branch, ANM-116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96-18-18, amendment 39-9744, and AD 96-13-11, amendment 39-9679, are approved as alternative methods of compliance with the requirements of paragraphs (c) and (d) of this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

#### Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 5:** The subject of this AD is addressed in French airworthiness directive 2001-355(B), dated August 8, 2001.

Issued in Renton, Washington, on June 4, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AF37

#### Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of "Special Profile" into Regulations

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** For purposes of this notice, "we," "our," and "SSA" refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. "You" and "your" refer to individuals who claim benefits from the Social Security Administration based on "disability."

This document proposes to clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we

decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases.

We also propose to clarify that we may use vocational experts, vocational specialists, or other resources to obtain information we need to determine whether your impairment(s) prevent you from doing your past relevant work;

Add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and

Make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

**DATES:** To be sure that we consider your comments, submit them no later than August 12, 2002.

**ADDRESSES:** You may give us your comments by using: our Internet site facility (i.e., Social Security Online) at <http://www.ssa.gov/regulations/>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to 410-966-2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703.

You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them during these same hours by making arrangements with the contact person shown in this preamble.

**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 at: [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: <http://www.ssa.gov/regulations/>.

**FOR FURTHER INFORMATION CONTACT:** Georgia E. Myers, Regulations Officer, Social Security Administration, 2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-3632 or TTY 800-966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 800-772-1213 or TTY 800-325-0778, or visit our Internet website, Social Security Online, at <http://www.ssa.gov>.

#### SUPPLEMENTARY INFORMATION:

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

These proposed regulations would affect disability determinations and decisions we make for you under title II and title XVI of 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.

#### Who Can Get Disability Benefits?

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 have limited income and resources.

#### How Do We Define "Disability"?

Under both the title II and title XVI programs, disability means the inability to ". . . engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

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, or 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:

The 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 this 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 you are 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 P 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 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.

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

We propose changing several sections in subpart P of part 404 and subpart I of part 416 to clarify our longstanding rules about how we make determinations and decisions for initial applications at steps 4 and 5 of the sequential evaluation process. The changes we propose will also apply to steps 7 and 8 of the sequential evaluation processes for determining continuing disability in § 404.1594(f), and steps 6 and 7 in § 416.994(b)(5). However, for clarity we will refer in this preamble only to the steps of the sequential evaluation process for initial applications.

Several of the proposed revisions will clarify our longstanding interpretation of our rules that we assess your RFC once, after we have found that you have a severe impairment(s) that does not meet or equal a listing; i.e., after step 3 but before we consider step 4. We use this RFC assessment first to determine, at step 4, whether you are able to do any of your past relevant work. If we determine that you cannot perform past relevant work, or you have no past relevant work, we use the same RFC assessment at step 5 to determine whether you are able to make an adjustment to other work, given your RFC, age, education, and work experience.

Under the Act and §§ 404.1512 and 416.912 of our regulations, you generally have the burden of proving your disability. You must furnish medical and other evidence we can use to reach conclusions about your impairment(s) and its effect on your ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop your complete medical history. That includes arranging for consultative examinations,

if necessary. We are responsible for helping you produce evidence that shows whether you are disabled.

Our administrative process was designed to be nonadversarial. See §§ 404.900(b) and 416.1400(b) of our regulations; *Richardson v. Perales*, 402 U.S. 389, 403 (1971); *Sims v. Apfel*, 120 S. Ct. 2080, 2083–85, 2086 (2000). In addressing burdens of proof, it is critical to keep in mind that we are using a term in our nonadversarial administrative process that describes a process normally used in adversarial litigation. “Burdens of proof” operate differently in the disability determination process than in a traditional lawsuit.

In the administrative process, the burden of proof generally encompasses both a burden of production of evidence and a burden of persuasion about what the evidence shows. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 273 (1994) (citing *Powers v. Russell*, 30 Mass. 69, 76 (1833)). You shoulder the dual burdens of production and persuasion through step 4 of the sequential evaluation process. See *Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987).

Although you generally bear the burden of proving disability throughout the sequential evaluation process, there is a limited shift in the burden of proof to us “only if the sequential evaluation process proceeds to the fifth step \* \* \*.” *Bowen v. Yuckert*, id. When the process proceeds to the fifth step, this means that you have demonstrated the existence of a severe impairment(s) resulting in an RFC that prevents the performance of past relevant work. When we decide that you are not disabled at step 5, this means that we have determined that there is other work that you can do. To make this finding, we must provide evidence that demonstrates that jobs exist in significant numbers in the national economy that you can do, given your RFC, age, education, and work experience. In legal terms, this is a burden of production of evidence.

