

Congress of the United States
Washington, DC 20515

May 6, 2019

Ms. Nancy A. Berryhill
Acting Commissioner of Social Security
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Acting Commissioner Berryhill:

We write today to express our strong opposition to the Social Security Administration's (SSA) recent Notice of Proposed Rulemaking, "Removing Inability to Communicate in English as an Education Category" (84 Fed. Reg. 1006, February 1, 2019). In it, SSA makes a harmful and unjustified attempt to deny Social Security and Supplemental Security Income (SSI) disability benefits to older workers with long-term or fatal medical impairments who are severely limited in their functional capacity and who cannot communicate in English. We request that SSA withdraw this proposed rule.

The Social Security and SSI disability programs provide income for people who, because of a severe medical condition, can no longer work at a substantial level. The criteria are very strict. Fewer than 4 out of every 10 individuals who apply are found eligible, even after all levels of appeal.

To qualify, individuals must have a severe impairment which not only prevents them from doing their past work (in the past 15 years) but also prevents them from adapting to a new line of work. In shifting to a new occupation, factors like education level, transferable skills, and age affect an individual's ability to adapt to jobs they have not previously performed. For example, someone with advanced education and a mobility impairment could likely adapt to other work. However, for someone with limited education and low job skills, these adverse vocational factors – in combination with the functional limitations caused by their impairment – mean there might not be other work they could perform.

The Social Security Act recognizes this by requiring SSA to consider the impact of "age, education, and work experience" when determining whether an individual who is unable to do their past work can adapt to other work. For individuals with physical impairments, SSA's current rules provide adjudicators with guidelines for evaluating 82 combinations of these three adverse vocational factors. This approach encourages uniform national treatment of claims and enhances administrative efficiency.

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SSA's rule proposes to eliminate consideration of inability to communicate in English as an adverse educational factor, which is dispositive in only two out of the 82 guidelines. The two guidelines currently reflect that when a person with a disability is age 45 to 49 with an impairment that limits them to sedentary work, or age 50 to 54 with an impairment that limits them to light work, and has no or little past relevant work experience, the inability to communicate in English poses an additional major barrier to work.

In the vast majority of cases, the inability to communicate in English is not a factor of eligibility. In 2016, out of roughly 500,000 Social Security Title II disability benefit allowances at the initial level, SSA awarded benefits to only 2,487 people based on illiteracy or inability to communicate in English – or just half of one percent of all Title II disability awards. Moreover, SSA provides no data on what fraction of these awards were due to illiteracy, as opposed to inability to communicate in English, since the guidelines combine these two limitations into a single factor.

SSA's plan to deny benefits in these rare situations is uninformed and unsupported. In the proposed rule, SSA offers 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. SSA fails to establish that there is a sufficient occupational base of jobs that this narrow group of severely disabled individuals can perform, despite their pervasive limitations. SSA also raises concerns about claimants currently living in Puerto Rico or internationally, and whether inability to speak English should be considered in those situations. However, Social Security is a federal program with a nationwide scope. By law, SSA must consider an individual's ability to do any job "...which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives..." (Social Security Act, Section 223(d)(2)(A)). SSA's proposed change is inconsistent with this statutory requirement. SSA should not change its national rules based on a small number of outlier situations.

Denying Social Security and SSI disability benefits to older, severely disabled workers with limited functional capacity who are unable to communicate in English would cause significant harm – including loss of monthly income providing basic economic security, along with health care under Medicare, and in some cases, Medicaid.

The proposed rule has to date received over 200 comments signed by 312 individuals and organizations, with a 5:1 ratio of comments arguing against the change. Commenters included 157 national or regional organizations who oppose the proposal, and only one in support.

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For the reasons outlined above, and in light of the specific and detailed concerns expressed in the public comments, we urge SSA to withdraw this proposed rule. Any changes to SSA policies and processes must be evidence-based. Rather than making uninformed changes that deny vital benefits to older workers with severe disabilities that prevent them from returning to work, SSA should focus on making timely and accurate decisions as early in the disability application process as possible.

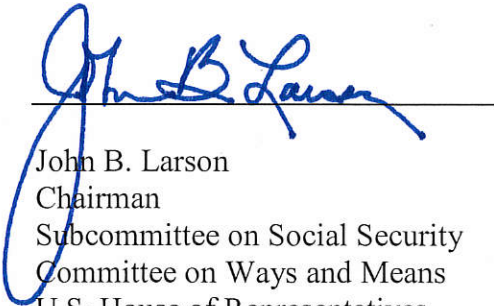
Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives



Ron Wyden
Ranking Member
Committee on Finance
U.S. Senate



John B. Larson
Chairman
Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives



Sherrod Brown
Ranking Member
Subcommittee on Social Security,
Pensions, and Family Policy
Committee on Finance
U.S. Senate



Danny K. Davis
Chairman
Subcommittee on Worker and
Family Support
Committee on Ways and Means
U.S. House of Representatives