

the claimant's description of past relevant work is credible or whether the claimant can perform past relevant work, either as it is normally performed in the national economy or as he or she actually previously performed it. According to the commenter, it is the administrative law judge's, not the VE's, duty to determine whether a claimant can continue to perform past work. The commenter also suggested that we include a cross-reference to §§ 404.1560(c) and 416.960(c) in several sections of the regulations that address the concept of "other work."

Response: We agree with the suggestion about adding cross-references and have added them to new § 404.1520(a)(4)(iv) and (v) and § 416.920(a)(4)(iv) and (v). We also agree that VE testimony is not a requirement at step 4, but that VE testimony may be obtained at step 4 to provide evidence to help us determine whether or not an individual can do his or her past relevant work. We do not agree that the VE is or should be limited to testifying about how an individual's past relevant work is normally performed in the national economy. Although we agree that the ultimate responsibility for making the necessary findings at step 4 rests with our adjudicators, we believe that it is appropriate for our adjudicators to consider evidence from a VE, VS, or other vocational resource (along with the other evidence in the case record) on a broad range of step 4 issues to help them decide if an individual can do his or her past relevant work. A VE or VS may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, as he or she actually performed it or as it is generally performed. Such testimony may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a VE or VS may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations (as determined by our adjudicator) imposed by the claimant's medical impairments can meet the demands of the claimant's previous work, either as the claimant actually performed it in the past or as that work is generally performed. In response to this comment about the role of the VE at step 4, we are making additional revisions to §§ 404.1560(b)(2) and 416.960(b)(2) to clarify our policy in this regard.

Comment: One commenter stated that a VE should not play any role at all in the disability process.

Response: The commenter did not explain why she stated that VEs should play no role in the disability claims adjudication process. We do not agree, and we made no changes in our longstanding policy based on this comment.

Several of the comments we received were outside the scope of the proposed rules. Two commenters asked us to provide additional clarification about aspects of step 5 of sequential evaluation that are not within the scope of these rules. Another commenter asked about claimants being able to record hearings before an ALJ. One commenter provided observations relating to her own claim for benefits. Because these comments were outside the scope of these rules, we are not addressing them.

Regulatory Procedures

Executive Order 12866

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

Regulatory Flexibility Act

We certify that these 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 final rules contain amended reporting requirements at §§ 404.1560 and 416.960 of the final regulation. The public reporting burden is accounted for in the Information Collection Request 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 form.

SSA solicited public comment in the notice of proposed rulemaking and subsequently received and incorporated suggestions from the public that have resulted in revision to these two sections of the regulation. As a result, SSA is soliciting comments in the final rule 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. While these rules will be effective September 25, 2003, these burdens will not be effective until cleared by OMB.

An Information Collection Request has been submitted to OMB for clearance. Comments may be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer for SSA, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503, Fax No. 202-395-6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, Fax No. 410-965-6400.

Comments can be received up to 30 days after publication of this notice. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

(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: May 22, 2003.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending 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: