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Disability--Ticket to Work Incentives Improvement [1]

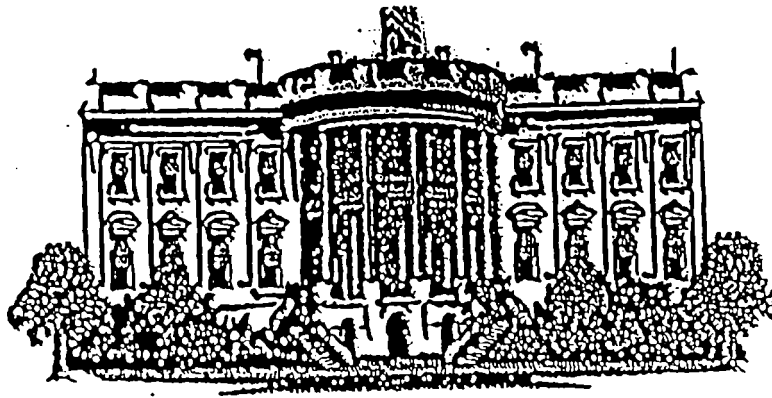
Stack:	Row:	Section:	Shelf:	Position:
S	96	5	1	3

Why are the types + stds. of narrow diff. - 84
relig. or charitable orgs 96
What will the state VR's think

Why have diff milestones 120
for EN + beneficiary

P 21 The level of
earnings + how it
compares to ~~earn~~
benefits.

Why would EN's still be
elig. for any payments



THE WHITE HOUSE

Domestic Policy Council

DATE: 10/3/00

FACSIMILE FOR: ~~Paul Oetken~~ Paul Oetken

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NUMBER OF PAGES (INCLUDING COVER): 14

COMMENTS:

Per voicemail, I've attached an excerpt of the rule,
with the relevant section starred,
& their GC's remarks & what they've
decided to do w/ the language.

Religious Organizations as Employment Networks (EN's)

I have looked into this issue and my conclusion is that SSA's proposed regulation could survive a constitutional challenge under the Establishment Clause but with several caveats. Moreover, I recommend that the regulation be modified as discussed below.

The issue is whether religious organizations can participate as "employment networks" (EN) under the SSA's proposed regulations to be published at 20 CFR, Part 411 ("The Ticket to Work and Self-Sufficiency Program"). The regulations would implement the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170. I am not the OPLaw expert on Ticket to Work matters and have only briefly reviewed the statute and proposed regulations, focusing only on the portions relevant to the issue raised.

The statute is designed to provide health care and employment preparation services to disabled individuals to enable them to reduce their dependence on cash benefit programs and establish a Ticket to Work program that allows disabled individuals to seek employment, vocational rehabilitation and other services in order to obtain employment. (This is not intended as a comprehensive description.)

Each disabled beneficiary under SSA's disability programs (Title II or XVI) with a Ticket may obtain services from an EN. The statute states that an EN can be a State or local agency or "a private entity". Each EN must have an agreement with SSA to provide various services, meet financial reporting requirements, and prepare other reports. I understand that neither the statute nor its legislative history defines "a private entity" or mentions religious organizations.

The proposed regulations state that an EN "is any qualified entity". Section 411.305(a) states that ENs may include, but are not limited to, "[a]ny public or private entity, including religious or charitable organizations, that can provide directly, or arrange for other organizations or entities to provide, employment services, vocational rehabilitation services, or other support services". Additional kinds of entities also are listed in the regulation, such as State agencies, schools, employers, etc.

The traditional test used by the courts when a challenge is brought under the Establishment Clause of the First Amendment is the "Lemon" test. This test is not always used but it is almost always used. The Lemon test is derived from case of Lemon v. Kurtzman, 403 U.S. 602 (1971). There are three prongs to the test. Firstly, is the statute (or regulation or other Government policy) [hereafter, "law"] motivated wholly by an impermissible purpose. Secondly, is the primary effect of the law the advancement of religion. Thirdly, would the law require excessive entanglement between church and state.

The Ticket to Work plan clearly seems to be secular, i.e., to assist disabled persons to

return to work. There is no impermissible purpose and the primary effect of allowing entities, even religious ones, to serve as ENs would not be the advancement of religion. The third prong is more troublesome, as it usually is in Establishment Clause jurisprudence.

According to the Ticket to Work law, SSA itself, or through a program manager, must have an agreement with a EN, obtain reports from the EN and, presumably, monitor it for compliance with program and funding requirements. In addition, the ENs presumably would be subject to audit and investigation by SSA's IG. Thus, the "entanglement" concern.

