



**DIVERSE
ELDERS
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MEMBER ORGANIZATIONS

National Asian Pacific Center
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SAGE (Advocacy & Services
for LGBT Elders)

Southeast Asia Resource
Action Center

Office of Regulations and Reports Clearance
Social Security Administration
3100 West High Rise Building
6401 Security Boulevard
Baltimore, Maryland 21235-6401

April 2, 2019

RE: Proposed Rule: Dependents RIN: 0960-AH86

Dear Office of Regulations and Reports Clearance:

Thank you for the opportunity to comment on the Social Security Administration (SSA)'s proposed rule, "Removing Inability to Communicate in English as an Education Category." The undersigned organizations are members of the Diverse Elders Coalition, a national policy advocacy organization working to improve aging in communities of color, American Indian and Alaska Native communities, and lesbian, gay, bisexual, and transgender (LGBT) communities.

Under current law, proficiency in English is one of the considerations used by the Social Security Administration (SSA) when making a disability determination for claimants who don't meet a medical impairment listing. While a limited proficiency in English is not alone sufficient to establish disability, it may be considered in coordination with other factors, including the skill level of the person's last job, whether any of those skills could be transferred to a new job, and the physical residual functional capacity of the claimant.

We are extremely concerned by this proposal, which would result in Limited English Proficient (LEP) individuals, especially older adults and those with disabilities, being wrongfully denied access to vital economic support. The Diverse Elders Coalition urges SSA to withdraw this proposed rule and continue to consider ability to communicate in English as a vocational factor. We submit the comment below to provide insight on the continuing challenges immigrants and LEP individuals face in our economy.

Rising Rates of Limited English Proficiency

Between 1990 and 2013, the U.S. LEP population grew 80%, from nearly 14 million to 25.1 million. Over the past two decades, the LEP share of the total U.S. population has increased from about 6% in 1990 to 8.5% in 2013.¹ Research demonstrates that someone with a given level of education and limited English proficiency will have fewer vocational opportunities in the U.S. economy than someone with the same education who is proficient in English. Programs like the Senior Community Service Employment Program (SCSEP) have made great strides in connecting LEP older adults with meaningful employment in their communities, but stagnant funding for these programs has resulted in a reduced impact on the economic security of LEP older adults.²

1. Zong, Jie and Batalova, Jeanne. "The Limited English Proficient Population in the United States." July 2015. Migration Policy Institute. <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states/>

2. Mikelson, Kelly. "The Role of SCSEP in Workforce Training for Low-Income Older Workers." October 2017. Urban Institute. https://www.urban.org/sites/default/files/publication/94371/2001575_scsep_white_paper_finalized_2.pdf



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The communities represented by the Diverse Elders Coalition have varied rates of English proficiency, but in some, such as Southeast Asian American communities, limited English proficiency among older adults is as high as 90%.³ Additionally, many of these older adults live in linguistically isolated households, limiting their access to outside resources and support.

Disproportionate Impact on LEP Older Adults

Because of the high rates of limited English proficiency among older adults, the proposed rule will have a disproportionate impact on older LEP individuals. The current SSA sedentary grid rules direct a finding of disabled for claimants age 45 – 49 who are unable to communicate in English, and the current light grid rules direct a finding of disabled for claimants age 50 – 54 who are unable to communicate in English.⁴ The proposed rules will no longer recognize the vocational limitations experienced by these older individuals who have limited proficiency in English.

Additionally, there is no evidence that work opportunities in sedentary and light unskilled jobs have expanded for people with limited proficiency in English. The justification in the NPRM cite to analysis showing that “work opportunities have expanded and labor force participation has increased” for LEP individuals in “occupations requiring lower level skills such as laborer, machine operator, janitor, cook, maintenance, and housekeeping.” However, these jobs are all well above a sedentary or light exertional level, which is where the grid rules about ability to communicate in English apply. Additionally, these are not the jobs in which LEP older adults are primarily employed. Asian American and Pacific Islander older adult workers, for example, are 37% employed in management and professional roles, 21% employed in service roles, and 23% in sales and office roles.⁵

A Broad and Inconsistent Proposal

In addition to the disproportionate impact that this proposed rule would have on the communities represented by the Diverse Elders Coalition, the proposal is also directly inconsistent with the Administration’s position in the recent public charge Notice of Proposed Rulemaking.⁶ In the preamble to the public charge proposed rule, the Department of Homeland Security (DHS) stated that “an inability to speak and understand English may adversely affect whether an [immigrant] can obtain employment.” Therefore, in one proposal, the Administration claimed that ability to speak English directly impacts ability to find work and now, in another proposal, the Administration claims that ability to speak English is irrelevant for an individual’s ability to find employment.

3. “Asian Americans and Pacific Islanders in the United States Aged 65 Years and Older: Population, Nativity, and Language.” September 2013. National Asian Pacific Center on Aging. <https://www.napca.org/resource/population-nativity-and-language/>

4. “Code of Federal Regulations: Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines.” April 2018. Social Security Administration. https://www.ssa.gov/OP_Home/cfr20/404/404-app-p02.htm

5. Lee, Eun Jeong and Blacher, Karen. “Asian American and Pacific Islander Older Workers: Employment Trends.” September 2013. National Asian Pacific Center on Aging. <https://www.napca.org/wp-content/uploads/2017/10/older-worker-data-FINAL.pdf>

6. “Proposed Rule - Inadmissibility on Public Charge Grounds.” September 2018. Department of Homeland Security. <https://www.dhs.gov/publication/proposed-rule-inadmissibility-public-charge-grounds>



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Most LEP individuals who can participate in the workforce are already employed, and this proposal has not made a case for why the current SSA justifications for including inability to communicate in English in as a vocational factor no longer apply. Furthermore, this proposal is overly broad, and could be used to deny benefits to people who are unable to communicate in English because of their disability, not because they are not native speakers of English.

Conclusion

The proposal to eliminate the inability to communicate in English as an education category in eligibility determinations for people with disabilities is discriminatory and inconsistent with fundamental American principles, including equal opportunity. We urge you to withdraw the proposed rule change to avoid this needless attack on limited English proficient older adults, people with disabilities, and immigrants.

Sincerely,

Jenna McDavid
National Managing Coordinator
Diverse Elders Coalition

National Asian Pacific Center on Aging (NAPCA)
National Hispanic Council on Aging (NHCOA)
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