Business Practice Standards; Standards and Models approved for incorporation by reference are:

(1) WEQ–000, Abbreviations, Acronyms, and Definition of Terms, standard WEQ–000–2 ([WEQ] Version 003.1, September 30, 2015), including only: the definitions of Interconnection Time Monitor, Time Error, and Time Error Correction;

(2) WEQ–000, Abbreviations, Acronyms, and Definition of Terms, ([WEQ] Version 003.2, Dec. 8, 2017)(with minor correction applied July 23, 2019);

(3) WEQ–001, Open Access Same-Time Information Systems (OASIS), [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017), excluding: standards WEQ–001–9 preamble text, WEQ–001–10 preamble text;

(4) WEQ–002, Open Access Same-Time Information Systems (OASIS) Business Practice Standards and Communication Protocols (S&CP), [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017);

(5) WEQ–003, Open Access Same-Time Information Systems (OASIS) Data Dictionary, [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017) (with minor corrections applied July 23, 2019);

(6) WEQ–004, Coordinate Interchange ([WEQ] Version 003.2, Dec. 8, 2017);

(7) WEQ–005, Area Control Error (ACE) Equation Special Cases ([WEQ] Version 003.2, Dec. 8, 2017);

(8) WEQ–006, Manual Time Error Correction ([WEQ] Version 003.1, Sept. 30, 2015);

(9) WEQ–007, Inadvertent Interchange Payback ([WEQ] Version 003.2, Dec. 8, 2017);

(10) WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection ([WEQ] Version 003.2, Dec. 8, 2017);

(11) WEQ–011, Gas/Electric Coordination ([WEQ] Version 003.2, Dec. 8, 2017);

(12) WEQ–012, Public Key Infrastructure (PKI) ([WEQ] Version 003.2, Dec. 8, 2017);

(13) WEQ–013, Open Access Same-Time Information Systems (OASIS) Implementation Guide, [OASIS] Version 2.2 ([WEQ] Version 003.2, Dec. 8, 2017);

(14) WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response ([WEQ] Version 003.2, Dec. 8, 2017);

(15) WEQ–021, Measurement and Verification of Energy Efficiency Products ([WEQ] Version 003.2,Dec. 8, 2017);

(16) WEQ–022, Electric Industry Registry ([WEQ] Version 003.2, Dec. 8, 2017); and

(17) WEQ–023, Modeling ([WEQ] Version 003.2, Dec. 8, 2017), including only: standards WEQ–023–5; WEQ–023–5.1; WEQ–023–5.1.1; WEQ–023–5.1.2; WEQ–023–5.1.2.1; WEQ–023–5.1.2.2; WEQ–023–5.1.2.3; WEQ–023–5.1.3; WEQ–023–5.2; WEQ–023–6; WEQ–023–6.1; WEQ–023–6.1.1; WEQ–023–6.1.2; and WEQ–023–A Appendix A.

Appendix

Note: The Following Appendix Will Not Be Published in the Code of Federal Regulations.

List of Entities Filing Comments on WEQ Version 003.1 NOPR in Docket No. RM05–5–025, and the Abbreviations Used To Identify Them

- Bonneville Power Administration (9/26/16) (Bonneville)
- California Independent System Operator Corporation (9/26/16) (CAISO)
- Edison Electric Institute (9/26/16) (EEI)
- Idaho Power Company (9/23/16) (Idaho Power)
- Open Access Technology International (9/27/16) (OATI)
- Public Utility District No. 1 of Snohomish County, Washington and the City of Tacoma, Department of Public Utilities, Light Division (collectively, Snohomish/Tacoma) (9/26/16)
- Southern Company Services, Inc. (9/26/16) (Southern)
- Southwest Power Pool, Inc. and Midwest Independent System Operator, Inc. (9/26/16) (collectively, Joint Commenters)

List of Entities Filing Comments on WEQ Version 003.2 NOPR in Docket No. RM05–5–027, and the Abbreviations Used To Identify Them

- Bonneville Power Administration (7/23/2019) (Bonneville)
- Midcontinent Independent System Operator, Inc. (7/23/2019) (MISO)
- North American Energy Standards Board (6/5/2019) (NAESB)
- Nevada Power Company and Sierra Pacific Power Company (7/23/2019) (NV Energy)
- Open Access Technology International, Inc. (7/22/2019) (OATI)
- PJM Interconnection, L.L.C. (7/23/2019) (PJM)
- Southern Company Services, Inc. (7/23/2019) (Southern)
- Southwest Power Pool, Inc. (7/23/2019) (SPP)

List of Entities Filing Comments on WEQ Time Error Correction NOPR in Docket No. RM05–5–026, and the Abbreviations Used To Identify Them

- Dr. Jonathan E. Hardis (11/13/18)
- Dr. Demetrios Matsakis (11/13/18)
- North American Electric Reliability Corporation (10/24/2018) (NERC)
- North American Energy Standards Board (11/28/2018) (NAESB)
- Southwest Power Pool, Inc. (11/13/18) (SPP)

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0046]

RIN 0960–AH86

Removing Inability To Communicate in English as an Education Category

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are finalizing our proposed regulations to eliminate the education category ''inability to communicate in English'' when we evaluate disability claims for adults under titles II and XVI of the Social Security Act (the Act). This education category is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education because of changes in the national workforce since we adopted the current rule more than 40 years ago. We expect that these revisions will help us better assess the vocational impact of education in the disability determination process.

DATES: The final rule is effective on April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are finalizing the proposed rules on removing the education category ''inability to communicate in English,'' which we published in a notice of proposed rulemaking (NPRM) on February 1, 2019 (84 FR 1006). We are revising our rules to remove the education category ''inability to communicate in English'' based on research and data related to English language proficiency, work, and education; expansion of the international reach of our disability programs; audit findings by our Office of the Inspector General (OIG); [1] and public comments we received on the NPRM. We expect these changes will

[1] See Office of Inspector General, Social Security Administration, Audit Report, *Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English* (April 2015) (OIG report), at *https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-13-13062_0.pdf.*

help us better assess the vocational impact of education in the disability determination process.

In the preamble to the NPRM, we explained that we use a five-step sequential evaluation process to determine whether an adult is disabled under the Act.[2] When this final rule becomes effective, we will no longer consider whether an individual is able to communicate in English at the fifth and final step of the sequential evaluation process (step 5). The NPRM also discussed in detail further conforming edits, and the bases for our revisions. Because we are adopting these revisions as we proposed them, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM, available at *http://www.regulations.gov* by searching for docket number SSA–2017–0046.

In the preamble, we refer to the regulations in effect on the date of publication as the ''current'' rule. We refer to the regulations that will be in effect on April 27, 2020 as the ''final'' rule.

Public Comments

We received 216 comments on the NPRM, 212 of which were related to the regulation and are thus available for public viewing at *http://www.regulations.gov*.[3] These comments were from:

- Individual citizens and claimant representatives;
- Members of Congress;
- National groups representing claimant representatives, such as the National Organization of Social Security Claimants' Representatives and the National Association of Disability Representatives; and
- Advocacy groups, such as the Consortium for Citizens with Disabilities and Justice in Aging.

We carefully considered these comments; below, we discuss and respond to the significant issues raised by the commenters that were within the scope of the NPRM. We summarized, condensed, and paraphrased the comments due to their length. We organized the comments and our responses by category for ease of review.

Eliminating the English Language Distinction

Comment: Several commenters supported the proposal to eliminate the ''inability to communicate in English'' as an education category. One commenter expressed that the current rule gives non-English speakers an advantage over English speakers. Other commenters asserted that the current rule treats persons who are non-English speaking as though they are illiterate; that it creates a negative perception of non-English speakers; and that it suggests only English-speaking persons are educated enough to hold a job.

Response: We concur with the commenters' support for the proposal to eliminate the language distinction. The goal of this final rule is to help ensure our program rules remain current, and we expect that this final rule will allow us to decide disability claims consistent with the changes that have occurred in the national workforce in the last four decades.

Comment: One commenter supported our proposal, stating there is no strict correlation between proficiency in English and the ability to make valuable contributions to the U.S. economy. The commenter opined that our current rules might determine a highly-skilled non-English speaker to be disabled, diverting disability funds away from the people who most need them.

Response: We acknowledge the commenter's support for our rule. We, however, disagree that our current rules have diverted disability funds away from those who need them the most. Whether an individual is able to communicate in English is one of many factors we consider when determining disability. For example, if an individual has the residual functional capacity to perform his or her past relevant work, we find the person not disabled, regardless of the person's ability to communicate in English.

Changes in the National Workforce

Comment: Several commenters noted that the United States (U.S.) is now a diverse country with work opportunities for non-English speakers. One commenter stated that an ability to speak, read, or write in English is no longer imperative for attaining a job in the U.S. Other commenters similarly opined that the U.S. today is a diverse country with employment opportunities in many industries for non-English-speakers, and that a lack of English language proficiency is not the obstacle that it used to be. A commenter also expressed that the ''inability to communicate in English'' education category is unnecessary, and that changing the current rule is ''overdue.''

Response: We acknowledge the commenters' support for our rule. Our current rules, published in 1978,[4] are premised on the assumption that ''it may be difficult for someone who does not speak and understand English to do a job, regardless of the amount of education the person may have in another language.'' [5] As we discussed in the NPRM, and as the commenters said, there have been changes in the national workforce since we added the ''inability to communicate in English'' category to our rules on evaluating education. These changes and other data and research have led us to conclude that this education category is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education for the purposes of our programs. This final rule reflects those changes in the national workforce, acknowledge the vocational advantage that formal education may provide in any language, and account for expansion of the international reach of our disability programs.

Comment: One commenter, citing to the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2016 American Community Survey: English Proficiency,[6] contended that the data we presented does not support the proposal, because job opportunities for individuals with limited English proficiency (LEP) have not grown at the same rate as the LEP population. The commenter asserted

[2] The sequential evaluation of disability for adults is composed of five steps. We determine whether an individual: Is doing substantial gainful activity (step 1); has one or more severe medically determinable impairments (step 2); has an impairment that meets or medically equals the requirements of the Listing of Impairments in 20 CFR part 404, subpart P, appendix 1 (step 3); can do his or her past relevant work (step 4); and can do any other work, given his or her residual functional capacity, age, education, and work experience (step 5). If at any step, we can make a finding of ''disabled'' or ''not disabled,'' we stop the evaluation, make our determination or decision, and do not proceed to the next step. See 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[3] We excluded one comment from one of our employees who improperly submitted the comment in the capacity as an employee. We excluded three other comments because they were out of scope or nonresponsive to the proposal.

[4] 43 FR 55349, 55364–65 (1978). Our original rules on the inability to communicate in English stated that this factor ''may be considered a vocational handicap because it often narrows an individual's vocational scope.'' 20 CFR 404.1507(f) (1979). In 1980, we reorganized and rewrote a number of rules in simpler, briefer language, including our rule on consideration of education as a vocational factor. 45 FR 55566, 55591 (1980). Our rules on the inability to communicate in English have remained unchanged since that 1980 revision.

[5] See 20 CFR 404.1564(b)(5) and 416.964(b)(5).