There are two useful analogies, discussed below, to the Ticket to Work proposal to involve religious organizations in a Government program. One of them was challenged under the Establishment Clause.

In 1982, Congress enacted the Adolescent Family Life Act, Pub. L. No. 97-35, to fight against the adverse consequences of pregnancy and childbirth among unmarried adolescents. That statute provided for grants to public and private organizations for services and research. Both "care services" and "prevention services" would be provided. The statute states that projects shall be funded by the Government and will use support systems such as family members, friends, religious and charitable organizations, and voluntary associations. Some grantees and subgrantees were organizations "with institutional ties to religious denominations". The statute was challenged "on its face" and "as applied". The district court invalidated the statute on both grounds as a violation of the Establishment Clause. However, the Supreme Court reversed.

In Bowen v. Kendrick, 487 U.S. 589 (1988), the Court ruled that the statute was not invalid on its face and it remanded the case for reconsideration of whether it might be invalid as applied. According to the Court, the statute has a secular purpose and does not have the primary effect of advancing religion. The Court acknowledged that it can be argued that the statute advances religion by expressly recognizing a role for religious organizations and by allowing them to participate as grantees or subgrantees. Nonetheless, the statute is neutral toward religion (i.e., does not favor or disfavor religion) and among religions (i.e., does not favor or disfavor any particular religion or religions). The statute includes religious organizations among a "wide spectrum" of eligible organizations. The organizations were not shown in the district court to be "pervasively sectarian". (The only example given of a pervasively sectarian organization is that of religious schools.) Whether some organizations are in fact pervasively sectarian could be explored on remand, said the Court.

With regard to the third prong of the Lemon test, the Court noted that monitoring the performance of the organizations is necessary. But the Court did not believe that monitoring performance, which could include visits to the organizations' offices or clinics, would be an "excessive entanglement", at least if the organizations are not pervasively sectarian. Indeed, the Court found a Catch-22 dilemma: if the

Government monitors organizations to ensure that funds are spent correctly and are not used to advance religion, could that monitoring create an excessive entanglement? In my view, the Court does not analyze this issue as well as it might and merely concludes that there was "no reason to fear" that the Government would "intrude unduly" in the day-to-day operations of the religiously affiliated grantees. However, this seems like a very fact-bound dilemma that the district court might have to resolve either on remand or in another case if someone challenged the statute "as applied" with a more detailed factual record.

The second analogy is the Welfare Reform Act (WRA), or Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193. Section 104 of the WRA authorizes States to contract with charitable, religious, or private organizations and to provide beneficiaries with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations. This provision seems to provide very useful guidance on how SSA could structure the Ticket to Work relationship with religious organizations. The beneficiary can choose which organization to deal with, religious or nonreligious. The religious organizations which participate may not discriminate against beneficiaries on the basis of religion. The religious organizations are subject to the same fiscal accountability as other contractors. The statute also prohibits the religious organizations from spending any Government funds for "sectarian worship, instruction, or proselytization". The Government may not require a religious organization to alter its form of internal governance or to remove religious art, icons, etc. The statute also provides that religious organizations are eligible to participate to the same extent as other organizations, as long as the program is implemented "consistent with the Establishment Clause".

From the above, one can conclude that allowing religious organizations to participate in the Ticket to Work plan as ENs is not facially violative of the Establishment Clause. However, the details of participation could present a problem. It would be important that Government funds not be used for specifically religious purposes, as that would constitute an advancement of religion. Participation of "pervasively sectarian" organizations may be impermissible, although that phrase is not defined except as relating to religious schools.

I suggest that SSA follow the model provided by section 104 of the WRA in writing its regulations, as that would seem to provide the best way of avoiding Establishment Clause problems. It may be especially useful to provide a discussion in the preamble to the regulations of the Establishment Clause issue, showing how SSA will avoid violating it. That discussion also would put religious organizations on notice as to what they can and cannot do with Federal funds.

Finally, I note that if religious organizations were not allowed to participate, they could challenge their exclusion as a violation of the Equal Protection Clause, Free

Speech, and Freedom of Expression Clauses of the Constitution. See Rosenberger v. University of Virginia, 515 U.S. 819 (1995) (public university may not discriminate against student organization in disbursing funds because of its religious expression), and section 104(c) of the WRA.

FAX COVER



Income Maintenance Branch

Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503



To: CHRISTINA HO

Organization: DEC

Fax Number: 6-7431

From: JOANNE CIANCI

Date/Time: 10-03-00

Number of Pages: Cover + 1

Notes:

Christina-

Here is the revised page. Let me know what you think.

