

pollutant discharge, pollution control and facilities permits applicable to coal mining, preparation and transportation.

Pursuant to the Agreement, the Buyer will acquire the real property interests, the coal preparation facility, the equipment and the permits ("Assets") from the Sellers. The Sellers shall assign and delegate to the Buyer all rights and obligations under various oil and gas leases, farming leases, timber leases, residential leases, licenses, franchises, contracts, concessions and recorded and unrecorded occupancy agreements applicable to or for the use or occupancy of the real estate to be sold. The total purchase price under the Agreement for the Assets is \$6.05 million, of which \$1.25 million shall be paid at closing to be held no later than June 30, 1995. The Buyer will deliver a promissory note, secured by a letter of credit, in the amount of \$4.8 million, bearing interest at the rate of a 8.004213 percent per annum, payable in 40 equal quarterly installments of principal and interest of \$175,500, beginning on September 30, 1995 and ending on June 30, 2005.

Under the Agreement, the Sellers have agreed to indemnify the Buyer against certain liabilities and contingencies that may be asserted by employees or former employees of SACCo against the Buyer or by federal, state or local agencies as a result of noncompliance with laws relating to mining operations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-11040 Filed 5-3-95; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License # 03/03-5171]

Consumer United Capital Corporation; Notice of License Surrender

Notice is hereby given that *Consumers United Capital Corporation*, ("CUCC"), 1150 Connecticut Avenue NW., Suite 205, Washington, D.C. 20036, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). CUCC was licensed by the Small Business Administration on April 25, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March

22, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 27, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95-10952 Filed 5-3-95; 8:45 am]

BILLING CODE 8025-01-M

Investment Advisory Council; Public Meeting

The U.S. Small Business Investment Advisory Council will hold a public meeting from 10 a.m. to 3 p.m. Thursday, May 11, 1995, at the ANA Hotel, located at 2900 M Street, NW, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ed Cleveland, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, (202) 205-6510.

Dated: April 27, 1995.

Dorothy A. Overall,

Director, Office of Advisory Council.

[FR Doc. 95-10926 Filed 5-3-95; 8:45 am]

BILLING CODE 8025-01-M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 95-1(6)]

Preslar v. Secretary of Health and Human Services; Definition of Highly Marketable Skills for Individuals Close to Retirement Age

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 95-1(6).

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT:

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a

holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Sixth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after May 4, 1995. If we made a determination or decision on your application for benefits between January 21, 1994, the date of the Court of Appeals' decision and May 4, 1995, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: November 14, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Acquiescence Ruling 95-1(6)

Preslar v. Secretary of Health and Human Services, 14 F.3d 1107 (6th Cir. 1994)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Issue: Whether, in order to find that the skills of a claimant who is close to retirement age (age 60-64) are "highly marketable" within the meaning of the Secretary's regulations, the Social Security Administration (SSA) must

first establish that the claimant's skills are sufficiently specialized and coveted by employers as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty.

Statute/Regulation/Ruling Citation:

Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)); 20 CFR 404.1520(f)(1), 404.1563(d), 404.1566(c), 416.920(f)(1), 416.963(d), 416.966(c); 20 CFR Part 404, Subpart P, Appendix 2, sections 201.00(f) and 202.00(f); Social Security Ruling 82-41.

Circuit: Sixth (Kentucky, Michigan, Ohio, Tennessee)

Preslar v. Secretary of Health and Human Services, 14 F.3d 1107 (6th Cir. 1994).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing or Appeals Council).

Description of Case: In April 1989, the plaintiff, Walter Preslar, who was 61 years of age and had an eleventh grade education, applied for Social Security disability insurance benefits and Supplemental Security Income benefits based on disability. Mr. Preslar alleged that he was disabled due to pain resulting from hip and back injuries, osteoarthritis and the late effects of musculoskeletal and connective tissue injuries. Following denial of his claims at both the initial and reconsideration levels of the administrative review process, the plaintiff requested and received a hearing before an ALJ. The evidence provided at the hearing included the testimony of a vocational expert who testified that Mr. Preslar could not perform any of his past relevant work, which included food truck driving, custodial work, and bartending. The vocational expert also testified, however, that Mr. Preslar possessed truck driving skills and that there were a significant number of skilled light trucking jobs in the regional economy that he could perform with no significant vocational adjustment.