This burden shifts to us because, once you establish that you are unable to do any past relevant work, it would be unreasonable to require you to produce vocational evidence showing that there are no jobs in the national economy that you can perform, given your RFC. However, as stated by the Supreme Court, “It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so.” *Bowen v. Yuckert*, id. Thus, the only burden shift that occurs at step 5 is that we are required to prove that there is other work that you can do, given your RFC,

age, education, and work experience. That shift does not place on us the burden of proving RFC.

When the burden of production of evidence shifts to us at step 5, our role is to obtain evidence to assist in impartially determining whether there is a significant number of jobs in the national economy you can do. Thus, we have a burden of proof even though our primary interest in the outcome of the claim is that it be decided correctly. As required by the Act, the ultimate burden of persuasion to prove disability, however, remains with you.

### **What Specific Changes Are We Proposing?**

#### *Sections 404.1501 and 416.901 Scope of Subpart*

The second sentence of §§ 404.1501(g) and 416.901(j) is very long and it includes a number of clauses. We propose to clarify this sentence by numbering and listing the clauses and by revising some language. This includes clarifying in proposed (g)(2) that assessment of RFC is our responsibility (“our residual functional capacity assessment”) and that we use this assessment at steps 4 and 5 of the sequential evaluation process.

#### *Sections 404.1505 Basic Definition of Disability, and 416.905 Basic Definition of Disability for Adults*

In paragraph (a), we propose to revise the second sentence, to delete the third sentence, and to add four new sentences. The revisions in the second sentence will clarify our longstanding policy that, when we consider your “previous work,” we consider only work that was “past relevant work.” Past relevant work is work that you performed within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. See SSR 82–62, “Titles II and XVI: A Disability Claimant’s Capacity To Do Past Relevant Work, In General,” Social Security Rulings, Cumulative Edition, 1982, p. 158.

The current third sentence explains that we consider your RFC, age, education, and work experience when we determine whether you can do other work; i.e., at step 5 of the sequential evaluation process. We propose to replace this sentence with four new sentences that will provide more detail about this policy, including cross-references to our rules on the sequential evaluation process and RFC. They will also clarify that we assess RFC once, and that we use this assessment at both step four and step five of the sequential evaluation process.

#### *Proposed Sections 404.1512 and 416.912 Evidence*

We propose several revisions in these sections to clarify both your responsibility and our responsibility. We propose to change the heading of these sections from “Evidence of your impairment” to “Evidence” because, as we discuss below, we propose to add a provision that is not about evidence of your impairment; i.e., a provision that is about our responsibility, at step 5 of the sequential evaluation process, to provide evidence of the existence of jobs.

We propose to make two changes in paragraph (c) to make it clearer. These are not substantive changes. First, we propose to add a new second sentence to paragraph (c) to clarify, consistent with the remainder of the current paragraph, that we may ask for non-medical information about functioning or about other non-medical issues in addition to medical information. Second, we propose to make a slight modification to the current second sentence (which will become the new third sentence) to make it clearer.

We also propose to add a new paragraph (g), “Other work” to explain our burden at step 5. It will explain that, in order to determine that you can make an adjustment to other work, we must provide evidence of the existence of work in the national economy that you can do, given your RFC and vocational factors. The new paragraph will include cross-references to regulations that explain how we evaluate your ability to do other work (§§ 404.1560 through 404.1569a and 416.960 through 416.969a, as appropriate).

The new paragraph will also clarify our longstanding interpretation of the statutory requirement that we consider your age, education, and work experience as well as your impairment(s) when we determine the ability to do other work at step 5.

Our use of the phrase “make an adjustment to other work” is not new. We used the phrase when we originally published proposed rules on the medical/vocational guidelines in appendix 2, subpart P of regulations part 404 (the grid rules) in 1978:

If an individual cannot perform his or her past relevant work but the individual’s physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed, it will be determined that such an individual is not under a disability. However, if such an

individual’s physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

See 43 FR 9284, 9288 (March 7, 1978). We used the same language in the preamble when we published the final rules for the medical/vocational guidelines (see 43 FR 55349, 55352 (November 28, 1979)) and have used similar language in our Policy Interpretation Rulings (see, e.g., SSR 83–11, “Titles II and XVI Capability To Do Other Work—The Exertionally Based Medical-Vocational Rules Met,” Social Security Rulings, Cumulative Edition, 1983, p. 184). More recently, we have used the same or similar language in publications that we use to help the public better understand whether they may qualify for disability benefits under the Act and our regulations. Therefore, we are proposing to use this language in our regulations.