[6] See SSA Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2016 American Community Survey: English Proficiency (ORES English Proficiency Analysis 2016), Table 1: Estimated working-age (25–64) population, by English proficiency and educational attainment, 1980 and 2016 (ORES English Proficiency Analysis 2016 Table 1), and Table 2: Estimated labor force participation of working-age (25–64) population, by English proficiency and educational attainment, 1980 and 2016 (ORES English Proficiency Analysis 2016 Table 2), available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

that the percentage of working-age LEP individuals with a high school degree in the workforce only increased by 3.7% between 1980 to 2016, while the working-age LEP population increased by 5.4% during the same period.

Response: We disagree because the statistics presented by the commenter characterizing our data are incorrect. The increase in the working age (25–64) LEP [7] population between 1980 and 2016 was not 5.4%.[8] The working age LEP population more than tripled, increasing from approximately 5.4 million to 17.8 million.[9] Also, the increase in the labor force participation rate (LFPR) [10] of the working age LEP population with high school education was not 3.7%. Rather, their LFPR increased by 3.7 percentage *points,* from 70% to 73.7%.[11] See Tables 1–2 below for a summary of relevant data.

TABLE 1—WORKING AGE LEP POPULATION IN THE U.S.

1980	2016	Change
5.1% (5.4 million).	10.5% (17.8 million).	LEP population increased by 5.4 percentage points.

TABLE 2—LABOR FORCE PARTICIPATION BY LEP INDIVIDUALS WITH HIGH SCHOOL DIPLOMA

1980	2016	Change
70% (819,000).	73.7% (4.4 million).	Labor force participation increased by 3.7 percentage points.

More importantly, between 1980 and 2016, the working age LEP population more than doubled from 5.1% to 10.5% as a percentage of the US population (approximately 5.4 million to 17.8 million).[12] During the same period, the LFPR of the working age LEP population (with no restriction on education) increased from 66.7% to 72.2% (approximately 3.6 million to 12.9 million).[13] This means that in 2016, 1 out of 10 working age individuals in the country was a person with LEP, and that 72% of the working age LEP population were in the labor force. The data, while not an exact match for all the parameters we examine, indicates that individuals with LEP were more likely to be part of the labor force in 2016 than in 1980.[14] See Table 3 below for a summary of relevant data.

TABLE 3

Working age LEP population in the U.S.		Labor force participation of LEP population in the U.S.	
1980	2016	1980	2016
5.1% (5.4 million)	10.5% (17.8 million)	66.7% (3.6 million)	72.2% (12.9 million).

We also looked at employment rate [15] as another indicator of how the national workforce has changed. Because employment rate focuses exclusively on the employed population, it demonstrates that people with LEP are working, and that the percentage of those who are working has increased since 1980. In 2017, the employment rates for the working age LEP population (95.2%) and the working age population that speak only English (95.8%) were about the same.[16] The employment rate for people who speak only English changed slightly from 1980 to 2017 (95.2% to 95.8%).[17] The employment rate for individuals with LEP increased by a slightly greater percentage over that same period (92.4% to 95.2%).[18] The employment rate for those who speak no English, however, increased from 88.1% to 94.3% during the same period.[19] Moreover, the number of individuals who speak no English increased substantially, and at a greater rate than all other group, except the LEP group that speaks English not well.[20] The group that speaks no English and the group that speaks English not well nearly quadrupled between 1980 and 2017.[21] In sum, contrary to the commenter's assertions, the data we presented supports our final rule removing inability to communicate in English as an education category because, as explained above, the labor force participation and employment rates for individuals with LEP have increased. See Tables 4–5, below, for a summary of relevant data.

[7] As explained in the NPRM, the U.S. Census Bureau defines LEP as those who speak English ''well,'' ''not well,'' or ''not at all.'' See U.S. Census Bureau American Community Survey (ACS), What State and Local Governments Need to Know, p. 12, n. 8, February 2009, *https://www.census.gov/content/dam/Census/library/publications/2009/acs/ACSstateLocal.pdf.*

[8] See ORES English Proficiency Analysis 2016 Table 1.

[9] Id.

[10] Labor force participation rate refers to the percent of the civilian population that is working or actively looking for work.

[11] See ORES English Proficiency Analysis 2016 Table 2.

[12] See ORES English Proficiency Analysis 2016 Table 1.

[13] Between 1980 and 2016, the LFPR of the individuals who spoke only English increased from 73.4% to 77.5% (approximately 69.8 million to 101.1 million). See ORES English Proficiency Analysis 2016 Table 2.

[14] When we published the NPRM, we used 2016 data about the LFPR and the working age population by English proficiency and educational attainment, because this was the most recent data available. Because many commenters referred to the 2016 data that we discussed in the NPRM, some of our responses in this final rule refer to this 2016 data. However, we now have parallel data available for 2017. The 2017 data closely tracks the data from 2016 that we cited in the NPRM. For example, in 2017 the working age LEP population's LFPR was 72.6%, compared to 72.2% in 2016. For the complete 2017 data, see the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency and Labor Force Participation (ORES Labor Force Analysis 2017), available at *regulations.gov* as supporting and related material for docket SSA–2017–0046.

[15] In our analysis, employment rate equals the percent of civilian individuals ages 25–64 who report that they are working.

[16] For the population that spoke only English, approximately 97.6 million individuals out of 101.9 million in the labor force were employed. For the LEP population, approximately 12.2 million individuals out of 12.8 million in the labor force were employed. See the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency, Population Size, and Employment (ORES English Proficiency, Population, and Employment Analysis 2017) Table 2 and ORES Labor Force Analysis 2017, available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[17] ORES English Proficiency, Population, and Employment Analysis 2017 Table 2.

[18] Id.

[19] Id.

[20] See the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency, Population Size, and Employment (ORES English Proficiency, Population, and Employment Analysis 2017) Table 1, available at *regulations.gov* as a supporting and related material for docket SSA–2017–0046.

[21] Id. The population of LEP individuals who speak no English increased from approximately 682,000 to 2.6 million.

TABLE 4

Working age population in the U.S.	1980	2017 (million)	Rate of population growth (percent)
Total	107.2 million	170.5	59.05
Speaks only English	95.2 million	130.9	37.50
Speaks English very well	6.6 million	22	233.33
LEP	5.4 million	17.6	225.93
Speaks English well	3.1 million	8.4	170.97
Speaks English not well	1.7 million	6.6	288.24
Speaks no English	682,000	2.6	281.23

TABLE 5—EMPLOYMENT RATE FOR WORKING AGE POPULATION

	1980 (percent)	2017 (percent)
Population with LEP	92.4	95.2
Population that speaks no English	88.1	94.3
Population that speaks only English	95.2	95.8

Comment: Some commenters asserted that the fact that work opportunities for the population with LEP expanded is irrelevant, because the ''inability to communicate in English'' education category only includes the LEP population that speaks no English. Commenters pointed out that the ''LEP'' rubric includes individuals who speak English ''well,'' ''not well,'' and ''not at all,'' so the LEP population is too broad to represent those individuals who are ''unable to communicate in English.'' These commenters contended that the appropriate proxy for individuals with an ''inability to communicate in English'' would be only those individuals with LEP who speak no English. Further, some of these commenters asserted that the labor force participation for individuals who speak no English has, in their opinions, not improved much.

Response: We disagree. The ''inability to communicate in English'' education category can apply to a range of individuals with varying levels of English communication ability. This is because our agency uses the ''inability to communicate in English'' category to include all individuals who are unable to do one or more of the following in English: (1) Read a simple message; (2) write a simple message; or (3) speak or understand a simple message.[22] In other words, we currently find as ''unable to communicate in English'' individuals who cannot speak English but who have some, or even higher, capacity to read and understand English. Similarly, we find as ''unable to communicate in English'' individuals who cannot read or write English, but who can speak some English. Therefore, while not an exact match, the LEP population is an appropriate proxy for the population we deem ''unable to communicate in English'' under our current rules.

In response to the commenters' assertion that the LFPR for this group has not increased, we note that the data we cited indicates that individuals who speak no English are participating in the labor force in increased numbers. Between 1980 and 2016, the LFPR for those who speak no English rose from 54.7% to 61.5% (approximately from 373,000 to 1.7 million in absolute numbers).[23] [24] [25] The proportion of the working age population who do not speak English to the total labor force nearly tripled, that is, from approximately 373,000 out of 78.3 million to approximately 1.7 million out of 131 million over the same period.[26]

Moreover, the 2016 data shows that the LFPR of the individuals who spoke no English increased more than any other group at the High School Diploma, Some College, and College Graduate levels.[27] At the Less than High School Diploma level, even though the increase in the LFPR of those individuals who spoke no English was not the highest among all groups, the LFPR of the no English group (60.5%) was still higher than that of only English group (48.9%).[28] [29] In 1980, the reverse was true.[30]

Comment: Some commenters raised the concern that the work opportunities for individuals with LEP are not the same throughout the U.S. A few commenters noted that the region in which an individual with LEP lives and the number of people in that individual's region of residence who speak the same language as the individual could affect job prospects. One commenter stated that no one speaks anything other than English in his region, so he believed that an inability to communicate in English would be a significant barrier to working where he lives. Another commenter said that even though a substantial number of LEP persons live in his region, he doubted that employers would hire them, because a large number of English proficient workers are available in his region. Another commenter asserted that, for non-English speaking individuals, the language the individuals speak might affect their work opportunities. This commenter opined that an individual with LEP who speaks Spanish might have better work prospects than an individual with LEP who speaks another language.

Response: Our disability programs are national in scope. According to the Act, it does not matter whether work ''exists in the immediate area in which [a claimant] lives'' as long as sufficient work exists in the ''national economy.'' [31] The Act defines the ''national economy'' as ''the region

[22] See 20 CFR 404.1564 and 416.964. See also Program Operations Manual System (POMS) DI 25015.010C.1.b Education as a Vocational Factor, available at *https://secure.ssa.gov/apps10/poms.NSF/lnx/0425015010.*

[23] See ORES English Proficiency Analysis 2016 Table 2.

[24] The LFPR for those who speak only English rose from 73.4% to 77.5% (approximately from 69.8 million to 101.1 million in absolute numbers). Id.

[25] The LFPR for those who speak no English was 61% (approximately 1.6 million in absolute numbers) in 2017. See ORES English Labor Force Analysis 2017.

[26] See ORES English Proficiency Analysis 2016 Table 2.

[27] Id.

[28] Id.

[29] In 2017, the data shows that the LFPR of those with less than a high school diploma and who spoke no English was 59.2%. The LFPR of those similarly situated individuals who spoke only English was 49.1%. See ORES English Proficiency, Population, and Employment Analysis 2017.

[30] In 1980, the LFPR of those with less than a high school diploma and who spoke no English was 54.5%. The LFPR of those with less than a high school diploma who spoke only English was 60.7%. See ORES English Proficiency Analysis 2016 Table 2.

[31] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

where [a claimant] lives'' *or* ''several regions of the country.'' [32] The existence of jobs for individuals with LEP may vary depending on the immediate area in which the individual resides. The Act, however, requires us to consider the existence of jobs in the overall national economy (defined as an entire region or several regions of the country).

As to the concern that an individual with LEP may not be hired because employers may prefer a person who is proficient in English, the Act prohibits us from considering ''whether a specific job vacancy exists for [a claimant], or whether he would be hired if he applied for work.'' [33] Consistent with the Act, our regulations explain that when we determine whether a claimant can adjust to other work, we do not consider the hiring practices of employers.[34] Again, we are required to consider only whether a claimant could engage in work that exists in significant numbers in the national economy, not how likely claimants are to be hired by certain employers.

