

Fight Back Against Proposed Rule Change from The Social Security Administration

The Social Security Administration (SSA) announced a [proposed rule change](#) that would remove the “inability to communicate in English” from the list of educational categories that are considered when SSA determines who qualifies to receive Supplemental Security Income (SSI) and Social Security Disability (SSDI) benefits.

To fight back, you can [submit comments to the Social Security Administration directly](#) and/or sign on to [the letter below](#), developed by the Center for Law and Social Policy (CLASP) and the National Immigration Law Center (NILC), on behalf of the [Protecting Immigrant Families, Advancing Our Future \(PIF\) Campaign](#). Comments are due to SSA no later than 4/2/2019.

If you plan to draft your own comment, comments can be submitted online at: <https://www.regulations.gov/document?D=SSA-2017-0046-0001>. Click on “Comment now” and either enter your comment in the text box (must be fewer than 5000 characters) or upload your comment as a PDF.

We will be accepting sign-ons to the comment below until [Monday, April 1 at 5:00pm ET \(2:00pm PT\)](#).

To sign on to the letter, please visit bit.ly/PIFSSAsignonletter and add your organization’s name. If there are any questions, please email Jackie Vimo (vimo@nilc.org) or Madison Hardee (mhardee@clasp.org).

PIF Sign-On Comment

April 2, 2019

Submitted via www.regulations.gov

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

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 a campaign united to protect and defend access to basic needs programs for immigrants and their families.

Under current law, proficiency in English is one of the considerations used by the Social Security Administration 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 previous jobs, whether any of those skills could be transferred to a new job, and the physical residual functional capacity of the claimant.

We are deeply concerned by this proposal which would result in Limited English Proficient (LEP) individuals with disabilities being wrongfully denied access to vital economic support which helps them to live healthy and secure lives in the United States. We submit the following comment to oppose the proposed rule and provide insight on the continuing challenges immigrants and LEP individuals living with disabilities face in our economy.

LEP Individuals with Disabilities Face Unique Workforce Barriers

In the Notice of Proposed Rulemaking (NPRM), SSA states that, "since we adopted these rules, the U.S. workforce has become more linguistically diverse and work opportunities have expanded for individuals who lack English proficiency." However, the NPRM cites as evidence a Brookings Institution report that examines data about LEP workers generally, *not* those living with disabilities.¹ Findings about employment of LEP individuals more generally do not necessarily apply to LEP individuals with disabilities.

¹ Jill Wilson, *Investing in English Skills: The Limited English Proficient Workforce in U.S. Metropolitan Areas*, The Brookings Institution, September 2014, <https://www.brookings.edu/research/investing-in-english-skills-the-limited-english-proficient-workforce-in-u-s-metropolitan-areas/>; Hamutal Bernstein and Carolyn Vilter, *Upskilling the Immigrant Workforce to Meet Employer Demand for Skilled Workers*, Urban Institute, July 2018, <https://www.urban.org/research/publication/upskilling-immigrant-workforce-meet-employer-demand-skilled-workers>.

While most Limited English Proficient (LEP) individuals who can engage in employment are already employed, LEP workers with disabilities face unique barriers to employment. Even not factoring in disabilities, individuals with limited English-speaking ability are at a disadvantage in the workplace relative to their peers who speak English only. Federal law acknowledges that LEP individuals face discrimination in accessing employment and public services, and language spoken had been upheld by the courts as a proxy for national origin discrimination.² The NPRM does not address the fact that employers have been found to discriminate against both workers with disabilities and with Limited English Proficiency (LEP) and that this must be taken into account when considering employment prospects for LEP individuals with disabilities.³