#### *Sections 404.1520 Evaluation of Disability in General, and 416.920 Evaluation of Disability of Adults, in General*

We propose to revise the language in paragraph (a) of these sections to make it clearer. We propose to divide it into five separate paragraphs. We also propose to modify the current language to explain more clearly what the five steps of the sequential evaluation process are, and to reflect the provisions of proposed new paragraph (e), which we discuss below.

We propose to add a new paragraph (e) to this section to explain that, after we decide that you are not working and have a severe impairment(s) that does not meet or equal any listing, we will assess your RFC. We then use this RFC assessment at step 4 to determine whether you are able to do any past relevant work and, if we make a determination at step 5, we use the same RFC assessment in determining whether you can do any other work.

Because we propose to add a new paragraph (e), we also propose to redesignate current paragraphs (e) and (f) as paragraphs (f) and (g). We also propose to revise these paragraphs to make changes consistent with proposed changes in other rules already described. For example, they will refer to “our residual functional capacity assessment,” to “past relevant work” (instead of “work you have done in the past” or “past work experience”), and to making “an adjustment to other work.”

Likewise, proposed paragraph (g) (current paragraph (f)) will clarify that, at step 5, we consider "the same residual functional capacity assessment" we used at step 4. In current paragraph (e) (proposed paragraph (f)), we also propose to change the phrase, "[i]f we cannot make a decision based on your current work activity or on medical facts alone," to "[i]f we cannot make a determination or decision at the first three steps of the sequential evaluation process," in order to make it clear that this language has always referred to determinations or decisions at steps 1, 2 and 3 of the sequential evaluation process. We also propose to make a comparable conforming change to §§ 404.1560(a) and 416.960(a).

We propose to revise current paragraph (f)(2) (proposed paragraph (g)(2)) to reflect that we are adding a second special medical-vocational profile under which we may find you disabled without referring to our grid rules. When we discuss changes we are proposing to §§ 404.1562 and 416.962 later in this notice, we explain the second profile and our reasons for proposing to include it. We also propose to modify the language that is in current paragraph (f)(2) (proposed paragraph (g)(2)) to delete the partial description of the first special medical-vocational profile that is currently in our regulations because it is duplicative of information already contained in §§ 404.1562 and 416.962.

Finally, we are proposing a number of minor editorial changes in current paragraphs (e) and (f) (proposed paragraphs (f) and (g)).

#### *Sections 404.1545 and 416.945 Your Residual Functional Capacity*

To make current paragraph (a) easier to understand, we propose to revise the paragraph by breaking it into five numbered subparagraphs with headings. We also propose to reorganize and clarify some of the text.

In proposed paragraph (a)(3), "Evidence we use to assess your residual functional capacity," we propose to include references to §§ 404.1512 and 416.912, which explain your burden to provide evidence of the existence and severity of your impairment(s) and how it affects your functioning, and our responsibility to develop a complete medical history and to arrange for a consultative examination(s) if necessary.

In paragraph (a)(5), "How we will use our residual functional capacity assessment," we propose to explain that we first use our RFC assessment to decide if you can do past relevant work

and to explain that, if you cannot do past relevant work, or do not have any past relevant work, we use the same assessment to decide, at step 5, if you can make an adjustment to other work.

In addition, we propose other changes in this section to clarify our rules. In paragraph (a)(1), "Residual functional capacity assessment," we propose to add a sentence to explain that RFC is the most you can do despite your limitations. This will incorporate into our regulations a clarification that we currently provide in SSR 96-8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims," 61 FR 34474 (July 2, 1996). We also propose to incorporate another clarification provided in that SSR by explaining in paragraph (a)(2), "If you have more than one impairment," that, when we assess RFC, we will consider all medically determinable impairments of which we are aware, including impairments that are not "severe."

Proposed paragraph (a)(3) will clarify the fifth, sixth, and seventh sentences of current paragraph (a), which discusses the evidence we consider when assessing RFC. Our intent is to clarify three points about how we consider evidence of pain and other symptoms in our RFC assessments. First, we will make clear that the phrase "observations by your treating and examining physicians or psychologists," in the current rule, includes "statements about what you can still do," as discussed in §§ 404.1513 and 416.913. Second, we will clarify that we consider descriptions and observations of your impairment-related limitations from both medical and non-medical sources. Third, by removing the phrase "that are important in the diagnosis and treatment of your medical condition" from the fifth sentence of current section (a), we will make clear that we consider all limitations that result from your medically determinable impairments, not just those that are important in the diagnosis and treatment of a medical condition. We also propose to delete the entire eighth sentence, which could be misinterpreted to mean that we may or may not consider evidence that we already have. Because that is not our intent, and because these proposed rules make clear that we consider all relevant medical and nonmedical evidence in the case record, we believe this language is unnecessary.