Comment: Some commenters expressed the view that an increase in the size of the population with LEP does not translate to greater work opportunities for those individuals with LEP. These commenters contended that increased linguistic diversity in the economy might actually make finding work more difficult for workers with LEP, because they would have a harder time finding other workers who speak the same language.

Response: The available data does not support the assertions made in this comment. Both the LEP population as a percentage of the U.S. population and their LFPR increased considerably between 1980 and 2016. In fact, during this period, the LFPR of the LEP population increased more than that of the individuals who spoke only English. The LEP population's LFPR increased by 5.5 percentage points (from 66.7% to 72.2%) while the LFPR of the population that spoke only English increased by 4.1 percentage points (from 73.4% to 77.5%).[35] The increase is notable considering the change in the make-up of the U.S. population. In 1980, the LEP individuals made up only 5.1% (5.4 million) of the population.[36] In 2016, LEP individuals made up 10.5% (17.8 million) of the U.S. population.[37] Further, the Brookings Institution's 2014 study (the Brookings analysis) that evaluated the LEP population in 89 metropolitan areas (home to 82% of nation's LEP population) in 43 States and the District of Columbia showed that a majority of working-age individuals with LEP are in the labor force.[38] While the LFPR increase for the LEP population could theoretically be attributed to multiple factors, the data suggests that there are job opportunities for those with LEP.

Comment: One commenter asserted that our reliance on the Brookings analysis was inappropriate because the study did not examine LEP individuals with disabilities, but rather focused on the general LEP population.

Response: Under the Act, we find a person disabled if the person cannot do his or her past relevant work or any other work that exists in the national economy in significant numbers. This means that a person found disabled under our rules would not be working, absent special circumstances. Therefore, we examined data about the LFPR of individuals in the general LEP population, rather than focusing on the data about LEP individuals who are disabled. Examining statistics on persons with impairments who are in the labor force would not have been directly relevant to this rulemaking, because if such persons were able to engage in work in the national economy, their impairments would not have been severe enough to meet the Act's definition of ''disability'' in the first place.

Inability To Communicate in English as a Barrier to Work

Comment: A few commenters cited Social Security Ruling (SSR) 85–15,[39] which says that we will find an individual disabled if his or her mental capacity is insufficient to meet the demands of unskilled work due to a mental impairment. These commenters equated the effects of ''inability to communicate in English'' with the effects of having a mental impairment that severely limits the potential work capacity. These commenters stated that our rules should treat similarly the effects of the ''inability to communicate in English'' and those of severely limiting mental impairments. One of these commenters also cited listing 2.09, which addresses ''loss of speech,'' [40] and said that it is implausible that the ''inability to communicate in English'' would be completely vocationally irrelevant when we find an individual who is unable to speak disabled under listing 2.09.

Response: We disagree with these comments, because the loss of speech under listing 2.09 and an inability to communicate in English (or in any one particular language) are different and cannot be conflated. SSR 85–15 addresses primarily the loss of functional capacity that results from a medically determinable impairment(s) (MDI). Under the Act, an MDI ''results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.'' [41] The ''inability to communicate in English'' is not an MDI; rather, it is a subset of the Act's vocational factor of education. Our rules treat MDIs differently from vocational factors in determining disability. Specifically, we consider the effects of an MDI or a combination of MDIs to determine an individual's residual functional capacity (RFC).[42] We do not include the effects of vocational factors—*i.e.,* age, education, and work experience —when determining an RFC. Under this final rule, how we assess an RFC remains the same, but we will no longer consider an ''inability to communicate in English'' as a subset of the vocational factor of education for the reasons we explain here and in the NPRM. We note that persons who are unable to communicate due to an MDI would be evaluated under the criteria for that MDI; the inability to communicate generally (presumably in any language, not just English) would be considered in that context, and not as a ''symptom'' in isolation.

The comparison of the ''inability to communicate in English'' to ''loss of speech'' under listing 2.09 can be

[32] Id.

[33] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

[34] See 20 CFR 404.1566(c) and 416.966(c).

[35] See ORES English Proficiency Analysis 2016 Table 2.

[36] ORES English Proficiency Analysis 2016 Table 1.

[37] Id.

[38] Jill H. Wilson, Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas, Metropolitan Policy Program, at Brookings Institution (September 2014), p. 15, 20; and Appendix. Limited English Proficiency Population, Ages 16–64, 89 Metropolitan Areas, 2012, p. 32–37, available at *https://www.brookings.edu/wp-content/uploads/2014/09/Srvy_EnglishSkills_Sep22.pdf.*

[39] SSR 85–15: Titles II and XVI: Capability to Do Other Work–The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments.

[40] 20 CFR part 404, subpart P, appendix I, Listing 2.09. As explained in footnote 2, we use the five-step sequential evaluation process to determine whether an individual is disabled. At the third step, if we determine that a claimant has an impairment that meets or medically equals the requirements of the Listing of Impairments in 20 CFR part 404, subpart P, appendix 1, we find the person disabled. See 20 CFR 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

[41] Sections 223(d)(2)(C)(3),1614(a)(3)(D) of the Act, 42 U.S.C. 423(d)(3),1382c(a)(3)(D).

[42] See 20 CFR 404.1545 and 416.945; and sections 223(d)(2)(C)(3),1614(a)(3)(D) of the Act, 42 U.S.C. 423(d)(3),1382c(a)(3)(D).

similarly distinguished. Listing 2.09 deals with individuals who due to a MDI have an ''inability to produce by any means speech that can be heard, understood, or sustained.'' [43] We find individuals who satisfy the listing requirements disabled at step 3 of the sequential evaluation process, with no consideration of whether they are able to communicate in English or in another language.[44] An inability to communicate in English was a category of education that we considered at step 5 [45] and was not a functional limitation. Equating an ''inability to speak'' to an ''inability to communicate in English'' due to a lack of English proficiency draws a false equivalency between two groups of individuals who are fundamentally dissimilar. Our program experience and common understanding make it clear that individuals who are unable to produce by any means of speech that can be heard, understood, or sustained because of a severe MDI are substantially more limited than those without such an impairment who merely lack facility with the English language.

Comment: One commenter opined that an individual's ability to communicate in English should remain a relevant vocational factor because every vocational expert [46] would say that language proficiency affects job placement. The commenter reasoned that if that were not the case, the Dictionary of Occupational Titles (DOT) would not have included a language component in their job descriptions.

Response: The commenter asserted that because the DOT has a language component in their job descriptions, the ability to communicate in English must be a relevant vocational factor. We note that even under our current rules, the inability to communicate in English has no impact on disability determinations for claimants under age 45.[47] This underscores that the ability to communicate in English is not an influencing factor as a matter of general principle.

Further, we did not state the ability to communicate in English is irrelevant to job placement. Through this rule, we are simply acknowledging the changes that have occurred in the labor market and the workforce in the last four decades. The data we presented in the NPRM demonstrated that individuals with LEP, including those who speak no English, are participating in the U.S. labor force at considerably higher levels than previously. This indicates that more jobs are present in the national economy for the LEP population. We are not legally bound to establish disability determination criteria based on every possible influencing vocational factor. Rather, we are required to determine that jobs exist in the national economy for disability applicants and recipients (if they are determined to no longer be qualified for payments based on medical factors).

Comment: Multiple commenters disagreed with the statement from the NPRM that English language proficiency has the least significance for unskilled work, because most unskilled jobs involve working with things rather than with data or people.[48] They contended that even unskilled jobs require some level of training, which would include verbal or written instructions. Several commenters also said that many unskilled jobs require public contact and the ability to communicate in English. These commenters noted that unskilled jobs like a ''fast food worker'' include duties such as taking customer orders and communicating the orders to the kitchen. Some commenters noted that the Occupational Information Network (O*NET) does not list any job for which knowledge of the English language is unnecessary or unimportant.

Response: The data we cited does not support the commenter's view. A large number of individuals with LEP, including those who speak no English, participate in the labor force in a variety of occupations. The Brookings analysis cited in the NPRM shows that over 1 million individuals with LEP, including those who speak no English, are represented in each of the following occupations: Building and grounds cleaning and maintenance; production; construction and extraction; food preparation and serving; transportation and material moving; sales and related occupations; and office and administrative support.[49] This data indicates that, contrary to the commenters' assumptions, employers do find a way to communicate with LEP employees, indicating that LEP is not a barrier to all types of employment.

Comment: In the NPRM, we noted that the work history of those claimants found disabled under Rule 201.17 or Rule 202.09 (the two main grid rules that we used for the inability to communicate in English) [50] included the following ten occupations: Laborer, machine operator, janitor, cook, maintenance, housekeeping, driver, housekeeper, truck driver, and packer.[51] Pointing to this list, several commenters contended that only physically demanding work is available to individuals who speak no English, because the DOT classifies these jobs as ''medium'' and ''heavy'' work. These commenters further argued that this list underscores how difficult it would be for older, severely impaired individuals who are unable to communicate in English to adjust to other work available in the national economy.

Response: The occupations cited are not all as physically demanding as characterized by the commenters. These occupations are types of work that many claimants whom we found ''unable to communicate in English'' had previously done, and many of them exist as unskilled, light exertional level work. In a supplemental document, ''Table of example entries of 'cook,' 'machine operator' and 'housekeeping' jobs in the Dictionary of Occupational Titles,'' [52] we list multiple examples of ''cook,'' ''machine operator,'' and ''housekeeping'' occupations with their corresponding strength requirement and specific vocational preparation.[53] As shown in our table, the DOT has multiple entries of various ''cook'' occupations that range in exertional level from light to medium. As well, the DOT lists numerous entries for ''machine operator'' occupations that range from sedentary to very heavy exertional levels. ''Housekeeping'' occupations exist at the light exertional level. Moreover, the ten occupations listed above do not represent all jobs that a person who may be found ''unable to communicate in English'' can do. Finally, English language proficiency has the least significance for unskilled work because most unskilled jobs involve working with things rather

[43] See 20 CFR part 404, subpart P, appendix I, Listing 2.09.

[44] See footnote 40.

[45] At step 5, we consider a claimant's vocational factors, *i.e.,* age, education, and work experience, together with the claimant's RFC to determine whether the claimant can do work in the national economy. See 20 CFR 404.1520(a)(4)(v) and 416.920(a)(4)(v).

[46] Vocational experts are vocational professionals who may provide impartial expert evidence at the administrative hearing level.

[47] See 20 CFR part 404, subpart P, appendix 2, Tables No. 1, 2, and 3.

[48] See 84 FR 1006, 1008 (February 1, 2019), citing 20 CFR part 404, subpart P, appendix 2, sections 201.00(h)(4)(i) and 202.00(g).

[49] See 84 FR 1006, 1009.

[50] See 20 CFR part 404, subpart P, appendix 2, Tables No. 1 and 2. We refer to the numbered rules in the tables as ''grid rules.''

[51] See 84 FR 1006, 1009.

[52] The supporting document, ''Table of example entries of ''cook, ''machine operator,'' and ''housekeeping'' jobs in the Dictionary of Occupational Titles'' is available at *http://www.regulations.gov* as supporting and related material for docket SSA–2017–0046.

[53] Specific vocational preparation is the amount of time required by a typical worker to learn the job.

than with data or people. From our adjudicative experience, we know that a significant number of unskilled jobs exist at the sedentary and light exertional levels in the national economy.

