

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

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

### Clarity of These Proposed Rules

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

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

### Electronic Version

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

### Regulatory Procedures

#### *Executive Order 12866*

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

#### *Regulatory Flexibility Act*

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

#### *Paperwork Reduction Act*

These proposed regulations would impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.002, Social Security Retirement Insurance; 96.004, Social Security Survivors Insurance; 96.006, Supplemental Security Income)

### List of Subjects

#### *20 CFR Part 404*

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

#### *20 CFR Part 416*

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

Dated: April 3, 2003.

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

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

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

### Subpart P—[Amended]

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

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

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

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

\* \* \* \* \*

(b) *How we evaluate your education.*

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

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

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

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

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