We propose to revise the last sentence of current paragraph (a) (which will become the last sentence of proposed (a)(5)(ii)) to remove the language that discusses our rules on RFC assessment in deciding whether your disability

continues or ends. Those rules are already discussed in §§ 404.1594 and 416.994, and the revised language will simply direct you to those sections.

We propose a number of other editorial changes to the current rule. These changes are intended only to clarify the current language and to reorganize the provisions into a more logical order.

#### *Proposed Sections 404.1546 and 416.946 Responsibility for Assessing Your Residual Functional Capacity*

We propose to revise the heading of these sections, which are currently titled "Responsibility for assessing and determining residual functional capacity." The two words "and determining" are superfluous. Our assessment is our determination about RFC.

The other changes we propose in this section are editorial. To make the section easier to understand, we propose to break up the current single paragraph into three paragraphs that address the responsibilities of:

- State agency medical and psychological consultants (proposed paragraph (a));
- State agency disability hearing officers (proposed paragraph (b)); and
- Administrative law judges and Appeals Council administrative appeals judges (proposed paragraph (c)).

#### *Proposed Sections 404.1560 and 416.960 When We Will Consider your Vocational Background*

We propose to change the heading, putting it into active voice, to make the meaning clearer. We propose to make changes in paragraphs (b), "Past relevant work," and (c), "Other work," consistent with the changes we are proposing in other sections, already noted above.

For clarity, we propose to revise paragraph (b) by dividing it into three subparagraphs, designated (b)(1) through (b)(3). We propose to add a new sentence in proposed paragraph (b)(1), "Definition of past relevant work," defining "past relevant work" as work you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. This definition is based on our longstanding interpretation in SSR 82-62, already noted above. We also propose to add a cross-reference to § 404.1565(a) or 416.965(a), as appropriate, because these paragraphs explain how we determine the 15-year period.

We propose to add new language in paragraph (b)(2), "Determining whether you can do your past relevant work," to

explain how we obtain information that we need to determine, at step 4 of the sequential evaluation process, whether your impairment(s) prevents you from doing your past relevant work. It will indicate that we ask you for information about work you have done in the past, and that we may ask other people who know about your past work. This is consistent with the provisions in current §§ 404.1565(b) and 416.965(b), and we propose to include cross-references to those sections in paragraph (b)(2).

We also propose to explain in paragraph (b)(2) that we may use the services of vocational experts or vocational specialists, or other resources such as the "Dictionary of Occupational Titles" to obtain information that we need to determine whether you can do your past relevant work. For example, we may use one of these sources to determine how the work you did is usually performed in the national economy. This is a longstanding policy interpretation set out in SSR 82-61, "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation As Generally Performed," Social Security Rulings, Cumulative Edition, 1982, p. 185.

Proposed paragraph (b)(3), "If you can do your past relevant work" will be essentially the same as the second sentence of current paragraph (b). We have edited it and made it into two sentences for clarity.

We propose to modify paragraph (c) to make clear that, if we decide at step 5 that you are not disabled, we are responsible for providing evidence of other work you can do (consistent with proposed §§ 404.1512(g) and 416.912(g)). The modified paragraph will also make clear that we are not responsible for providing additional evidence of RFC or for making another RFC assessment at step 5. This is because we use the same RFC assessment at step 5 that we made before we considered your ability to do past relevant work at step 4, a point in our process at which you have the burdens of production and persuasion.

*Sections 404.1561 and 416.961 Your ability to do work depends upon your residual functional capacity*

We propose to delete these sections because their provisions are incorporated into other proposed and existing rules.

*Proposed Sections 404.1562 and 416.962 Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work*

We propose to revise and update the headings of these sections in order to reflect changes we are proposing to their content.

*Current Medical-Vocational Profile*

Currently, §§ 404.1562 and 416.962 describe a special medical-vocational profile under which, if you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled labor, and you are not working and are no longer able to do this kind of work because of a severe impairment, we will find that you are disabled. We consider this special medical-vocational profile at step 5 of the sequential evaluation process, before we consider the grid rules. We do this because we have decided that, if you match this profile, you do not have the ability to adjust to other work (i.e., you are disabled) regardless of your age. If you meet this profile, and are age 60 or over, we would usually find you disabled using our grid rules. However, if you are under age 60, you might not qualify without this special rule.