The ALJ found that Mr. Preslar could not perform his past relevant work, but that he retained the capacity to do a full range of light work with only minor limitations. The ALJ also found, based upon testimony by the vocational expert, that Mr. Preslar had "highly marketable work skills," including truck driving, the ability to use hand and power tools, and the ability to use a cash register. Based on these findings, the ALJ concluded that Mr. Preslar was not disabled. The Appeals Council denied Mr. Preslar's request for review,

and the ALJ's decision became the final decision of the Secretary. This decision was reviewed by a district court which upheld the Secretary's denial of disability benefits, and the plaintiff appealed to the Court of Appeals for the Sixth Circuit.

Holding: The Sixth Circuit reversed the decision of the district court. The court of appeals noted that at the fourth and fifth steps of the five-step sequential evaluation process for determining disability prescribed in the Secretary's regulations, once a claimant establishes that he or she can no longer perform his or her past relevant work because of a severe impairment (step four), the burden shifts to the Secretary to show whether the claimant can perform other work which exists in the national economy, considering the claimant's residual functional capacity, age, education and work experience (step five). The court observed that for purposes of step five, a claimant's age is to be evaluated under the four-tiered structure of section 404.1563 of the Secretary's regulations.¹ Among other things, section 404.1563(d) provides that if a claimant is of advanced age (55 or over), has a severe impairment, and cannot do medium work, such claimant may not be able to work unless he or she has skills that can be transferred to less demanding jobs which exist in significant numbers in the national economy. The court noted that, in addition, section 404.1563(d) states that, "[i]f you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable."

The Sixth Circuit observed that the term "highly marketable" skills was not expressly defined in the statutes, regulations or case law. The court stated, however, that it was evident from the regulations that "highly marketable" skills denoted something more than "transferable" skills. Specifically, the court noted that, under section 404.1563(d) of the regulations, claimants age 55 or over, including those close to retirement age, must possess skills easily transferable to other occupations; the "highly marketable" requirement, on the other hand, only

applies to those age 60-64. In addition, the court indicated that section 404.1563(a) of the regulations also sheds light on how the Secretary is required to evaluate a claimant's age, noting that the section states, in part:

Age refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others.

Although the Sixth Circuit noted that, under section 223(d)(2)(A) of the Act (42 U.S.C. 423(d)(2)(A)), vocational factors usually are to be viewed in terms of their effect on the ability to perform jobs rather than obtain them, the court nevertheless found that section 404.1563 of the regulations "recognizes a direct relationship between age and the likelihood of employment" and that, as age increases, the four-tiered structure of the regulation places an increasingly heavy burden on the Secretary to demonstrate that a claimant is "easily employable." The court concluded that the regulations and other judicial interpretations of "highly marketable" skills imply that such skills are those "which are sufficiently coveted by employers and sufficiently specialized or unique so as to offset the disadvantage of advancing age" and enable a claimant to obtain employment with little difficulty. The court indicated that the possession of such skills may be shown by establishing that a claimant's skills were acquired through specialized or extensive education, training or experience and that they give the claimant a significant advantage or edge over other, younger, potential employees competing for jobs requiring the skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.

The court applied its interpretation of "highly marketable" skills to Mr. Preslar's case and concluded that the Secretary had not assessed whether Mr. Preslar's skills were in some way specialized or coveted by employers; had not determined the amount of training, education or experience required of the plaintiff to attain his skills; and had not assessed whether the plaintiff enjoyed a competitive edge over younger, potential employees with whom he would compete for truck driving jobs. Accordingly, the court remanded the case to the Secretary for reevaluation of whether the plaintiff possessed "highly marketable" skills in accordance with the court's interpretation of that term in section 404.1563(d) of the regulations.

¹ Although the court of appeals only cited the title II regulation concerning the evaluation of age, section 404.1563, the corresponding title XVI regulation, section 416.963, also was relevant in Mr. Preslar's case. These sections, entitled "Your age as a vocational factor," are virtually identical. Sections 404.1563(b)-(d) and 416.963 (b)-(d) specify three age categories: "Younger person" (under age 50); "Person approaching advanced age" (age 50-54); and "Person of advanced age" (age 55 or over). The latter includes a subcategory—a person close to retirement age (age 60-64).