Thanks,

Joanne

Income Maintenance Fax Number: (202) 395-0851
Voice Confirmation: (202) 395-4686

Any qualified agency or instrumentality of a State (or political subdivision thereof) or a private entity that assumes responsibility for the coordination and delivery of services under the Ticket to Work program to disabled beneficiaries is eligible to be an EN. A single entity or an association of or consortium of entities combining their resources is eligible to be an EN. The entity may provide these services directly or by entering into an agreement with other organizations or individuals to provide the appropriate services or other assistance that a beneficiary with a ticket may need to find and maintain employment that reduces dependency on disability benefits. ENs may include, but are not limited to:

(a) Any public or private entity, including charitable organizations, that can provide directly, or arrange for other organizations or entities to provide, employment services, vocational rehabilitation services, or other support services.

(b) State agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 et seq.) may choose, on a case-by-case basis, to be paid as an EN under the payment systems described in subpart H of this part. For the rules on State VR agencies' participation in the Ticket to Work program, see subpart F of this part.

(c) One-stop delivery systems established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2841 et seq.).

(d) Alternate participants currently operating under the authority of section 222(d)(2) of the Social Security Act.

(e) Organizations administering Vocational Rehabilitation Services Projects for American Indians with Disabilities authorized under section 121 of part C of title I of the

8/31/00

TO: Andrea Kane

Here is SSA's Ticket-to Work regulation. The current plan is to have all comments by Sept. 13th when we will be passing back to SSA. I am separately sending a copy to Christina Ho.

Joe Lackey

Please call me on 54741 if you have any questions.

EXECUTIVE ORDER 12866 SUBMISSION

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1. Agency/Subagency originating request
Social Security Administration

2. Regulation Identifier Number (RIN) 0960-AF-11

0960-A538

3. Title Ticket to Work and Self-Sufficiency Program

4. Stage of Development

- () Prerule
(X) Proposed Rule
() Interim Final Rule
() Final Rule
() Final Rule - No material change
() Notice
() Other

5. Legal Deadline for this submission

- a) (x) Yes, For Final Rule () No
b) Date 12 / 17 / 2000
DD MM YY
c) (X) Statutory () Judicial

6. Economically Significant

- (X) Yes () No

Description of Other

7. Agency Contact (person who can best answer questions regarding the content of this submission).

Jeff Funk, Social Insurance Specialist

Phone (410) 965-9010

Certification for Executive Order 12866 Submissions

The authorized regulatory contact and the program official certify that the agency has complied with the requirements of E.O. 12866 and any applicable policy directives.

Signature of Program Official

Signature of Authorized Regulatory Contact

Date AUG 28 2000

Date 8/28/00

ISSUES FOR DISCUSSION

Distribution of Tickets

■ **Medical Improvement Expected**

Current version contains a proposal to sunset the policy of providing tickets to MIEs on December 31, 2004.

Additional Information Requested: What is the rationale for extending to this population and for including a sunset provision? Considering that the Commissioner has discretion regarding who receives tickets, are their legal concerns or considerations regarding excluding MIEs from the ticket program prior to their first CDR?

What are the characteristics of the MIE population (e.g., type of impairment, age, DI/OASI)? What is the average length of time someone classified as MIE receives benefits? What portion still receives benefits 2-4 years after date of award? Reason benefits were stopped (e.g., RTW, turned 65, medically improved, died, increased resources). Of those still receiving benefits, what portion are working? Are the same outcomes expected regardless of whether the ticket is used?

Alternative Proposal: Conduct a demonstration by providing tickets to MIEs in a only few states.

■ **Age 18 Beneficiaries**

Current version provides tickets to individuals upon attainment of their 18th birthday. This would preempt the age 18 redetermination and may result in individuals who do not meet the definition of disability retaining benefits.

Additional Information Requested: Who are the 30 percent of 18 year old SSI recipients who fail to meet the definition of disability as an adult (e.g., type of impairment, length of time on benefits, etc.)? What happens to these individuals after they lose SSI benefits (e.g., go to school, get a job, receive other types of assistance)?

Alternative Proposal: (1) provide tickets to individuals after completion of their 18 year-old redetermination; (2) develop a youth-to-work ticket program for 16-18th birthday.

Recordkeeping and Reporting

The draft NPRM references many recordkeeping and reporting guidelines, but does not provide many specifics. What is the timeline for publishing them? How are these requirements going to be described in the contracts with providers? What if false information is reported?