Although we have changed the language somewhat over the years, the current medical-vocational profile has been in our regulations since 1960 (when it was at § 404.1502(c)). However, it contains a number of provisions that need to be updated to be consistent with our current rules and policies. For example, the last sentence of the paragraph before the example speaks about the ability to do other work "on a full-time or reasonably regular part-time basis." However, in SSR 96-8p, we explain that at step 5 we consider only full-time work when we consider other work you are able to do. See 61 FR 34474, 34475 (July 2, 1996). Other provisions in the current medical-vocational profile have been made obsolete or been superseded by more recent regulations, such as our rules on doing substantial gainful activity at step 1 of the sequential evaluation process, and our rules on transferability of skills in §§ 404.1568(d)(4) and 416.968(d)(4).

We therefore propose to delete the second and third sentences of the paragraph and to revise the example. These changes will only make the rule more consistent with our current policies and will not affect anyone who we would find disabled under the current profile. We propose to designate all the language discussing this current

medical-vocational profile as paragraph (a) of §§ 404.1562 and 416.962.

We also propose to make a conforming change to the third sentence of section 203.00(b) in appendix 2 to subpart P of part 404, to reflect these changes.

*Second Medical-Vocational Profile*

We propose to add to §§ 404.1562 and 416.962 a second special medical-vocational profile that we have been using since 1975, but that is not in our regulations. We propose to designate the language discussing the second medical-vocational profile as paragraph (b). Under this profile, we will find you disabled if you:

- Are of "advanced age" (i.e., are at least 55 years old);
- Have a "limited" education or less (i.e., generally, an 11th grade education or less—see §§ 404.1564(b)(3) and 916.964(b)(3));
- Have no past relevant work (i.e., either no work experience or no work experience that satisfies our definition of "past relevant work"); and
- Have a "severe," medically determinable impairment(s).

If you have these characteristics, we would usually find you disabled using our grid rules. However, if you have solely "nonexertional" limitations (see § 200.00(e) of appendix 2 to subpart p of part 404), you might not qualify without this special profile.

The original instruction for this profile dates back to a policy decision of July 7, 1975. In 1982, we incorporated this profile into SSR 82-63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work" (see Social Security Rulings, Cumulative Edition, 1982, page 205). Therefore, the proposed rule would only incorporate our longstanding policy interpretation into our regulations.

We also propose to make clear in paragraph (b) and other related rules that, if you meet the second medical-vocational profile, we do not have to assess RFC. This is because, once we have determined that you have a "severe" impairment(s) and that you meet the other criteria in the profile, we will find you disabled, and we will not need an RFC assessment. We recognize that, in most cases, our normal sequential evaluation process would require us to do an RFC assessment before we determine that you have no past relevant work. However, because you must only have a "severe" impairment(s) under this profile, and your advanced age, limited education, and lack of past relevant work should be

readily apparent from the case record, an RFC assessment is unnecessary.

*Sections 404.1563 and 416.963 Your Age as a Vocational Factor*

We propose only editorial changes to the second sentence of paragraph (a).

*Sections 404.1569a and 416.969a Exertional and Nonexertional Limitations*

We propose to delete the seventh sentence of paragraph (a), "General," and to add three new sentences in its place. These changes are consistent with other changes discussed above.

*Sections 404.1594 How We Will Determine Whether Your Disability Continues or Ends, and 416.994 How We Will Determine Whether Your Disability Continues or Ends, Disabled Adults*

We propose to revise the first sentence of § 404.1594(f)(7) and § 416.994(b)(5)(vi), which contain essentially the same language, in order to update the cross-reference. This is necessary due to the changes we are proposing to §§ 404.1560 and 416.960 and §§ 404.1561 and 416.961.

*Section 203.00, Appendix 2 to Subpart P of Part 404*

As already noted, we propose to revise the third sentence of section 203.00(b) to conform to the changes in proposed §§ 404.1562(a) and 416.962(a).

*Are We Proposing Any Other Changes?*

We propose to make a number of minor editorial changes throughout these rules to make them easier to read and understand. Because these proposed changes will not be substantive, we have not summarized them all.

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

*Clarity of These Proposed Rules*

Executive Order 12866 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 them 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 is not 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?

Could we improve clarity by adding tables, lists, or diagrams?

What else could we do to make the rules easier to understand?

*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 rules contain reporting requirements at §§ 404.1512(c), 416.912(c), 404.1545(a), 416.945(a), 404.1560(b) and 416.960(b). The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1-A-20 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235-6401.