As SSA notes in the NPRM, most LEP workers are concentrated in jobs that do not require English language skills to be successful. However, many of these jobs are in fields like construction that are inaccessible to individuals with significant physical limitations.⁴ LEP adults ages 18 and older account for 39 percent of all workers in positions that do not require a postsecondary degree or credential.⁵ In California and Texas, the two states with the largest LEP populations and largest state economies, more than half of workers employed in positions that do not require postsecondary education have limited English proficiency.⁶ Compared to their English-proficient counterparts, LEP individuals are more likely to work in construction, service, production, material-moving and maintenance occupations.⁷ Based on the amount of physical exertion that these jobs require, they are typically categorized in the heavy or medium exertional categories in the Dictionary of Occupational Titles (DOT). If a claimant is only able to physically engage in light or sedentary work, ability to speak English is directly relevant to the claimant's ability to find employment that accommodates their exertional limitations. Therefore, the current grid rules direct a finding of disabled for claimants over age 45 who are unable to communicate in English and are limited to sedentary work, and for those over age 50 who are limited to light work.⁸

In the proposed rule, the agency defends its position, saying that "claimants who cannot read, write, or speak English often have a formal education that may provide them with a vocational advantage." This is directly inconsistent with the explanation provided in the current regulatory text which notes that "[b]ecause English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in

² Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, and its implementing regulations, 28 C.F.R. Part 42 and 34 C.F.R. Part 100 (Title VI),

<https://www.govinfo.gov/content/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf>.

³ Megumi Hosoda, Lam T. Nguyen, Eugene F. Stone-Romero, "The Effect of Hispanic Accents on Employment Decisions," *Journal of Managerial Psychology*, Vol. 27 Issue: 4, pp. 347-364 (2012), <https://psycnet.apa.org/record/2012-10713-003>; Sharon Segrest, Pamela L. Perrewew, Treena L. Gillespie, et al., "Implicit Sources of Bias in Employment Interview Judgments and Decisions," *Organizational Behavior and Human Decision Processes* 101.2, pp. 152-167 (2006), <https://www.sciencedirect.com/science/article/pii/S0749597806000690>.

⁴ Ibid., 1.

⁵ Chhandasi Pandya, "Limited English Proficient Workers and the Workforce Investment Act: Challenges and Opportunities," *Migration Policy Institute*, July 2012, <https://www.migrationpolicy.org/article/limited-english-proficient-workers-and-workforce-investment-act-challenges-and-opportunities>.

⁶ Ibid.

⁷ Jie Zong and Jeanne Batalova, "The Limited English Proficient Population in the United States," *Migration Policy Institute*, July 2015, <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states#Education%20and%20Employment>.

⁸ 20 CFR §§: Part 404, Subpart P, Appendix 2, <https://www.govinfo.gov/content/pkg/CFR-2012-title20-vol2/pdf/CFR-2012-title20-vol2-part404-subpartP-app2.pdf>.

another language.”⁹ Furthermore, the reality is that LEP adults are much less educated than their English-proficient peers. As of 2013, 46 percent of all LEP individuals ages 25 and over had no high school diploma compared to 10 percent of their English-proficient counterparts. About 14 percent of LEP adults had a bachelor’s degree or higher, compared to 31 percent of English-proficient adults.¹⁰ For those immigrants who have credentials and job experience in their home countries, transferring those skills and finding employment in the U.S. in their previous profession can be extremely difficult.¹¹

Finally, limited English proficiency is also associated with poor health outcomes, which can limit workforce participation.¹² Additionally, people with disabilities earn 37 percent less than other workers, on average, thus LEP individuals with disabilities face a dual penalty.¹³

LEP individuals with disabilities face barriers to learning English

The assumption underlying this proposed rule is that LEP individuals with disabilities can simply learn English, but the NPRM fails to acknowledge that some cognitive and physical disabilities may interfere with the ability to learn a new language. Moreover, the current supply of English as a Second Language and Vocational English as a Second Language courses is incapable of meeting the demand for English instruction, even in cases when LEP individuals may be able to benefit from English language instruction. The Adult Education and Family Literacy Act (AEFLA), which funds adult education and English language instruction is, “severely underfunded, serving a small fraction of the nation’s low-skilled adults.” In 2013, AEFLA met only 4 percent of the need for these classes nationally.¹⁴ The structure of AEFLA also discourages the states from providing services to harder-to-serve populations such as LEP individuals with disabilities, as lower success rates will impact performance measures as defined by the law.¹⁵ By making it more difficult for LEP individuals with disabilities to obtain economic stability, the proposed rule could leave affected populations with little time or ability to focus on skills development.¹⁶