In fact, in the NPRM we also said that the Brookings analysis shows that over 1 million individuals with LEP, including those who speak English ''not at all,'' are represented in each of the following occupations: Building and grounds cleaning and maintenance; production; construction and extraction; food preparation and serving; transportation and material moving; sales and related occupations; and office and administrative support. These occupations represent seven of 22 major occupation groups that exist in the national economy.[54] Each major group contains numerous jobs that exist at varying exertional levels. As well, we note that sales and related occupations and office and administrative support are not physically taxing by nature.

Comment: Several commenters contended that we should not eliminate a rule that affects only a very small group of people who are age 45 or older, are restricted to sedentary or light work, and are without skills.

Response: Our goal in publishing this rule is to ensure we use the most accurate, current criteria possible when determining if someone is disabled. The data we cited in the NPRM and here, indicating the existence of jobs in the national economy for individuals with LEP, supports our decision to remove the inability to communicate in English. It is the supportability and applicability of the criteria used, not the number of people affected, that drives this policy. The increase in the LFPR and employment rate in the LEP population apply to both the LEP individuals who are under 45 and the LEP individuals who are 45 or older. We also note that the two groups' LFPR and employment rate in 2017 were comparable, as shown in Table 6, below.[55]

TABLE 6—COMPARISON OF LEP LFPR AND EMPLOYMENT RATES FOR AGES 25–44 VS. AGES 45–64

	Ages 25–44 (%)	Ages 45–64 (%)
LFPR for LEP Individuals	74.2	70.9
Employment Rate for LEP Individuals	94.9	95.6

Comment: Some commenters contended that we offered no meaningful evidence that the nationwide job prospects for ''older, severely disabled workers with very limited functional capacity who are unable to communicate in English'' have improved. They asserted that we did not establish that a sufficient occupational base of jobs exists for this narrow group of individuals.

Response: In the NPRM and this final rule, we presented data demonstrating that the national workforce has changed, and that individuals who are unable to communicate in English are working in much greater numbers than previously. Further, the inability to communicate in English is just one of multiple factors that we consider under the sequential evaluation process. Thus, workers who are ''severely disabled'' are likely to qualify for Social Security disability payments based on medical or other factors, rather than on their inability to communicate in English. Because this final rule removes only one category of several from our consideration of education, and education is just one of many factors that we consider under the sequential evaluation process, it does not follow that removal of this factor would lead to ''severely disabled'' people no longer being able to receive disability payments. For example, at step 3 of the sequential evaluation, we will continue to determine whether a claimant is disabled based solely on ''medical severity'' of a claimant's impairments, without considering age or English language proficiency.[56] Similarly, at step 5 of the sequential evaluation process, we will still consider the factors of age, education, and work experience to determine if the individual can adjust to other work in the national economy.

Comment: Many commenters asserted that claimants who are unable to communicate in English have fewer vocational opportunities than the claimants with the same level of education who can communicate in English.

Response: The Act does not require us to consider whether the individuals who are unable to communicate in English and individuals who are able to communicate in English have equivalent vocational opportunities when assessing disability. Under the Act, the issue of whether an individual is disabled is determined based on whether an individual, with his or her RFC, age, education, and work experience, is able to perform any substantial gainful work that exists in significant numbers in the national economy.[57] We believe the data cited in the NPRM and in this final rule supports our position that there is such work available.

Education, Inability To Communicate in English, and Illiteracy

Comment: Several commenters supported the proposal, including one commenter who noted that an individual's actual formal education is the best preparation for future jobs, and that assessing an individual's education category based solely on communication skills was ''unreasonable.'' The commenter also indicated that our current rule might have the effect of stigmatizing as illiterate those people who cannot communicate in English. Another commenter stated that the ''inability to communicate in English'' category is outdated, because it suggests that only a person who speaks English is educated enough to hold a job. Similarly, one commenter indicated that disregarding education simply because a person has limited English proficiency did not make sense, noting that many of her family members who know little English hold advanced degrees from their home country.

Response: We acknowledge the support provided by the commenters, and reiterate that we no longer consider English proficiency to be the best proxy for assessing an individual's education level as part of our disability determination process. We therefore anticipate the revision we are making in this final rule will help us better assess the vocational impact of education in the disability determination process, in a manner consistent with the current national economy.

Comment: One commenter, citing to research and to the U.S. Census Bureau's 2014 American Community Survey data, asserted that immigrants have difficulty transferring their foreign education, foreign credentials, and overseas job experience to the U.S. job market. Another commenter, also

[54] See *https://www.bls.gov/oes/current/oes_stru.htm.*

[55] For more detailed information, see the Office of Research, Evaluation, and Statistics (ORES) Analysis of 1980 Census and 2017 American Community Survey: English Proficiency, Labor Force Participation, and Employment, Table 1: Estimated labor force participation of working-age population (25–64), by English proficiency and age, 1980 and 2017, and Table 2: Estimated employment rate of working-age population (25–64), by English proficiency and age, 1980 and 2017, available at regulations.gov as a supporting and related material for docket SSA–2017–0046.

[56] See 20 CFR 404.1520(a) and (d) and 416.920(a) and (d).

[57] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B).

pointing to the 2014 American Community Survey data, said that a significant number of immigrants are working in jobs for which they are educationally overqualified, and this demonstrates that they are not able to make full use of their educational background in the U.S. job market. One commenter described working with immigrants who were physicians in their native country but who could only qualify as low-paid home health aides in the U.S. because of their poor English (and various licensing requirements).

Response: The standard applied at step 5 to determine disability is not whether an individual is able to find work that maximizes the individual's education and work experience. Rather, the standard is whether an individual who cannot do his or her previous work is able to engage in ''any other kind of substantial gainful work'' which exists in the national economy, given his or her RFC, age, education, and work experience.[58] The phrase ''any other kind of substantial gainful work'' makes clear that we are not required to identify work that maximizes an individual's education and work experience. Thus, finding a claimant not disabled because he or she has a capacity to adjust to work that is less than his or her education and skill level is entirely consistent with the Act. This is the case even for claimants who have the ability to fully communicate in English.

Comment: One commenter claimed that we did not show how foreign formal education, coupled with the inability to communicate in English, provides any vocational advantage. The commenter contended that we did not demonstrate that workers with a foreign formal advanced education are affected by this rule. The commenter opined that workers with the inability to communicate in English frequently lack a formal education.

Response: The Act requires us to consider an individual's education in some cases when we make disability determinations. We clarify that we are not making conclusions about the numbers of workers with foreign advanced education who are affected by our current rules. Similarly, we acknowledge that individuals with an inability to communicate in English have various education levels, and we will continue to assign individuals to the most appropriate of the remaining education categories (illiteracy, marginal education, limited education, and high school education and above).[59] Our final rule simply no longer prioritizes English skills over formal education.

Comment: Some commenters expressed that having formal education might not lead to a vocational advantage. One of these commenters noted that, even within the U.S., the quality of education varies significantly, and that many American high school graduates, especially those from low-income families, may have failed to develop reading skills beyond elementary levels due to differences in education funding. In this context, the commenter noted that if there were such variability among American educational institutions, correctly assessing formal education attained from another country would be even more difficult. Further, this commenter and several others noted that formal education from a non-English speaking country might not be helpful if the individual is unable to communicate in English.

Response: We disagree. Because we have never assessed the quality of education that a particular school has provided, and that will not change in this rule. When we determine an individual's education category, we consider the numerical grade level an individual completed if there is no other evidence to contradict it. We will adjust the numerical grade level if other factors suggest it would be appropriate, such as past work experience, the kinds of responsibilities an individual may have had when working, daily activities, hobbies, or the results of testing showing intellectual ability.[60]

We also disagree with the comment that formal education from a non-English speaking country might not be helpful if the individual is unable to communicate in English. Our current rules explain that educational abilities consist of reasoning, arithmetic, and language skills.[61] An individual's actual educational attainment (reflecting those three areas, among others), not the specific language the individual speaks, generally determines the individual's educational abilities. Thus, lack of English language proficiency does not diminish an individual's actual educational abilities, nor does it negate educational abilities attained through formal education.

Comment: Several commenters said we should maintain our current rules because the effects of illiteracy and inability to communicate in English on an individual's ability to work would be similar. One commenter, for example, said that those individuals who are illiterate and those who are unable to communicate in English would have a similar inability to read basic safety signs and supervisory instructions. Another commenter expressed that keeping the ''illiteracy'' education category while eliminating the ''inability to communicate in English'' education category is inconsistent and biased. The commenter said someone who can read and write in another language, but cannot do so in English, faces the same hardships and challenges in a work place as an illiterate individual.

Response: We disagree. Even though we treated illiteracy and inability to communicate in English similarly before this final rule, we maintained two distinct education categories for these situations, demonstrating that they are not the same. Individuals with LEP can have varying levels of education, ranging from none to post-secondary education, while an illiterate individual likely has no or minimal education.[62] Further, from a practical standpoint, people with LEP do not experience the disadvantages that people with illiteracy do. For example, the commenter raised the issue of being unable to read safety warning signs. In that circumstance, someone who was illiterate would have no way of knowing what he or she were reading, and no way to find out other than asking someone. Someone with LEP, however, might be able to use a free online translator program on a personal handheld electronic device to find out the meaning of the sign's message.

Regarding the comment that reading documents and following instructions in a workplace may be challenging for some individuals who have no English language proficiency, the data cited in the NPRM and here indicate that many of these individuals are in fact participating in the workforce and are employed, despite the language barrier.

Comment: One commenter suggested an alternative to our proposed rule. The commenter suggested that we revise the ''illiteracy'' education category to include the inability to read or write in any language, not just in English. The commenter contended that, with this revision, older individuals who cannot read or write in any language would be found disabled under the current grid rules that include ''Illiterate or Unable to Communicate in English.''

The commenter also suggested that we revise the ''inability to communicate

[58] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[59] See 20 CFR 404.1564(b)(1)–(4) and 416.964(b)(1)–(4).

[60] See 20 CFR 404.1564 and 416.964.

[61] Id.

[62] See 20 CFR 404.1564(b)(1) and 416.964(b)(1).

in English'' category. The commenter recommended that we consider education in another language, particularly at the high school level or above, when determining whether a claimant's inability to communicate in English has an impact on finding work in the national economy. The commenter further suggested that, for claimants with a considerable amount of education in a language other than English living in the U.S. territories, we should heavily weigh the effects of their education. The commenter noted that, due to complexities involved in determining availability of jobs in the national economy, we must use a vocational expert in such cases.

Response: Regarding the commenter's suggestion about revising the illiteracy category, we note that our current regulations at 20 CFR 404.1564 and 416.964 describe the illiteracy education category without reference to a specific language. As to the other suggestions, as the commenter noted, the options recommended would require our adjudicators to undertake complex analyses of even greater subjectivity, likely leading to inconsistent results. Further, if we were to adopt the suggestion of considering education differently in the U.S. territories, we would create a different set of rules for those living in places where English is not the dominant language. This would not be consistent with the intent of the Act that we apply our rules with national uniformity and consistency.[63]

Comment: Some commenters asserted that the proposed rule would be too burdensome for us to administer. Specifically, they said our adjudicators would have difficulty assessing education attained in another language or in another country.

Response: We acknowledge that evaluating education completed in another country could be complex at times. However, we already do this under our current rules. For claimants who are proficient in English, we assess foreign schooling if they attended school in another country. Under our current regulations, we use the highest numerical grade an individual completed to determine the individual's educational abilities unless there is evidence to contradict it.[64] This will not change under the final rule. We will provide training to our adjudicators about how we will assess education under the new framework of the remaining four education categories. We do not anticipate that the evaluation process will become more burdensome.