You may submit comments on the reporting requirements for up to 60 days after publication of this notice; however, your comments will be most useful if you submit them within 30 days of publication.

(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 (SSI).

Dated: April 2, 2002.

**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 chapter III of title 20 of the Code of Federal Regulations as follows:

**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 § 404.1501 by revising paragraph (g) to read as follows:

**§ 404.1501 Scope of subpart.**

\* \* \* \* \*

(g) Our rules on vocational considerations are in §§ 404.1560 through 404.1569a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by "work which exists in the national economy";

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional,

nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of this subpart.

\* \* \* \* \*

3. Amend § 404.1505, paragraph (a), by revising the second sentence, removing the third sentence, redesignating the fourth sentence as the last sentence, and adding four new sentences after the second sentence to read as follows:

**§ 404.1505 Basic definition of disability.**

(a) \* \* \* To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 404.1560(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1, we will assess your residual functional capacity as provided in §§ 404.1520 and 404.1545. (See §§ 404.1520(g)(2) and 404.1562 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work.

\* \* \*

\* \* \* \* \*

4. Amend § 404.1512 by:

a. Revising the section heading;

b. In paragraph (c), removing “also” from the second sentence, redesignating the second sentence as the last sentence, and adding one new sentence after the first sentence; and

c. Adding paragraph (g).

The additions and revisions are to read as follows:

**§ 404.1512 Evidence.**

\* \* \* \* \*

(c) *Your responsibility.* \* \* \* You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. \* \* \*

\* \* \* \* \*

(g) *Other work.* In order to determine under § 404.1520(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as

described in § 404.1520(e)), age, education, and work experience.

5. Amend § 404.1520 by revising paragraph (a), by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), and by adding a new paragraph (e) to read as follows:

**§ 404.1520 Evaluation of disability in general.**

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 404.1505.

(2) *Applicability of these rules.* These rules apply to you if you file an application for a period of disability or disability insurance benefits (or both) or for child's insurance benefits based on disability. They also apply if you file an application for widow's or widower's benefits based on disability for months after December 1990. See § 404.1505(a).

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five “steps” that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. See paragraph (e) of this section. We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. See paragraph (b) of this section.

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. See paragraph (c) of this section.

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are

disabled. See paragraph (d) of this section.

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. See paragraph (f) of this section.

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. See paragraph (g) of this section.

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 404.1594(f).

\* \* \* \* \*

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 404.1545. (See paragraph (g)(2) of this section and § 404.1562 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can do other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. See § 404.1560(b). If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual



functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 404.1562. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

6. Amend § 404.1545 by revising revising paragraph (a) to read as follows:

**§ 404.1545 Your residual functional capacity.**

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. See § 404.1546.

(2) *If you have more than one impairment.* We will consider all of your impairments of which we are aware, including your medically determinable impairments that are not “severe,” as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity. See paragraph (e) of this section.

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. See § 404.1512(c). However, before we make a determination that you are not disabled, we are responsible for making every reasonable effort to develop your complete medical history, including arranging for a consultative examination(s) if necessary. See §§ 404.1512(d) through (f). We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. See § 404.1513. We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends,

or other persons. See paragraph (e) of this section and § 404.1529.

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.*

(i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. See §§ 404.1520(f) and 404.1560(b).

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to other work that exists in the national economy. See §§ 404.1520(g) and 404.1566. At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 404.1560 through 404.1569a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, see § 404.1594.

\* \* \* \* \*

7. Revise § 404.1546 to read as follows:

**§ 404.1546 Responsibility for assessing your residual functional capacity.**

We are responsible for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for Disability or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* An administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

8. Amend § 404.1560 by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

**§ 404.1560 When we will consider your vocational background.**

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 404.1520), we will consider your residual functional capacity together with your vocational background.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. See § 404.1565(a).

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. See § 404.1565(b). We may use the services of vocational experts or vocational specialists, or other resources, such as the *Dictionary of Occupational Titles* and its companion volumes and supplements, published by the Department of Labor, to obtain information we need to determine whether you can do your past relevant work, given your residual functional capacity. For example, we may use the *Dictionary of Occupational Titles*, vocational experts, or vocational specialists to determine how a job you did is usually performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you are not disabled. We will not consider your vocational factors of age, education, and work experience.



(c) *Other work.* (1) If we find that you can no longer do your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can do other work. We will look at your ability to do other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

#### **§ 404.1561 [Removed]**

9. Remove § 404.1561.

10. Revise § 404.1562 to read as follows:

#### **§ 404.1562 Medical-vocational profiles showing an inability to make an adjustment to other work.**

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 404.1564) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 404.1520(c), 404.1521, and 404.1523), we will consider you unable to do lighter work, and therefore, disabled.

