

Reporting and recordkeeping requirements, Securities.

## Federal Reserve System

### 12 CFR Chapter II

#### Authority and Issuance

For the reasons set forth in the preamble, part 225 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

#### PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. Appendix A to part 225 is amended as follows:

a. In section I, the fifth undesignated paragraph is revised.

b. In section I, footnote 4 is removed and reserved.

#### Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk Based Measure

I. \* \* \*

The risk-based guidelines apply on a consolidated basis to any bank holding company with consolidated assets of \$500 million or more. The risk-based guidelines also apply on a consolidated basis to any bank holding company with consolidated assets of less than \$500 million if the holding company (i) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) conducts significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; or (iii) has a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission (SEC). The Federal Reserve may apply the risk-based guidelines at its discretion to any bank holding company, regardless of asset size, if such action is warranted for supervisory purposes.

3. Appendix C to part 225 is amended as follows:

a. In section 1, the first undesignated paragraph is revised.

b. In section 1, footnote 1 is removed and reserved.

c. In section 2.A., a new paragraph is added after the first paragraph in footnote 3.

#### Appendix C to Part 225—Small Bank Holding Company Policy Statement

\* \* \* \* \*

1. \* \* \*

This policy statement applies only to bank holding companies with *pro forma* consolidated assets of less than \$500 million that (i) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and (iii) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission. The Board may in its discretion exclude any bank holding company, regardless of asset size, from the policy statement if such action is warranted for supervisory purposes.

\* \* \* \* \*

2. \* \* \*

A. \* \* \*

3 \* \* \*

Subordinated debt associated with trust preferred securities generally would be treated as debt for purposes of paragraphs 2C, 3A, 4Ai, and 4Bi of this policy statement. A bank holding company, however, may exclude from debt an amount of subordinated debt associated with trust preferred securities up to 25 percent of the holding company's equity (as defined below) less goodwill on the parent company's balance sheet in determining compliance with the requirements of such paragraphs of the policy statement. In addition, a bank holding company that has not issued subordinated debt associated with trust preferred securities after September 8, 2005, may exclude from debt any subordinated debt associated with trust preferred securities until September 8, 2010. Subordinated debt associated with trust preferred securities will not be included as debt in determining compliance with any other requirements of this policy statement.

\* \* \* \* \*

4. Appendix D to part 225 is amended as follows:

a. In section I., paragraph b. is revised.

b. In section I.b., footnote 2 is removed and reserved.

#### Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

I. \* \* \*

b. The tier 1 leverage guidelines apply on a consolidated basis to any bank holding company with consolidated assets of \$500 million or more. The tier 1 leverage guidelines also apply on a consolidated basis to any bank holding company with consolidated assets of less than \$500 million if the holding company (i) is engaged in significant nonbanking activities either directly or through a nonbank subsidiary; (ii) conducts significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; or (iii) has a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission.

The Federal Reserve may apply the tier 1 leverage guidelines at its discretion to any bank holding company, regardless of asset size, if such action is warranted for supervisory purposes.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, September 1, 2005.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. 05-17740 Filed 9-7-05; 8:45 am]

BILLING CODE 6210-02-P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960-AG28

#### Revised Medical Criteria for Evaluating Growth Impairments

**AGENCY:** Social Security Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are planning to update and revise the rules we use to evaluate growth impairments of individuals under age 18 who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are in section 100.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating growth impairments, along with our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

**DATES:** To be sure your comments are considered, we must receive them by November 7, 2005.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf.Rules+Open+To+Comment> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830, or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703. You may also deliver them to the Office of

Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment>, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**Electronic Version:** The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (i.e., Social Security Online) at: <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment>.

**FOR FURTHER INFORMATION CONTACT:**

Rosemarie A. Greenwald, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 966-7813 or TTY (410) 966-5609. 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 Web site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**What Is the Purpose of This Notice?**

We are planning to update and revise the rules that we use to evaluate growth impairments of individuals under age 18 who apply for, or receive, disability benefits under title II and SSI payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for children with growth impairments.

**Who Should Send Us Comments and Suggestions?**

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by individuals under age 18 with growth impairments. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for children who have growth impairments, experts in the evaluation of growth

impairments, diseases and injuries, researchers, people who make disability determinations and decisions for us, and any other individual who may have ideas for us to consider.