U.S. Territories and Countries With a Totalization Agreement

Comment: A commenter supported our proposal, stating that evaluating disability claims based on an individual's ability to communicate in English is no longer appropriate considering the international expansion of the Social Security agreements (also known as totalization agreements).[65]

Response: We acknowledge the commenter's support for the rule. We agree that the international reach of our disability program has steadily expanded, and we anticipate further expansion. As explained in the NPRM, in 1978 we had a totalization agreement with only one country. In contrast, we now have totalization agreements with 30 countries, and English is the dominant language in only four of those countries. The increasingly global scope of our programs is also illustrated by the fact that, during the public comment period for the proposed rule, two new totalization agreements (with Slovenia and Iceland) went into effect.[66]

Comment: Several commenters claimed that our proposal appeared to be based on our experience adjudicating claims from individuals in the U.S. territories and outside of the U.S. These commenters asserted that we should not change nationwide policy based on a small number of ''uncommon cases'' in these areas. One commenter referenced data stemming from an OIG report.[67] This data seemed to indicate that during calendar year 2011–2013, there were an average of 122 disability allowances per year in Puerto Rico in which ''inability to communicate in English'' was a deciding factor.

Response: We disagree that we based our proposal on ''uncommon cases.'' The Puerto Rico data referenced by the commenter was only one source of support cited in the NPRM. As previously noted in this document, one of the reasons for the proposal is the expansion of the population with LEP as a portion of the U.S. population and the increase in their LFPR and employment rate, demonstrating that a lack of English proficiency is no longer the work barrier that it used to be. As stated previously, other reasons for the change include research and data related to English language proficiency, work, and education; the expansion of the international reach of our disability programs; and public comments we received on them in support of our NPRM.

Comment: Another commenter expressed that because individuals living in Puerto Rico and other U.S. territories can and do move to one of the 50 States, and because many individuals receiving disability benefits while living abroad have a right to live in the U.S., current rules based on the dominant language of the U.S. should be retained.

Response: We note that regardless of the individual's country of origin, residence or language, we administer the program based on uniform rules, because this is a national program.

Comment: Some commenters suggested that we revise the ''inability to communicate in English'' category to distinguish the areas with more diverse labor markets, such as foreign language enclaves, from the rest of the U.S., where the ability to communicate in English may be more important vocationally.

Response: We are required to administer a national disability program that applies rules uniformly across the nation, which means we must apply the same rules regardless of where a claimant resides. Thus, adopting this suggestion would be contrary to the Act, which prohibits us from considering work that exists only in very limited numbers or in relatively few geographic locations as work that exists in the ''national economy.''[68] The intent of the Act was to ''provide a definition of disability which can be applied with uniformity and consistency throughout the Nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences, or to the state of the local or national economy.''[69] The language of the Act clearly reflects this principle.[70] Accordingly, our rules must

[63] See H.R. Rpt. 90–544, at 40 (Aug. 7, 1967), and Sen. Rpt. 90–744, at 49 (Nov. 14, 1967).

[64] See 20 CFR 404.1564(b) and 416.964(b).

[65] Totalization agreements eliminate dual social security coverage in situations when a person from one country works in another country and is required to pay social security taxes to both countries on the same earnings. Thus, the commenter's point is that some individuals for whom we would evaluate inability to communicate in English under current policy might not actually be living in a country or territory where English is the dominant language.

[66] In the NPRM, we reported we had totalization agreements with 28 countries See 84 FR 1006, 1009. Totalization agreements with Slovenia and Iceland went into effect on February 1, 2019 and March 1, 2019, respectively. See 83 FR 64631 (2018) and 84 FR 6190 (2019). The 30 agreements include Slovenia and Iceland.

[67] *Qualifying for Disability Benefits in Puerto Rico Based on an Inability to Speak English,* available at *https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-13-13062_0.pdf.*

[68] See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[69] See H.R. Rpt. 90–544, at 40 (Aug. 7, 1967), and Sen. Rpt. 90–744, at 49 (Nov. 14, 1967).

[70] The relevant text in full says: ''An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only

remain national in scope. Removing the category of ''inability to communicate in English'' and considering actual educational attainment for all claimants keeps our program in line with its national scope, and promotes accurate assessment of disability throughout the 50 States, the District of Columbia, the U.S. territories, and abroad.

Comment: One commenter asserted that they perceived us to be concerned about whether ''inability to communicate in English'' should be considered for the claimants currently living in Puerto Rico or internationally, and that this assumed concern is misplaced. According to the commenter, because we administer a Federal program with a national scope, the Act requires that we consider jobs in the ''national economy,'' and whether work exists in the ''immediate area in which [the claimant] lives'' [71] is irrelevant.

Response: We disagree with the commenter's assertion that we proposed this rule based solely, or even primarily, on concerns about limited regions. As we stated above, the examples of Puerto Rico and claimants living outside the U.S. were only part of our justification for this rule. We wanted our rules in this area to reflect the increased existence of jobs in the national economy for LEP workers; the research and data related to English language proficiency, work, and education; the expansion of the international reach of our disability programs; and in response to public comments we received on them in support of our NPRM.

However, we do note that the Act does not prohibit us from considering if work exists in significant numbers in the ''immediate area'' where a claimant lives.[72] While we do not require that the work exists in the immediate area in which the claimant lives, we do require that the work exists in significant numbers either in the region where the individual lives (an area larger than the immediate area in which the claimant lives and which may or may not include jobs in the immediate area) or in several regions of the country.

Comment: One commenter requested that we share more data to enable the public to better assess whether issues with ''inability to communicate in English'' are national in scope. The commenter asked for data on allowances under ''inability to communicate in English,'' and the educational attainment of those claimants by State. The commenter opined that this would confirm either that there is a national problem in the application of ''inability to communicate in English,'' or that the problem is a local one based in the unique characteristics of Puerto Rico as a territory.

Response: We believe the data we have provided already about some State allowance rates under Rule 201.17 and 202.09 in the NPRM's supporting material is sufficient to demonstrate that this rule is based on more than just information from Puerto Rico. Because we are administering a national program, providing more state-by-state data is out of context. As we discussed in the NPRM and this final rule, the data we cited indicates there have been changes in the national workforce since we published our current rules over 40 years ago. These changes demonstrate that the ''inability to communicate in English'' education category is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education.

Comment: One commenter suggested that we should not disregard this rule in its entirety, but apply it in limited circumstances. As an example, the commenter said that we should codify the U.S. First Circuit Court of Appeals' decision in *Crespo* v. *Secretary of Health and Human Services.*[73] This suggestion would allow us to continue to apply the current rule where English is the predominant language.

Response: The commenter asked us to apply this final rule disparately in different regions. In the *Crespo* case example cited by the commenter, the court found it acceptable to consider, during our disability evaluation process, the claimant's ability to communicate in Spanish in place of the ability to communicate in English, because the claimant was a resident of Puerto Rico. In recommending that we apply *Crespo* nationally, the commenter is therefore suggesting that we should only proceed with the final rule for areas in which our beneficiaries may reside, but English is not the primary spoken language (*e.g.,* Puerto Rico; foreign countries with whom we have totalization agreements). The commenter, therefore, is recommending that we maintain the current rule in the 50 States.

Regarding the specific example of *Crespo,* as even the commenter noted, the court explicitly declined to apply the rationale outside of this specific case.[74] As well, we administer a national disability program that applies rules uniformly across the nation, regardless of where a claimant resides.

Implementation, Efficiency, and Burden

Comment: One commenter said that our employees believe the proposed rules would lead to inefficient and unfair resolutions of claims. The commenter stated that he had spoken with one former and one current SSA employee about the proposal.

Response: We disagree with this comment. We decide each claim fairly and always strive to provide timely decisions. As part of our implementation of this final rule, we will provide comprehensive training to our staff to ensure we continue to meet the obligation of providing timely, accurate, and consistent decisions. We will also continue to monitor for quality in the decisionmaking process to ensure our adjudicators apply the rules correctly.

Comment: In the NPRM, we proposed to apply this rule for ''new applications, pending claims, and continuing disability reviews (CDR), as appropriate, as of the effective date of the final rule.'' [75] Several commenters opposed the proposed implementation process. These commenters said that using the new rules for claims pending at the time this final rule goes into effect is inefficient.

Some commenters asked that we not apply this final rule to claims filed prior to the effective date. They expressed concern that claimants may experience a delay in receiving their decisions because we may need to hold supplemental hearings for claims that are in post-hearing status as of the effective date of this final rule.

unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.'' See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act, 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[71] Id.

[72] Id.

[73] See *Crespo* v. *Secretary of Health and Human Services,* 831 F.2d 1 (1st Cir. 1987).

[74] Id. at 7. (''In using the grid as a framework for consideration of the vocational testimony, therefore, the ALJ was justified in treating claimant's fluency in Spanish as tantamount to fluency in English. See 20 CFR 404.1564(b)(5) (inability to communicate in English is a vocational consideration '[b]ecause English is the dominant language of the country'). In so holding, we do not suggest that the Secretary, in relying on the grid for a dispositive finding on disability in appropriate cases where no significant nonexertional impairments are present, is free to substitute Spanish for English in the requirements of the grid whenever a claimant resides in Puerto Rico. We need not, and do not, reach that issue.'')

[75] 86 FR 1006 and 1011.

Another commenter asked that we clarify whether the proposed changes would apply to new applicants only, and whether current recipients of disability benefits would need to re-apply when this final rule becomes effective. The commenter noted that a non-English speaking individual whom we previously found disabled may have a reliance interest. This commenter suggested we should allow that person to retain payments if our medical review process reveals that his or her medical condition remained unchanged.

Response: Our standard practice is to implement the final rule as of the effective date for all pending claims, CDRs, and new applications. We will do the same for this regulation.[76] We disagree that this implementation process will be inefficient and note that, in general, it will not require us to hold supplemental hearings. Because we already ask for education information as part of our standard disability determination process (at the time of initial application filing and again at the reconsideration and hearing levels), and this information is not dependent on the claimant's ability to communicate in English, we will be able to use that existing information when we implement the final rule. For example, we ask all claimants to provide the highest grade of school completed; to specify whether they received special education in school; and to disclose if they completed vocational school. We therefore do not anticipate needing more education information than what we already have as part of our existing processes. Further, as discussed above, we will provide training to adjudicators to ensure accurate, effective, and timely adjudication of claims.

Current beneficiaries will not need to reapply. However, we will use this final rule when we review their cases under our CDR process. This change in the rule will only affect those who experience medical improvement and were previously assigned to the inability to communicate in English education category. For these individuals only, we will redetermine their education category and assign one of the four remaining education categories based on their level of education. Because we use the Medical Improvement Review Standard to determine if an individual's disability continues or ceases in a CDR, this final rule will not affect a beneficiary whose medical condition has not changed since he or she was last found disabled.

Comment: Multiple commenters asserted that the proposed rule would require us to obtain the testimony of vocational experts at the hearing level to assess whether specific jobs require the ability to communicate in English. Some commenters stated that the proposed rule would delay favorable decisions for many claimants unable to communicate in English, because vocational expert testimony is available only at the hearing level.

One commenter said that because language limitations affect individuals' RFCs, the hypothetical questions presented to vocational experts at hearings should include the effects of an inability to communicate in English. Another commenter said that the proposed rules would lengthen the hearings, because vocational experts would need to respond to additional hypothetical questions about whether certain jobs require the ability to communicate in English.