*Example to paragraph (a):* B is a 58-year-old miner with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 404.1520(c), 404.1521, and

404.1523), are of advanced age (age 55 or older, see § 404.1563), have a limited education or less (see § 404.1564), and have no past relevant work experience (see § 404.1565), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to this subpart.

11. Amend § 404.1563 by revising the second sentence of paragraph (a) and adding a new sentence after the revised second sentence to read as follows:

#### **§ 404.1563 Your age as a vocational factor.**

(a) *General.* \* \* \* When we decide whether you are disabled under § 404.1520(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. \* \* \*

\* \* \* \* \*

12. Amend § 404.1569a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding 3 new sentences after the sixth sentence to read as follows:

#### **§ 404.1569a Exertional and nonexertional limitations.**

(a) *General.* \* \* \* When we decide whether you can do your past relevant work (see §§ 404.1520(f) and 404.1594(f)(7)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to other work. See §§ 404.1520(g) and 404.1594(f)(8). \* \* \*

\* \* \* \* \*

13. Amend § 404.1594 by revising the first sentence of paragraph (f)(7) to read as follows:

#### **§ 404.1594 How we will determine whether your disability continues or ends.**

\* \* \* \* \*

(f) \* \* \*

\* \* \* \* \*

(7) If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 404.1560. \* \* \*

\* \* \* \* \*

14. Amend § 203.00 in appendix 2 to subpart P of part 404 by revising the section heading, revising the third sentence of paragraph (b), and adding a new fourth sentence to read as follows:

#### **Appendix 2 To Subpart P of Part 404—Medical-Vocational Guidelines**

\* \* \* \* \*

#### **§ 203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).**

\* \* \* \* \*

(b) \* \* \* However, we will find that an individual who (1) has a marginal education, (2) has work experience of 35 years or more during which he or she did only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the individual is able to do medium work. See § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.

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

##### **Subpart I—[Amended]**

15. 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).

16. Amend § 416.901 by revising paragraph (j) to read as follows:

#### **§ 416.901 Scope of subpart.**

\* \* \* \* \*

(j) Our rules on vocational considerations are in §§ 416.960 through 416.969a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by "work which exists in the national economy";

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

\* \* \* \* \*

17. Amend § 416.905, paragraph (a), by revising the second sentence, removing the third sentence, and adding four new sentences after the second sentence to read as follows:

**§ 416.905 Basic definition of disability for adults.**

(a) \* \* \* To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§ 416.920 and 416.945. (See §§ 416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work.

\* \* \*

\* \* \* \* \*

18. Amend § 416.912 by:

- a. Revising the section heading;
- b. In paragraph (c), redesignating the second sentence as the last sentence and by adding a new sentence after the first sentence; and
- c. Adding paragraph (g). The revisions and additions are to read as follows:

**§ 416.912 Evidence.**

\* \* \* \* \*

(c) *Your responsibility.* \* \* \* You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. \* \* \*

\* \* \* \* \*

(g) *Other work.* In order to determine under § 416.920(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (see §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 416.920(e)), age, education, and work experience.

19. Amend § 416.920 by revising paragraph (a), by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), by revising newly redesignated (f) and (g), and by adding a new paragraph (e) to read as follows:

**§ 416.920 Evaluation of disability of adults, in general.**

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 416.905.

(2) *Applicability of these rules.* These rules apply to you if you are age 18 or older and you file an application for Supplemental Security Income disability benefits.

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five “steps” that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. See paragraph (e) of this section. We use this residual functional capacity assessment at both step four and at step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. See paragraph (b) of this section.

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. See paragraph (c) of this section.

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. See paragraph (d) of this section.

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. See paragraph (f) of this section.

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to

see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. See paragraph (g) of this section.

(5) *When you are already receiving benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 416.994(b)(5).

\* \* \* \* \*

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 416.945. (See paragraph (g)(2) of this section and § 416.962 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can do other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. See § 416.960(b). If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 416.962. If you meet one of those

profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

20. Amend § 416.945 by revising paragraph (a) to read as follows:

**§ 416.945 Your residual functional capacity.**

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. See § 416.946.

(2) *If you have more than one impairment.* We will consider all of your impairments of which we are aware, including your medically determinable impairments that are not “severe,” as explained in §§ 416.920(c), 416.921, and 416.923, when we assess your residual functional capacity. See paragraph (e) of this section.