**Will We Respond to Your Comments From This Notice?**

We will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as the results of current medical research and our program experience, we will decide how to revise the rules we use to evaluate growth impairments. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

**Which Rules Are We Considering Updating and Revising?**

We are considering the updating and revision of section 100.00. This is the section for evaluating growth impairments in children (Part B, 100.00). This body system addresses linear growth impairments of individuals under age 18.

**Where Can You Find These Rules on the Internet?**

You can find these rules on our Internet site at these locations:

- Section 100.00 is in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at [http://www.ssa.gov/OP\\_Home/cfr20/404/404-ap10.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm).

- You can also look up section 100.00 of the listings at <http://www.ssa.gov/disability/professionals/bluebook/>.

- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

**Why Are We Updating and Revising Our Rules for Evaluating Growth Impairments?**

We first published the growth impairment listings in the **Federal Register** on March 16, 1977 (42 FR 14705). Except for minor changes we made to them on December 6, 1985 (50 FR 50068) and April 24, 2002 (67 FR 20018), we have not comprehensively updated or revised them since 1977. We published an Advanced Notice of Proposed Rulemaking on June 14, 2000

(65 FR 37321), in which we asked for suggestions on how we could update and revise the growth impairment listings. We received very few comments. Because there may have been changes in the evaluation and treatment of growth impairments in the last five years, we are asking for suggestions from the public once again before we decide how to revise the rules for evaluating growth impairments.

The current listings for growth impairments (100.00) will no longer be effective on July 2, 2007, unless we extend them or revise and promulgate them again.

**What Should You Comment About?**

We are interested in any comments and suggestions you have about section 100.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You have concerns about any of the current growth impairment listing provisions, such as whether you think we should change any of our criteria or whether you think a listing is difficult to use or to understand.

- You would like our growth impairment listings to include something that they do not include now, such as weight-related conditions, or you believe new medical criteria, such as Body Mass Index (BMI), should be added to the listings.

We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

**What Other Information Will We Consider?**

We will also be considering information from other sources, including the following recent documents, for relevance to our policy for evaluating growth impairments.

- “Criteria for Determining Disability in Infants and Children: Short Stature.” *Evidence Report/Technology Assessment No. 73*. Rockville, MD: Agency for Healthcare Research and Quality (AHRQ Publication No. 03-E025) March, 2003. This report is available at: <http://www.ahrq.gov/clinic/tp/shorttp.htm>.

- “Criteria for Determining Disability in Infants and Children: Low Birth Weight.” *Evidence Report/Technology Assessment No. 70*. Rockville, MD: Agency for Healthcare Research and Quality (AHRQ Publication No. 03-E010) December, 2002. This report is available at <http://www.ahrq.gov/clinic/tp/lbwdistp.htm>.

- “Criteria for Determining Disability in Infants and Children: Failure to

Thrive." *Evidence Report/Technology Assessment No. 72*. Rockville, MD: Agency for Healthcare Research and Quality (AHRQ Publication No. 03-E026) March, 2003. This report is available at <http://www.ahrq.gov/clinic/tp/fthrivetp.htm>.

- Behrman, R.E., Kliegman, R.M., and Jenson, H.B. (Eds.) (2004). *Nelson Textbook of Pediatrics*. Philadelphia, PA: Elsevier Science (USA).

- McMillan, J.A., DeAngelis, C.D., Feigin, R.D., Warshaw, J.B. (Eds.) (1999). *Oski's Pediatrics, Principles and Practice*. Philadelphia, PA: Lippincott Williams & Wilkins.

## Other Information

### *Who Can Get Disability Benefits?*

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for SSI payments on the basis of disability if you are disabled and have limited income and resources.

### *How Do We Define Disability for Individuals Under Age 18?*

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months.

If you are under age 18 and file a claim under title II, disability means you have a medically determinable impairment(s) as described above and that results in the inability to do any substantial gainful activity. If you are under age 18 and file a claim under title XVI, disability means you have a medically determinable impairment(s) as described above and that results in marked and severe functional limitations.

### *How Do We Decide Whether You Are Disabled?*

If you are under age 18 and seeking benefits under title II of the Act, we use a five-step "sequential evaluation process" to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for persons under age 18 who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

### *What Are the Listings?*

The listings are examples of impairments that we consider severe enough to prevent you from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by

reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

### *How Do We Use the Listings?*

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

### *What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?*

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

## List of Subjects

### *20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

### *20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: August 16, 2005.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

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