Response: We disagree with these comments. The same rules will apply at all adjudicatory levels. Therefore, even at the hearing level where a vocational expert may testify about the demands and existence of jobs in the national economy, adjudicators will not consider the effects of inability to communicate in English. With regard to the comment that we would need to incorporate the effects of language into a hypothetical RFC posed to vocational experts, as we noted previously, under our current rules and this final rule, we do not consider the effects of an inability to communicate in English when we assess an individual's RFC. We consider only the effects of an MDI or a combination of MDIs to determine an individual's RFC.[77] ''Inability to communicate in English'' is not an MDI. When the final rule takes effect, we will not consider whether an individual can communicate in English at any step of the sequential evaluation process. Thus, if claimants or their representatives raise the issue of the inability to communicate in English in a hypothetical question posed to a vocational expert during a hearing, we will find it to be out of scope for the purposes of determining disability.

Comment: Several commenters asserted that this rule would cause more appeals, would increase the disability hearings backlog, and would increase our administrative costs.

Response: The changes in this final rule are straightforward, and represent an incremental change to our larger disability evaluation process. An estimated increase of 22,382 hearings spread over the 10-year period of fiscal years (FY) 2020–2029 is small relative to the number hearings we hold annually (for example, we made over 700,000 hearing decisions in FY 18).[78] Therefore, we do not anticipate difficulty administering the changes with current resources. We have not seen evidence to indicate that the proposed rule, as implemented, would substantially increase the number of pending hearings, or that it would impose unmanageable administrative costs. See the ''E.O. 12866'' section of the preamble, further below, for our specific estimates of administrative costs associated with this rule.

Discrimination and Disparate Impact

Comment: Some commenters expressed that they supported the proposed rules because they believed the rules would allow us to more fairly assess education and account for increased diversity in the U.S. One commenter said that the proposed rules would allow us to adjudicate disability claims more equitably. Another commenter criticized the current rules, opining that the rules may impose social and political stigmas upon non-English speaking individuals. One commenter asserted that measuring English abilities is neither an effective, nor a culturally sensitive way to assess an individual's ability to work.

Response: We acknowledge and note the commenters' support for the rule. As stated above, we expect that the revisions will help us better assess the vocational impact of education in the disability determination process.

Comment: Many commenters said the proposed rules would have a negative effect on vulnerable populations, such as immigrants, older people, women, refugees, individuals with low-income, and individuals with LEP. Some commenters expressed the proposed rules would have a disparate impact and discriminatory effect on thousands of older, non-English-speaking citizens. Other commenters were concerned that the proposed rules would result in the denial of benefits to a large number of claimants.

One commenter said that denial and loss of benefits would cause economic harm to the affected claimants. Another

[76] With only one exception, namely Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844 (January 18, 2017), we have always implemented our final rules as of the effective date for all pending claims, CDRs, and new applications. We implemented that regulation differently because individuals who filed claims before the effective date of those final rules may have requested evidence, including medical opinions from treating sources, based on our then-current policies. 82 FR at 5862.This reliance-based justification is not applicable here because we expect additional development of evidence related to this final rule to be minimal.

[77] See 20 CFR 404.1545 and 416.945.

[78] See *https://www.ssa.gov/appeals/*.

commenter noted that the proposed rules could contribute to ''generational poverty.'' One commenter, citing *Dorsey* v. *Bowen,* 828 F.2d 246, (4th Cir. 1987), noted that the ''Social Security Act is a remedial statute to be broadly construed and liberally applied in favor of beneficiaries.'' This commenter asserted that we are strictly construing the Act against the most vulnerable of our citizens.

Another commenter said that the Supreme Court has interpreted that discrimination based on language or English proficiency is a form of national origin discrimination. Another commenter said that we should undertake an analysis of the potential discriminatory impact of the proposed rules.

One commenter said discrimination by government against taxpayers because of their race or national origin is strictly prohibited under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Some commenters said the proposed rules discriminate against individuals based on their national origin, race, or immigration status. One such commenter contended that the proposed rules demonstrate a hostility towards non-native born Americans.

Response: We disagree with the commenters' statements that this rule will have a negative effect on vulnerable populations; is discriminatory in intent or effect; or that it is motivated by hostility towards a certain group of people. We have not seen any evidence (nor did the commenters present any) that the proposed rules, as implemented, would negatively affect vulnerable populations, because we will continue to assess other eligibility criteria for such populations besides the ability to communicate in English.

In response to claims that the rule is discriminatory, we note that the new rule, once implemented, will apply the same standards for evaluating educational level to all claimants, regardless of country of origin or residence and primary language. Similarly, we strongly disagree with the statement that our rule was motivated by hostility towards a certain group of people. Like all Federal agencies, we are obligated to serve all members of the public equally. We take that responsibility seriously, and we do not discriminate against individuals based on race, age, gender, language, national origin, immigration status, or for any other reason. We intend for this rule to help us better assess the vocational factor of education in the contemporary work environment for all claimants and beneficiaries.

The proposed rule also does not violate the equal protection component of the Due Process Clause of the Fifth Amendment. In the NPRM, we articulated a basis for no longer distinguishing between those who are unable to communicate in English and those who are able to communicate in English at step 5 of the sequential evaluation process. Further, under this final rule, we will apply the same standard in assessing education for all claimants. This final rule does not categorize individuals based on any particular identities, nor does it deprive an individual of a protected property interest. Our regulations provide due process to individuals with appropriate procedural protections. This final rule is consistent with the constitutional principles of equal protection.

Finally, the principle that the Act should be ''broadly construed'' in favor of beneficiaries does not mean that we should not, or may not, revise our rules to account for changes in the national workforce. The quoted statement is an interpretative standard sometimes applied by the courts in the judicial review of agency decisions; it does not mean that we are required to develop rules that only favor beneficiaries, or that do not result in any program and administrative savings.

Comment: Some commenters asserted that the proposed rules are ''arbitrary and capricious.''

Response: The commenters appear to be referring to the standard that courts apply when they review rules promulgated after informal rulemaking.[79] Under this standard, the agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. A rule may be arbitrary and capricious, for example, if an agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[80] None of that is true here. In this rulemaking, the final rule is supported by the objective data we have provided, and we have explained our justifications for the proposed change in the NPRM and this final rule in detail. The final rule is not inconsistent with the Act or any other Federal law, and we have considered and responded to the significant concerns raised by the commenters. Our rule therefore cannot be considered ''arbitrary or capricious'' under the law.

Comment: Some commenters asserted that our proposed rules conflicted with various legal authorities. A few commenters opined that the NPRM conflicted with Federal laws that protect the rights of persons with LEP, who experience discrimination in health care, employment, and public services, under Title VI of the Civil Rights Act of 1964 and implementing regulations. One commenter stated that the NPRM violated Executive Order 13166, which directs Federal agencies to ensure that all persons with LEP should have meaningful access to federally-conducted and federally-funded programs and activities.

Response: This final rule does not violate the Civil Rights Act of 1964, its implementing regulations, Executive Order 13166, or any other provision of Federal law. We are eliminating a rule that reflected the existence of jobs in the economy for certain individuals who were unable to communicate in English at the time we issued it in 1978. The final rule we are adopting today simply reflects the changes in the national workforce since 1978, and the greater existence of jobs for individuals with LEP. When the final rule takes effect, we will no longer consider an individual's English proficiency when determining an individual's education. Such a rule does not preclude individuals with LEP from having meaningful access to our programs; it merely updates our rules to reflect that an inability to communicate in English is no longer a useful indicator of an individual's educational attainment or of the vocational impact of an individual's education.

We remain committed to fulfilling our responsibilities and obligations towards individuals with LEP, and this final rule is fully consistent with Federal laws that protect the rights of persons with LEP. We have a longstanding commitment to ensure that individuals with LEP have equal access to our programs. For example, we provide free interpreter services,[81] and Social Security information is publicly available in several languages.[82] This final rule has no effect on these services, which ensure that all individuals with

[79] See 5 U.S.C. 706(2)(A).

[80] *Motor Vehicle Manufacturers Association of the United States* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 43 (1983).

[81] Available at *https://www.ssa.gov/multilanguage/langlist1.htm.*

[82] Available at *https://www.ssa.gov/site/languages/en/.*

LEP will continue to have meaningful access to our programs.

Department of Homeland Security (DHS)'s NPRM on Inadmissibility on Public Charge Grounds

Comment: Multiple commenters asserted that our NPRM does not align with DHS's NPRM, ''Inadmissibility on Public Charge Grounds,'' published on October 10, 2018.[83] Specifically, these commenters cited the following excerpt from the DHS NPRM: ''an inability to speak and understand English may adversely affect whether an alien can obtain employment. Aliens who cannot speak English may be unable to obtain employment in areas where only English is spoken. People with the lowest English speaking ability tend to have the lowest employment rate, lowest rate of full-time employment, and lowest median earnings.'' [84] The commenters also noted Census data research DHS had cited to support this assertion. Commenters expressed that the two proposed rules were not in accordance with each other because the DHS proposal stated that an ability to speak English directly affects the ability to find work, whereas our proposal stated that an ability to speak English is irrelevant for an individual's ability to find employment.

Response: Because we administer different programs with different legal mandates than DHS does, our proposed rule explored different aspects of job availability and English proficiency data than DHS did. For the purposes of our programs and the population we are examining, we believe the data we reviewed and presented supports our final rule consistent with our statutory mandate to consider, among other things, an individual's education and the existence of work in the national economy. DHS's legal mandate is to determine whether an alien (that is, a non-citizen, non-U.S. national person) seeking admission to the United States or adjustment of status to that of a lawful permanent resident is likely at any time in the future to become a public charge. We are not projecting the likelihood of LEP individuals being hired for particular types of jobs, *i.e.* those that would make the alien more likely to be self-sufficient. We are only stating that jobs exist in the national economy that LEP individuals perform. Finally, some of the commenters inaccurately characterized our NPRM as stating that the ability to speak English is irrelevant to finding work. We did not make this assertion. Rather, we stated that, as a result of changes in the national workforce over the last 40 years, we no longer consider English proficiency to be an appropriate proxy for assessing an individual's education level as part of our disability determination process.

Other Comments

Comment: Some commenters supported this proposal based on their assumption that it would improve Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) program integrity and save money. One commenter expressed the view that we would prevent an estimated 10,500 adults [85] with ''manageable work limitations'' from receiving SSDI or SSI disability benefits, keeping more resources for those who are ''truly needy.''

Response: The purpose of this final rule is not to save money or to make it more difficult for individuals to qualify for disability benefits. Rather, we anticipate that this final rule will allow us to better assess the vocational impact of an individuals' education on their ability to work in the contemporary work environment. Finally, we note that our standard for determining disability is based on the criteria in the Act and our regulations, and not whether an individual has ''manageable work limitations'' or whether the individual is ''truly needy.''

Comment: Some commenters asserted that the criteria for qualifying for disability benefits are already strict enough, and that we should not impose additional restrictions or barriers to qualifying for benefits.

Response: The rule does not create additional restrictions or barriers to qualifying for benefits; rather, it is modifying the way in which we assess educational level achieved, which is an existing category we examine. As discussed above and in the NPRM, since 1978, the national workforce has become more linguistically diverse, and employment rate and LFPR have expanded considerably for individuals with LEP. This final rule thus recognizes that English proficiency is no longer an appropriate proxy for assessing education as part of our disability determination process.

