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to: PABSS, BPAO, EDI

from: Ray Cebula

**re: NPRM, Age as a Factor in Evaluating Disability,
November 4, 2005**

The Commissioner of SSA has released a notice of public rulemaking concerning how age will be considered when making an initial disability determination. Comments must be submitted by January 3, 2006, in order to be considered by the Commissioner during the promulgation of final regulations. Comments can be submitted via the web on the SSA website: www.socialsecurity.gov

What is the purpose of this notice of proposed rulemaking?

SSA is proposing to increase the age categories associated with the GRID regulations by 2 years (for each category) and to eliminate age 65 as a ceiling in the process of initial disability determinations. Associated changes have been proposed in order to make all of the relative regulations for the SSDI and SSI programs consistent.

The proposed changes reflect SSA's adjudicative experience, advances in medical treatment and healthcare, changes in the workforce since the current regulations were published in 1978, and the current and future increases in the full retirement age.

Citing advances in medical treatment and healthcare, the agency assumes that Americans will have longer life expectancies and more healthy years. Not only are Americans living longer, but there is clear and overwhelming evidence that the average health of the elderly population is improving. Recent studies have concluded that adults over the age of 65 are reporting continuing and significant improvements in their ability to perform activities of daily living, instrumental activities of daily living and functional limitations. These three measurements are considered effective measures of old-age disability by the researchers.

Among adults of age 50 and over, significant and consistent improvements have been reported with respect to functional limitations. The functional limitations considered are seeing words and letters in ordinary newspaper print, lifting and carrying 10 pounds, climbing a flight of stairs, and walking a quarter of a mile.

The increase in healthy, active years has already translated into a shift among older adults who are working past 65. It has been projected that labor force participation for

workers age 55-64 will increase by five percent for men and nine percent for women between 2003 and 2012. Economic and social changes have also increased opportunities for individuals with disabilities to participate in the workforce. Job growth will occur in non-physically intensive occupations such as computer operators or service providers.

Congress has acknowledged that it is both reasonable and necessary for people to work longer before retiring and have increased full retirement age accordingly. Congress has not made policy decisions concerning the use of age in the disability determination process. They have left that to SSA with the exception of the statutory blindness category. Blindness provisions are part of the Act and will not be affected by this NPRM.

SSA's adjudicative experience suggests that the current rules should be revised to more accurately reflect the ages at which adjustment to other work becomes increasingly difficult. It appears that there are many jobs that individuals, despite their age, are capable of performing and adjusting to, even though they have not done those jobs previously. While relevant, age has become less of a factor in determining whether individuals can make an adjustment to other work. Therefore, the adjustment in the age categories (by two years) is necessary.

The elimination of the age 65 "cap" in the disability determination process reflects SSA's increased experience in making disability determinations for individuals who are over the age of 65.

How does SSA use the Medical-Vocational Guidelines?

The Medical-Vocational guidelines (GRID) are used at Step 5 of the sequential evaluation when making an initial disability determination. The GRID takes administrative notice of the existence of numerous unskilled occupations the various exertional levels (sedentary, light, etc.). The GRID considers residual functional capacity (RFC) and the factors of age, education and work experience when considering whether the individual has the ability to adjust to other work.

The GRID rules direct a determination as to disability if the RFC and vocational factors match the criteria in set forth in the rule. If the RFC and vocational factors do not exactly match those set forth in the GRID rule, the rule can be used as a framework for making the disability decision.

SSA policy recognizes that advancing age makes it increasingly more difficult for older persons to adjust to other work and the GRID reflects this policy. However, if the worker was engaged in skilled or semi-skilled work activity, that worker may have gained skills that would make a transition to other work easier. As a result, the GRID rules will direct a decision of "not disabled" for these workers.

Age as a vocational factor.

As mentioned above, age is one of the factors considered by SSA when making a disability determination. The regulations break down age groupings into 3 broad categories:

“younger person”

“person closely approaching advanced age”

“person of advanced age.”

Within the 3rd category is a sub-category called “closely approaching retirement age.” Each category spans a number of years. It is this span of years that will be increased by 2 years in order to adopt the findings of SSA supporting the NPRM.

The specific changes are outlined below:

SSDI PROPOSALS

CURRENT REGULATION

PROPOSED REGULATION

<p>20 CFR 404.1562 – Medical-Vocational profiles showing an inability to make an adjustment to other work.</p> <p>***</p> <p><i>(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.</i></p> <p>***</p>	<p><i>(b)If you are at least 57 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 Sec. Sec.404.1520(c), 404.1521, and 404.1523), are of advanced age (age 57 or older, see Sec. 404.1563), have a limited education or less (see Sec. 404.1564), and have no past relevant work experience (see Sec.404.1565), we will find you disabled. * * *</i></p>
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CURRENT REGULATION