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. See § 416.912(c). However, before we make a determination that you are not disabled, we are responsible for making every reasonable effort to develop your complete medical history, including arranging for a consultative examination(s) if necessary. See §§ 416.912(d) through (f). We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. See § 416.913. We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. See paragraph (e) of this section and § 416.929.

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.* (i) We will first use our residual functional capacity assessment at step four of the

sequential evaluation process to decide if you can do your past relevant work. See 416.920(f) and 416.960(b).

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to other work that exists in the national economy. See §§ 416.920(g) and 416.966. At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 416.960 through 416.969a, and consider your residual functional capacity together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, see § 416.994.

\* \* \* \* \*

21. Revise § 416.946 to read as follows:

**§ 416.946 Responsibility for assessing your residual functional capacity.**

We are responsible for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 416.1414, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 416.1418, the Associate Commissioner for Disability or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* An administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

22. Revise § 416.960 to read as follows:

**§ 416.960 When we will consider your vocational background.**

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (see § 416.920), we will consider your residual functional capacity together with your vocational background.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. See § 416.965(a).

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. See § 416.965(b). We may use the services of vocational experts or vocational specialists, or other resources, such as the *Dictionary of Occupational Titles* and its companion volumes and supplements, published by the Department of Labor, to obtain information we need to determine whether you can do your past relevant work, given your residual functional capacity. For example, we may use the *Dictionary of Occupational Titles*, vocational experts, or vocational specialists to determine how a job you did is usually performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you are not disabled. We will not consider your vocational factors of age, education, and work experience.

(c) *Other work.* (1) If we find that you can no longer do your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can do other work. We will look at your ability to do other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence

that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

#### **§ 416.961 [Removed]**

23. Remove § 416.961.

24. Revise § 416.962 to read as follows:

#### **§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.**

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (see § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (see §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

*Example to paragraph (a):* B is a 58-year-old miner with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (see §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, see § 416.963), have a limited education or less (see § 416.964), and have no past relevant work experience (see § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

25. Amend § 416.963 by revising the second sentence of paragraph (a) and adding a new sentence after the newly revised second sentence to read as follows:

#### **§ 416.963 Your age as a vocational factor.**

(a) *General.* \* \* \* When we decide whether you are disabled under

§ 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. \* \* \*

\* \* \* \* \*

26. Amend § 416.969a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

#### **§ 416.969a Exertional and nonexertional limitations.**

(a) *General.* \* \* \* When we decide whether you can do your past relevant work (see §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to other work. See §§ 416.920(g) and 416.994(b)(5)(vii). \* \* \*

\* \* \* \* \*

27. Amend § 416.994 by revising the first sentence of paragraph (b)(5)(vi) to read as follows:

#### **§ 416.994 How we will determine whether your disability continues or ends, disabled adults.**

\* \* \* \* \*

(b) \* \* \*  
(5) \* \* \*

\* \* \* \* \*

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 416.960. \* \* \*

\* \* \* \* \*

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## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 301**

[REG-115285-01]

RIN-1545-AY84

#### **Low-Income Taxpayer Clinics—Definition of Income Tax Return Preparer**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that exclude

certain Low-Income Taxpayer Clinics (LITCs) that qualify for grants under section 7526 of the Internal Revenue Code from the definition of income tax return preparer under section 7701(a)(36). These proposed regulations also exclude certain persons who are employed by, or volunteer for, such clinics.

**DATES:** Written or electronically generated comments and requests for a public hearing must be received by September 9, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-115285-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-115285-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at: [www.irs.gov/regs](http://www.irs.gov/regs).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Brinton T. Warren, at (202) 622-4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622-7180 (not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the definition of the term *income tax return preparer* under section 7701(a)(36) of the Internal Revenue Code (Code). These proposed regulations exclude certain qualified Low-Income Taxpayer Clinics (LITCs) from the definition of income tax return preparer and exclude certain persons who are employed by, or volunteer at, such clinics.

Section 7701(a)(36), defining the term *income tax return preparer*, was enacted by section 1203 of the Tax Reform Act of 1976, Public Law 94-455 (90 Stat. 1520) (1976) (TRA 1976). TRA 1976 also enacted many of the provisions of sections 6694 and 6695, which impose penalties for certain acts and omissions by income tax return preparers.

The preparer penalties enacted by TRA 1976 reflect the concern of Congress with improper practices within the commercial tax services industry. See H. R. Rep. No. 94-658, 94th Cong. 1st Sess. 274 (1976), 1976-3 (Vol. 2) C.B. 966. Consistent with the commercial focus of the legislative history, the definition of an income tax