Comment: Some commenters said that the inability to communicate in English is not a disability, suggesting our rules equated it with being disabled.

Response: We note that inability to communicate in English is one of many factors we consider in determining disability under the current rules. An inability to communicate in English by itself is not a determinative factor when determining whether an individual is disabled under our current rules.

Comment: One commenter stated that we should not pursue a final rule because we had not completed a full Regulatory Impact Analysis (RIA) for the regulation. Other commenters opined that the NPRM did not account for significant and foreseeable costs to society. These commenters asserted that burdens created by this rule would increase costs to state and local governments and community organizations, because they would likely spend more on things such as general assistance and homelessness assistance to meet the needs of those harmed by this rule.

Response: As we report below and as we reported in the NPRM, we expect this final rule will have a financial impact on the Social Security trust fund of over $100 million a year.[86] Regulations that have annual effect on the economy of $100 million or more are deemed economically significant and have additional analytical requirements under E.O. 12866, such as requiring an RIA. Our Office of the Chief Actuary estimated this rule would technically meet this threshold: For the period of FY 2020 through FY 2029, they estimated a reduction of $4.5

[83] 83 FR 51114; Available at *https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds.* We note that DHS also published a corresponding final rule on August 14, 2019, 84 FR 41292, which is available at *https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds.* However, several district courts have ordered that DHS cannot implement and enforce this final rule. The court orders also postpone the effective date of the final rule until there is final resolution in these cases. Some of the injunctions are nationwide and prevent DHS from implementing the rule anywhere in the United States. We note, though, that the Ninth Circuit recently granted a stay of one of these nationwide injunctions because ''DHS has shown a strong likelihood of success on the merits, that it will suffer irreparable harm, and that the balance of the equities and public interest favor a stay'' pending appeal. City and County of San Francisco v. United States Citizenship and Immigration Services, 944 F.3d 773, 781 (9th Cir. 2019). We also note that, more recently, the Supreme Court granted a stay of another nationwide injunction in one of these cases. Department of Homeland Security v. New York, No. 19A785, 2020 WL 413786 (U.S. Jan. 27, 2020).

[84] See 83 FR 51114, 51195 (internal footnotes omitted).

[85] Although the citation provided by this commenter refers to the ''Office of the Inspector General, Qualifying for disability benefits in Puerto Rico based on an inability to speak English, Social Security Administration (2015),'' we believe the number 10,500 refers to the estimated reduction of 6,500 Federal Old Age, Survivors, and Disability Insurance (OASDI) beneficiary awards per year and 4,000 SSI recipient awards per year on average over the period FY 2019–28 that our Office of the Chief Actuary provided in the NPRM. See 84 FR 1006, 1011.

[86] 84 FR 1006, 1011.

billion in Federal Old Age, Survivors, and Disability Insurance (OASDI) benefit payments and a reduction of $0.8 billion in Federal SSI payments. However, we have adequately accounted for the direct effects of this rulemaking through our analysis of transfer impacts and administrative costs. While not a separate RIA document, we believe the evaluations completed in the NPRM and this final rule fulfill our obligation to review the direct effects of the rulemaking. Some of the costs mentioned by commenters, such as money spent on homelessness assistance, are out of the scope of our rulemaking and associated analysis.

A Regulatory Flexibility Act (RFA) analysis is also required for rules that have a significant economic impact on a substantial number of small entities (SISNOSE); the commenters allude to this requirement with their assertion that this rule will ''increase costs to state and local governments and community organizations.'' Specifically, the RFA [87] requires an RFA analysis under the following circumstances: ''[w]henever an agency is required . . . to publish general notice of proposed rulemaking for any proposed rule, . . . the agency shall prepare and make available for public comment an initial regulatory flexibility analysis.'' That analysis must ''describe the impact of the proposed rule on small entities.'' In addition, when the agency subsequently publishes a final rule, it must ''prepare a final regulatory flexibility analysis.'' The requirement to prepare an initial or final regulatory flexibility analysis, however, ''shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The agency must publish such certification in the **Federal Register** when it publishes its notice of proposed rulemaking or final rule, ''along with a statement providing the factual basis for such certification.'' The agency must provide a copy of its certification and accompanying statement to the Chief Counsel for Advocacy of the Small Business Administration. Because this final rule only directly affects individuals, it will not impose any direct costs on small entities, including small government jurisdictions. We consider the potential costs commenters cited to be indirect, and as such they would be outside the scope of our SISNOSE determination.

Comment: One commenter indicated that we should not require individuals to speak English to receive disability benefits. Another commenter opposed the proposed rules because, according to the commenter, we may deny benefits to people who cannot speak because of a medical impairment.

Response: The comment implies that this final rule would require individuals to speak English to receive disability benefits. Neither the current rule nor this final rule requires individuals to be able to communicate in English to obtain benefits. When this final rule becomes effective, whether or not an individual is able to communicate in English will be irrelevant for the purposes of disability determination.

This final rule does not affect people who cannot speak because of a medical impairment. As we explained earlier, we will continue to evaluate medical impairment-related speech difficulties under our rules to determine whether these limitations meet a listing or preclude the individual from performing substantial gainful work.

Comment: Several commenters opposed the proposed rule, contending that LEP individuals with disabilities face barriers to learning English. They noted that the assumption underlying the proposed rule is that LEP individuals with disabilities can learn English in order to work. They argued that we did not acknowledge that cognitive and physical disabilities might interfere with their ability to learn a new language. Other commenters opposed the proposal on the grounds that many individuals with LEP may not have the resources (*e.g.,* time, money, access to classes) to learn a new language. Other commenters opined that an inability to learn a new language might indicate that the person has challenges in adjusting to new work. These commenters argued that difficulty in learning to communicate in English can therefore be a proxy for difficulty learning the duties of a job, and for this reason, we should retain ''inability to communicate in English.''

Response: Many of these comments are outside the scope of our proposal and disability program. We do not consider whether an individual is able to learn English under the current rules. We also do not need the factor ''inability to communicate in English'' to determine whether an individual is likely to have difficulty learning the duties of a job. We already consider an individual's cognitive and physical limitations related to MDIs that may interfere with an individual's ability to perform basic work activities. This final rule does not change this.

Comment: One commenter said we should not apply the proposed rules to individuals who may otherwise be eligible for disability under the ''arduous unskilled work'' medical-vocational profile.[88] To be found disabled under the profile, an individual must possess no more than a marginal education and must have spent 35 years performing arduous unskilled work. The commenter expressed that even if such an individual has had more than a marginal education in another country, it did not allow him or her to do anything other than the arduous unskilled work. The commenter argued that we should not penalize such an individual for having an education that does not serve him or her in the U.S.

Response: Under our final rule, inability to speak English will no longer be a proxy for education. For individuals who fall under the arduous unskilled physical labor profile, we will still examine their years of history performing solely arduous unskilled physical labor. As well, we will more closely examine the actual education level attained. Since we will still look at education and work history, individuals who fall under the profile will not be disadvantaged.

Comment: One commenter found it problematic that the proposed rules would bar an adjudicator from lowering an individual's education category based on ''inability to communicate in English.'' The commenter also noted that claimants who participated in an English learner program but remain unable to communicate in English likely did not attain the level of reasoning, arithmetic, and language abilities that the person was supposed to have gained. The commenter reasoned that such individuals could not have developed educational abilities due to inability to communicate in English, and we should therefore consider this in our proposal.

Response: We agree that in cases where individuals receive elementary or secondary education in a language other than their primary language, the language learning process may or may not affect their actual educational attainment. Our current regulations acknowledge that the numerical grade level completed in school may not represent an individual's actual educational abilities, which may be

[87] 5 U.S.C. 601–612

[88] The arduous unskilled physical labor profile applies when an individual has no more than a marginal education and work experience of 35 years or more during which he or she did only arduous unskilled physical labor. The individual also must not be working and no longer able to do this kind of work because of a severe impairment(s). If these criteria are met, we will be find the individual disabled. See 20 CFR 404.1562(a) and 416.962(a); and POMS DI 25010.001 Special Medical-Vocational Profiles, available at *https://secure.ssa.gov/poms.NSF/lnx/0425010001.*

higher or lower.[89] Therefore, to the extent supported by individual case evidence, we will continue to consider the related impact on educational abilities when assigning an education category in these cases.

Comment: One commenter opposed the proposed rule, citing a decline in American high school graduates' foreign language skills as a reason. The commenter said that only 20 percent of today's high school graduates have taken a foreign language class, and that colleges have closed 651 foreign language programs between 2013 and 2016. The commenter cited this data to support the assertion that many future employers would be unable to communicate even simple statements with foreign language-speaking employees. The commenter implied that this would affect the workforce, and that we failed to consider such effects in our rulemaking.

Response: The evidence we cited in the proposed rule and repeated here, demonstrates that many individuals with LEP are currently in the labor force; this indicates that their employers' potential inability to converse with them in their primary language is not a barrier to employment.[90] Further, our rulemaking (and rulemaking in general) can only contemplate evidence that actually exists; it is outside the scope of rulemaking to consider an assumption about whether future employers will be able to communicate in a foreign language to accommodate their employees with LEP.

Comment: We received comments that we should retain the ''inability to communicate in English'' for health and work safety reasons. Some commenters asserted that individuals with LEP in the national workforce are at a greater risk for occupational injuries and illnesses, most often due to language barriers. They claimed the proportion of fatal and nonfatal workplace injuries experienced by immigrants has been increasing.[91]

Similarly, another commenter said we should not adopt the proposed rules because some employers may require English language proficiency for safety reasons. The commenter further noted that employers might prefer to hire those who can communicate in English to avoid workers' compensation claims from accidents due to an inability to understand safety instructions.

Response: While we acknowledge the importance of safety in the workplace, it is outside the scope of our program to assess safety concerns associated with jobs a worker may be able to perform. As discussed above, in determining whether a claimant can adjust to other work, we do not consider the hiring practices of employers or whether the individual is likely be hired to do particular work, among other things.[92] As we stated above, the Act requires us only to determine whether a claimant can perform any substantial gainful work which exists in the national economy.

Comment: Some commenters said we should wait to adopt the proposed rules because we may propose additional revisions to other rules relating to disability determinations in the near future. The commenters said there will be more changes to the disability determination process because of a forthcoming new information system and vocational tool and they asked that we not incorporate revisions to current rules in a piecemeal or a premature manner.

Response: The possibility that we may propose other revisions in the future is not a reason to delay revisions that are currently warranted (based on the reasons we have articulated in the NPRM and here).

Comment: One commenter opined that this final rule would undermine the current occupational base that has served as the basis for the grid rules. As an example, the commenter noted that SSA has taken administrative notice of approximately 1,600 sedentary and light occupations in the national economy at the unskilled level. Based on this fact, the commenter asserted that the grid rules assume that a person with either light or sedentary work capacity, but who would be classified as ''unable to communicate in English,'' would not actually be able to perform the 1,600 unskilled light and sedentary occupations. The commenter stated that, accordingly, we would now need to reassess all of our work categories, and document evidence that a significant number of jobs *are* actually available for individuals who cannot communicate in English.