The Proposed Rule Is Directly Inconsistent with The Administration’s Position in the Recent Public Charge Notice of Proposed Rulemaking

In a Notice of Proposed Rulemaking posted on October 10, 2018, the Department of Homeland Security (DHS) seeks to include limited English proficiency as a *negative* factor in determining whether an immigrant is admissible under public charge grounds.¹⁷ In the preamble to the proposed rule, DHS states

⁹ 20 CFR § 404.1564, <https://www.govinfo.gov/content/pkg/CFR-2014-title20-vol2/pdf/CFR-2014-title20-vol2-sec404-1564.pdf>.

¹⁰ Ibid.

¹¹ Ibid., 1.

¹² Gilbert C. Gee and Ninez Ponce, “Associations Between Racial Discrimination, Limited English Proficiency, and Health-related Quality of Life Among 6 Asian Ethnic Groups in California,” *American Journal of Public Health* 100.5, pp. 888-895 (2010), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2009.178012>.

¹³ Michelle Yin, *An Uneven Playing Field: The Lack of Equal Pay for People With Disabilities*, American Institutes for research, December 2014, <https://www.air.org/resource/uneven-playing-field-lack-equal-pay-people-disabilities>.

¹⁴ Margie McHugh and Madeleine Morawski, *Immigrants and WIOA Services: Comparison of Sociodemographic Characteristics of Native- and Foreign-Born Adults in New York State*, Migration Policy Institute, December 2015, <https://www.migrationpolicy.org/sites/default/files/publications/WIOAFactSheet-New%20York-FINAL.pdf>.

¹⁵ Ibid.

¹⁶ Jennifer Ludden, “Barriers Abound for Immigrants Learning English,” *National Public Radio*, September 2007, <https://www.npr.org/templates/story/story.php?storyId=14330106>.

¹⁷ *Proposed Rule: Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114, 51,291 (to be codified in 8 C.F.R. § 212.22(b)(4)(i)(F)(i)).), Department of Homeland Security, October 2018, <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>.

that “an inability to speak and understand English may adversely affect whether an [immigrant] can obtain employment.” Therefore, in one proposal, the Administration claims that ability to speak English directly impacts ability to work and now, in another proposal, the Administration claims that ability to speak English has no bearing on ability to find employment. The only common thread between these directly conflicting positions is that they are both used to advance an anti-immigrant agenda. This is consistent with numerous and frequent statements and policy proposals from President Trump and his Administration that explicitly express hostility towards immigrants in the United States.

The undersigned organizations strongly opposed the public charge proposal and firmly believe that immigrants with limited English proficiency can serve important employment roles in the U.S. economy. However, we believe that the law must consider the intersection of disability and English language proficiency. While there are myriad areas where a person who speaks a language other than English can meaningfully contribute to the workforce and to civic society, those opportunities are significantly narrowed for individuals who have limited functional capacity. As a country, we have a long way to go to ensure that immigrants and LEP individuals receive equitable treatment. Limiting access to basic needs programs which help individuals and families thrive is a step in the completely wrong direction.

Instead of continuing to advance contradictory and harmful anti-immigrant policies which undermine the success of immigrants, we encourage the Administration to instead dedicate its efforts to advancing policies that truly support economic security, self-sufficiency, and a stronger future for the United States by promoting the ability of immigrants and their families to thrive.

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. 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.

The data presented by SSA in the NPRM only points to an increase in low-skill jobs for the LEP population *in general*, which is not applicable to individuals with disabilities/individuals with significant physical limitations. By failing to acknowledge the barriers that LEP immigrants encounter when finding employment, the proposed policy will only exacerbate racial and ethnic injustice in our country.

We urge you to withdraw the proposed rule change to avoid this needless attack on limited English proficient people with disabilities.

Sincerely,

Organization names here

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