PROPOSED REGULATION

<p>20 CFR 404.1563 – Your age as a vocational factor.</p> <p>***</p> <p>(c) <i>Younger person.</i> If you are a younger person (under age 50), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45. See Rule 201.17 in appendix 2.</p> <p>(d) <i>Person closely approaching advanced age.</i> If you are closely approaching advanced age (age 50-54), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.</p> <p>(e) <i>Person of advanced age.</i> We consider that at advanced age (age 55 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64). See §404.1568(d)(4).</p> <p>***</p>	<p>***</p> <p>(c) Younger person. If you are a younger person (under age 52), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 47-51 are more limited in their ability to adjust to other work than persons who have not attained age 47. See Rule 201.17 in appendix 2.</p> <p>(d) Person closely approaching advanced age. If you are closely approaching advanced age (age 52-56), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.</p> <p>(e) Person of advanced age. We consider that at advanced age (age 57 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age, including persons in this category who are age 62 or older. See Sec. 404.1568(d)(4).</p> <p>***</p>
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CURRENT REGULATION

PROPOSED REGULATION

<p>20 CFR 404.1568 – Skill requirements.</p> <p>***</p> <p>(d) Skills that can be used in other work (transferability)***</p> <p>(4) <i>Transferability of skills for individuals of advanced age.</i> If you are of advanced age (age 55 or older), and you have a severe impairment(s) that limits you to <i>sedentary</i> or <i>light work</i>, we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you have a severe impairment(s) that limits you to no more than <i>sedentary</i> work, we will find that you have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See §404.1567(a) and §201.00(f) of appendix 2.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to no more than <i>light</i> work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see §404.1567(b)). If you are <i>closely approaching retirement age</i> (age 60-64) and you have a severe impairment(s) that limits you to no more than <i>light</i> work, we will find that you have skills that are transferable to skilled or semiskilled light</p>	<p>***</p> <p>(d) Skills that can be used in other work (transferability) ***</p> <p>(4) Transferability of skills for individuals of advanced age. If you are of advanced age (age 57 or older), and you have a severe impairment(s) that limits you to sedentary or light work, we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). * * * If you are of advanced age but have not attained age 62, and you have a severe impairment(s) that limits you to no more than light work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see Sec. 404.1567(b)). If you are age 62 or older and you have a severe impairment(s) that limits you to no more than light work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry.</p>
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<p>work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See §404.1567(b) and Rule 202.00(f) of appendix 2 to this subpart.)</p>	
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CURRENT REGULATION

PROPOSED REGULATION

<p>Appendix 2 to Subpart P of Part 404 – Medical-Vocational Guidelines.</p> <p>201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).</p> <p>***</p> <p>(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.</p> <p>***</p> <p>(f) In order to find transferability of skills</p>	<p>d) The adversity of functional restrictions to sedentary work at advanced age (57 or older) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work.</p> <p>(f) In order to find transferability of skills</p>
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<p>to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.</p> <p>***</p> <p>(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.</p> <p>***</p> <p>(h)(1) The term <i>younger individual</i> is used to denote an individual age 18 through 49. For individuals who are age 45-49, age is a less advantageous factor for making an adjustment to other work than for those who are age 18-44. Accordingly, a finding of "disabled" is warranted for individuals age 45-49 who:</p> <p>***</p> <p>(2) For individuals who are under age 45,</p>	<p>to skilled sedentary work for individuals who are of advanced age (57 or older), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.</p> <p>(g) Individuals approaching advanced age (age 52-56) may be significantly limited in vocational adaptability if they are restricted to sedentary work.</p> <p>(h)(1) The term younger individual is used to denote an individual who has not attained age 52. For individuals who are age 47-51, age is a less advantageous factor for making an adjustment to other work than for those who have not attained age 47. Accordingly, a finding of "disabled" is warranted for individuals age 47-51 who:</p> <p>(2) For individuals who are under age 47,</p>
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<p>age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.</p> <p>(3) Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 45 (or individuals age 45-49 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.</p> <p>***</p> <p>(i) While illiteracy or the inability to communicate in English may significantly limit an individual's</p>	<p>age is a more advantageous factor for making an adjustment to other work.</p> <p>(3) Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 47 (or individuals age 47-51 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work.</p> <p>(i) *** Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate</p>
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<p>vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18-44 even if they are illiterate or unable to communicate in English.</p> <p>202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).</p> <p>***</p> <p>d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (<i>i.e.</i>, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.</p> <p>***</p> <p>(f) For a finding of transferability of skills to light work for individuals of</p>	<p>substantial vocational scope for those individuals who have not attained age 47 even if they are illiterate or unable to communicate in English.</p> <p>(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (<i>i.e.</i>, closely approaching advanced age, 52-56) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.</p> <p>(f) For a finding of transferability of skills to light work for individuals of advanced age who are age 62 or older, there must be</p>
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<p>advanced age who are closely approaching retirement age (age 60-64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.</p> <p>***</p> <p>(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.</p> <p>203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).</p> <p>***</p> <p>(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled</p>	<p>very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.</p> <p>(g) * * * This, in turn, represents substantial vocational scope for younger individuals (individuals who have not attained age 52) even if illiterate or unable to communicate in English.</p> <p>(b) * * * Even the adversity of advanced age (57 or over) and a work history of unskilled work may be offset by the substantial work capability represented by</p>
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<p>level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. 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.)</p> <p>***</p> <p>(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60-64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.</p>	<p>the functional capacity to perform medium work. * * *</p> <p>(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (57 or older). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals age 62 or older with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.</p>
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SSI regulations 20 CFR 416.962, 416.963 and 416.968, see proposed regulatory changes identical to the SSDI sections discussed above.

This is page two. Notice that the top and left margins are 1". **In order to use page 2, you will need to start your second page of content on this page.**

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