Response: We disagree with the commenter's conclusions, as the commenter's foundational statements reflect incorrect assumptions. While the current grid rules do reflect the ''inability to communicate in English'' as a factor to consider, they are not, in fact, based on the assumption that full English proficiency is required to engage in all of the 1,600 sedentary and light occupations in the national economy at the unskilled level. The existing occupational base does not distinguish between jobs that require or do not require English proficiency. Rather, the occupational base reflects the existence of unskilled sedentary, light, medium, and heavy jobs that exist in the national economy.

Comment: One commenter asserted that we withdrew a 2005 NPRM that proposed to revise the vocational factor of age [93] due to insufficient evidentiary support. The commenter drew a parallel between that NPRM and this rule, recommending that we withdraw this rule because, in the commenter's stated opinion, we had failed to provide conclusive supporting research for this rule and the 2005 NPRM.

Response: We disagree with this comment, because our decision not to finalize the 2005 NPRM that proposed revising the rules on the vocational factor of age was not due to a lack of adequate justification. As well, the commenter did not provide any evidence demonstrating that we had failed to provide sufficient supporting research for the 2005 NPRM. For this final rule, as explained previously, we presented sufficient supporting evidence to justify our changes, both in the NPRM and again here.

Comment: A few commenters asserted that we incorrectly claimed that the education level of non-English speakers in the workforce has increased over time.

Response: We did not claim that the education level of individuals who are unable to communicate in English in the workforce has increased over time. We clarify that in the NPRM, we noted that out of all claimants who reported an inability to read, write, or speak English in FY 2016, 49% (58,175) of title II claimants and 39% (49,943) of title XVI claimants completed a high school education or more.[94] We cited this data to show that many people who reported an inability to read, write, or speak English do have a high school education or more. We do not suggest that this data shows that educational attainment increased over the years for individuals who are unable to communicate in English.

How We Will Implement This Final Rule

We will begin to apply this final rule to new applications, pending claims,

[89] See 20 CFR 404.1564(b) and 416.964(b).

[90] See ORES English Proficiency Analysis Table 2.

[91] The commenter cited Flynn M. A., Safety & the Diverse Workforce: Lessons from NIOSH's Work With Latino Immigrants. Professional Safety (2002), p. 52.

[92] See 20 CFR 404.1566(c) and 416.966(c).

[93] *Age as a Factor in Evaluating Disability* 70 FR 67101 (Nov. 4, 2005), withdrawn on May 8, 2009 at 74 FR 21563.

[94] See 84 FR 1006, 1008.

and CDRs, as appropriate, as of the effective date of this final rule.[95]

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with OMB and determined that this final rule meets the criteria for an economically significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed the rule. Details about the economic impacts of our rule follow.

Anticipated Reduction in Transfer Payments Made by Our Programs

Our Office of the Chief Actuary estimates, based on the best available data, that this final rule will result in a reduction of about 6,000 OASDI beneficiary awards per year and 3,800 SSI recipient awards per year, on average, for the period FY 2020–29, with a corresponding reduction of $4.5 billion in OASDI benefit payments and $0.8 billion in Federal SSI payments for the total period of FY 2020–29.

Anticipated Administrative Costs to the Social Security Administration

The Office of Budget, Finance, and Management estimates administrative costs of $90 million (840 work years) [96] for the 10-year period from FY 2020 through FY 2029. Although we included administrative cost estimates for the disability determination services (DDS) in our NPRM, we are now using a revised cost estimate methodology that does not allow us to calculate the total administrative costs for SSA and DDS separately. Administrative costs include considerations such as system enhancements, potential appeals, and additional time needed to process initial disability claims and CDRs.

As mentioned above, the rule will result in a $90 million administrative cost to the government for the 10-year period from FY 2020 through FY 2029. However, we believe the qualitative benefits of ensuring the disability determination criteria we use are up-to-date and reflective of the current economy (specifically, for this rule, the criteria we use to determine an individual's education level) justifies this one-time cost. This final rule will also help us to fulfill our statutory obligation to be the best possible stewards of the Social Security programs.

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132, and determined that it will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that the final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Executive Order 13771

Based upon the criteria established in Executive Order 13771, we have identified the anticipated administrative costs as follows: The final rule is anticipated to result in administrative costs of $90 million and 840 work years for the period of FY 2020 through FY 2029. See the E.O. 12866 section above for further details on these costs.

This rule is designated a 13771 ''regulatory'' action.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule contains public reporting requirements in the regulation sections listed below, or will require changes in the forms listed below, which we did not previously clear through an existing Information Collection Request.

Below is a chart showing current burden estimates (time and associated opportunity costs) for all ICRs due to the implementation of the regulation. None of the burdens associated with these ICRs will change as a result of this final rule.

OMB No. form No. regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
0960–0072, SSA–454	Continuing Disability Review Report.	541,000	1	60	541,000	* $10.22	** $5,529,020
0960–0579, SSA–3368	Disability Report—Adult	2,258,510	1	90	3,387,766	* 10.22	** 34,622,968
0960–0681, SSA–3373	Function Report—Adult	1,734,635	1	61	1,763,546	* 10.22	** 18,023,440
0960–0635, SSA–3380, 20 CFR 404.1564, 20 CFR 416.964.	Function Report—Adult Third Party.	709,700	1	61	721,528	* 22.50	** 16,234,380
0960–0144, SSA–3441	Disability Report—Appeal	760,620	1	*** 41	520,346	* 10.22	** 5,317,936
Total		6,004,465			6,934,186		** 79,727,744

* We based these figures on average DI payments, as reported in SSA's disability insurance payment data, and by average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that we are imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*** This burden per response figure is not exact, as we have multiple collection modalities under this OMB Number with different response time estimates, and input the closest minute estimate to complete the chart. In the Supporting documents, we explain in further detail the different modalities and their actual numbers.

We are submitting an Information Collection Request for clearance 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;

[95] We will use the final rule beginning on its effective date. We will apply the final rule to new applications filed on or after the effective date, and to claims that are pending on and after the effective date. This means that we will use the final rule on and after its effective date in any case in which we make a determination or decision, including CDRs, as appropriate. See 20 CFR 404.902 and 416.1402.

[96] We calculate one work year as 2,080 hours of labor, which represents the amount of hours one SSA employee works per year based on a standard 40-hour work week.

and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

You can submit comments until March 26, 2020, which is 30 days after the publication of this notice. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(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 record keeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: January 30, 2020.

Andrew Saul,

Commissioner of Social Security.

For the reasons stated in the preamble, we are amending 20 CFR part 404, subpart P, and part 416, subpart I, as set forth below:

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

Subpart P—Determining Disability and Blindness

■ 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 (h)–(j), 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 (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.1564 by:

■ a. Removing the sixth sentence of paragraph (b) introductory text and paragraph (b)(5);

■ b. Redesignating paragraph (b)(6) as paragraph (c); and

■ c. Revising the first sentence of newly redesignated paragraph (c).

The revision reads as follows:

§ 404.1564 Your education as a vocational factor.

* * * * *

(c) *Information about your education.* We will ask you how long you attended school, and whether you are able to understand, read, and write, and do at least simple arithmetic calculations.* * *

■ 3. Amend appendix 2 to subpart P of part 404 by:

■ a. In section 201.00:

■ i. Revising paragraph (h)(1)(iv) and the second sentence of paragraph (h)(2);

■ ii. In paragraph (h)(4)(i), revising the first sentence, adding a sentence after the first sentence, and revising the last sentence; and

■ iii. In Table No. 1, revise rules 201.17, 201.18, 201.23, and 201.24;

■ b. In section 202.00:

■ i. Revising paragraphs (d) and (g); and

■ ii. In Table No. 2, revising rules 202.09, 202.10, 202.16, and 202.17; and

■ c. In section 203.00, Table No. 3, revising rule 203.01.

The revisions and addition read as follows:

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

* * * * *

201.00 * * *

(h)(1) * * *

(iv) Are illiterate.

(2) * * * It is usually not a significant factor in limiting such individual's ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are illiterate.

* * * * *

(4) * * *

(i) While illiteracy may significantly limit an individual's vocational scope, the primary work functions in most unskilled occupations involve working with things (rather than with data or people). In these work functions, education has the least significance. * * * Thus, the functional capacity 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.

* * * * *

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
*	*	*	*	*
201.17	Younger individual age 45–49	Illiterate	Unskilled or none	Disabled.
201.18	.....do	Limited or Marginal, but not Illiterate.	.....do	Not disabled.
*	*	*	*	*
201.23	Younger individual age 18–44	Illiterate	Unskilled or none	[4] Do.
201.24	.....do	Limited or Marginal, but not Illiterate.	.....do	[4] Do.
*	*	*	*	*

* * * * * * *

[4] See 201.00(h).

202.00 * * *

(d) A finding of disabled is warranted where the same factors in paragraph (c) of this section regarding education and previous work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.,* closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy.

* * * * *

(g) While illiteracy may significantly limit an individual's vocational scope, the primary work functions in most unskilled occupations relate to working with things (rather than data or people). In these work functions, education 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 they are illiterate.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
*	*	*	*	*
202.09	Closely approaching advanced age.	Illiterate	Unskilled or none	Disabled.
202.10	.....do	Limited or Marginal, but not Illiterate.	.....do	Not disabled.
*	*	*	*	*
202.16	Younger individual	Illiterate	Unskilled or none	Do.
202.17	.....do	Limited or Marginal, but not Illiterate.	.....do	Do.
*	*	*	*	*

* * * * * 203.00 * * *

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age.	Marginal or Illiterate	Unskilled or none	Disabled.
*	*	*	*	*

* * * * *

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

Subpart I—Determining Disability and Blindness

■ 4. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), 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, and 1382h note).

■ 5. Amend § 416.964 by:
■ a. Removing the sixth sentence of paragraph (b) introductory text and paragraph (b)(5);
■ b. Redesignating paragraph (b)(6) as paragraph (c); and
■ c. Revising the first sentence of newly redesignated paragraph (c).

The revision reads as follows:

§ 416.964 Your education as a vocational factor.

* * * * *

(c) *Information about your education.* We will ask you how long you attended school, and whether you are able to understand, read, and write, and do at least simple arithmetic calculations.
* * *

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 205

[Docket No. 2020–1]

Email Rule for Statutory Litigation Notices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule amending its procedures for submitting notices to the Office pursuant to sections 411 and 508 of the Copyright Act. Previously, these notices were submitted by mail to two different addresses, which risked delays and caused unnecessary burdens for both submitters and the Office. The new rule will alleviate these issues by requiring these notices to be submitted by email.

DATES: Effective May 26, 2020.

FOR FURTHER INFORMATION CONTACT: Jordana Rubel, Assistant General Counsel, by email at *jrubel@copyright.gov* or John R. Riley, Assistant General Counsel, by email at *jril@copyright.gov*; either can be reached by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

1. Background

Under sections 411 and 508 of the Copyright Act,[1] certain parties are required to notify the Register of Copyrights about copyright litigation. Sections 411(a) and 411(b) each define circumstances in which the Register of Copyrights must be notified of civil copyright lawsuits, to provide opportunity for he or she to participate in the case. Section 411(a) provides that copyright claimants who were denied registration by the Copyright Office for a specific work must inform the Register when they initiate a lawsuit alleging infringement of that work so that the Register may elect to become a party to the civil action with respect to the issue of registrability of the copyright for the work. Section 411(b) provides that if a party in a copyright infringement lawsuit alleges that a certificate of registration issued by the Copyright Office contains inaccurate information that was knowingly included in the application, then the court shall ask the

[1] 17 U.S.C. 411, 508.