Statement as to How Preslar Differs From Social Security Policy

At step five of the sequential evaluation, SSA considers a claimant's chronological age in conjunction with residual functional capacity, education and work experience to determine whether a claimant can do work other than past relevant work. SSA weighs the effect of increasing age by the extent it erodes a claimant's ability to adapt to new work situations and to work in competition with others.

To this end, SSA's regulations provide that in order to find that a claimant whose sustained work capability is limited to light work or less and who is close to retirement age (60-64) possesses skills that can be used in (transferred to) other work, "there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry." 20 CFR Part 404, Subpart P, Appendix 2, section 202.00(f). SSA's regulations provide the same rule for a claimant whose sustained work capability is limited to sedentary work and who is of advanced age (55 or over). 20 CFR Part 404, Subpart P, Appendix 2, section 201.00(f). If the claimant's skills are transferable to other work under this standard, SSA will consider such skills "highly marketable" under 20 CFR 404.1563(d) and 416.963(d).

SSA's regulations do not require a finding that a claimant's skills are specialized and coveted so as to offset the disadvantage that advancing age may present in obtaining employment. Instead, SSA's regulations require that a claimant (of any age) be found not disabled if his or her residual functional capacity and vocational abilities enable him or her to work, but he or she remains unemployed because of the hiring practices of employers. The evaluation of disability is based on the ability to perform jobs in the national economy and not the ability to obtain them, 20 CFR 404.1566(c) and 416.966(c).

The Sixth Circuit's interpretation of "highly marketable" imposes requirements in contravention of the Secretary's regulations regarding the vocational relevance of a claimant's age. Specifically, the court has interpreted "highly marketable" skills in 20 CFR 404.1563(d) to mean those skills which are sufficiently specialized and coveted by employers so as to make a claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty.

Explanation of How SSA Will Apply The Preslar Decision Within the Circuit

This ruling applies only where the claimant resides in Kentucky, Michigan, Ohio or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In the case of a claimant whose sustained work capability is limited to sedentary or light work as a result of a severe impairment, who is closely approaching retirement age (age 60-64), and who has skills, an adjudicator will consider the claimant's skills to be "highly marketable" only if the skills are sufficiently specialized and coveted by employers as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty. In determining whether a claimant's skills meet this definition of "highly marketable," an adjudicator will consider:

- (1) whether the skills were acquired through specialized or extensive education, training or experience; and
- (2) whether the skills give the claimant a competitive edge over other, younger, potential employees with whom the claimant would compete for jobs requiring those skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.

SSA intends to clarify the regulations at issue in this case, 20 CFR 404.1563 and 416.963, through the rule making process and may rescind this Ruling once such clarification is made.

[FR Doc. 95-10920 Filed 5-3-95; 8:45 am]

BILLING CODE 4190-29-F

DEPARTMENT OF STATE

[Public Notice 2198]

International Telecommunications Advisory Committee; Radiocommunications Sector; Study Group 8—Mobile Services; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 8—Mobile Services will meet on 19 May 1995 at 10 AM to 1 PM, in room 1107 at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile,

radiodetermination, amateur and related satellite services.

This May meeting will continue preparations for the June 12-16, 1995 international meeting of Study Group 8. It will also review activities concerning the Inter-American Telecommunication Commission Permanent Consultative Committee III—Radiocommunications, and begin preparations for the August 24-26 meeting of PCC.III.

Members of the General Public may attend the meeting and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: In order to gain access to State Department for this meeting, please call 202-647-0201 and leave your name, your social security number, and date of birth. Please use "C" Street Entrance.

Dated: April 28, 1995.

Warren G. Richards,
Chairman, U.S. ITAC for ITU-
Radiocommunication Sector.

[FR Doc. 95-10947 Filed 5-3-95; 8:45 am]

BILLING CODE 4710-45-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Claude Monet 1840-1926" (see list ¹) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at The Art Institute of Chicago, Chicago, Illinois from on or about July 14, 1995, to on or about November 26, 1995, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

¹ A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619-5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.