This proposed rule includes new reporting requirements for State VR agencies in order for them to participate in the Ticket to Work program. How much new burden will these reporting requirements impose? What are the current reporting requirements between SSA and VR agencies? How much will this rule increase these requirements? Which of these requirements are required by law, and which are not?

Cost Neutrality

The draft NPRM's estimated costs are substantially higher than what was scored at enactment.

ISSUES FOR FURTHER DISCUSSION OR CLARIFICATION

Implementation Plan – Please provide

Evaluation Plan – Please provide

Ticket Eligibility/CDR Cessation

When could someone be eligible for more than one ticket? Could there be a situation where an individual could assign the ticket to more than one EN (e.g. an EN that specializes in VR services and an EN that specializes in other employment services)? Page 68

What does it mean to be “scheduled for a MIE diary review?” A review is starting or ready to be started, or a review is scheduled to begin in one year? (Page 67) Is it when the beneficiary is sent a notice about the CDR? (Page 76)

Please clarify CDR policy during periods of inactivity.

Could the extension periods be used as a means to extend the period without CDRs while not actively using a ticket? Page 90

Blind v. Non-blind beneficiaries

Please clarify the distinction between blind and non-blind beneficiaries under the Ticket program.

Page 21 – In the fifth and subsequent years, both DI and SSI beneficiaries would be required to work for at least 6 months with earnings in each such month that were sufficient to eliminate payment of Social Security disability (**does a different standard for the blind and non-blind exist here?**) and Federal SSI cash benefits in a month.

Description of Payment Systems

Need to clarify milestone and outcome system. For example, the table does not reflect annual increase in PCB. This may be confusing.

Need to include reference to the present value of payments under the milestone-outcome system being less than that under the outcome system.

Eliminate references to milestone system being approximately 85 percent of the outcome system. First, this level is never explained. Some may argue that there was not intended to be such a large gap. Second, depending on the work level and resulting payment stream, the 85 percent level does not hold.

Could the payment system actually lead to a disincentive to work? No work activity required for two years, and limited work activity required in subsequent years. The lack of work requirement for the first two years is based on the average time to attain employment under the VR program. The NPRM states that the “outcome-based” payment system should result in faster employment outcomes. What is the estimated decrease in average times? Is the VR program

expected to improve its average performance as a result of the Ticket to Work program? In the preamble, please explain why SSA believes this payment system will lead to faster employment outcomes.

How does the timing of the PCB calculation occur (page 31)? Would it be published with the COLA, AWI, SGA and other adjustments in the Federal Register? Does there need to be a lag?

Is there a system for collecting improper payments to ENs?

Program Managers

The only qualification required in section **411.235** is that the PM must have expertise and experience in the field of vocational rehabilitation or employment services. Although this is the only requirement stated in the legislation, SSA could expanded upon what this means in the regulatory language.

Employment Networks

The proposed minimum qualification necessary to be an EN in section **411.315** do not require the EN to have demonstrated experience in providing or facilitating access to VR or employment services.

Please address an EN's rights of refusal.

Please clarify role of religious or charitable organizations.

*SSA
counsel's office reviewed*

See the section on VR agencies and one-stop centers for more issues regarding ENs.

VR Participation

The regulations for the Ticket program must be clear that the VR program's activities and responsibilities when serving a "ticketholder" will still be governed by the requirements of the Rehabilitation Act. This includes providing services outlined in the IPE, satisfying requirements, including those pertaining to informed choice, the search for comparable services and benefits, scope of services, etc. Although section 1148(c)(2)(A) of TWWIA and some sections of the NPRM appear to recognize this fact, language used in a number of places in the NPRM is inconsistent with this tenet. The NPRM provide requirements that each EN (which may be a VR agency) must satisfy; however, some of these requirements are inconsistent with the Rehab. Act requirements.

To clarify:

- For each beneficiary, the State VR program must first decide whether to participate as an EN or under the cost reimbursement payment system.
- If the VR agency participates as an EN, the agency must then choose between the outcome payment system or the outcome-milestone payment system. The Commissioner will provide

periodic opportunities for the VR agency to switch between outcome and outcome milestone payment systems. (How often will these “periodic opportunities” be offered?)

- The VR agency cannot switch payment options after they begin serving an individual.
- At any one time, the VR agency can be reimbursed under all three systems for different VR program beneficiaries (assuming they began VR services at different times).

411.370 -- Seems confusing (especially in regard to recordkeeping) to allow VR agencies to choose on a case-by-case basis whether or not they want to be an EN.

411.410 -- Notes that the EN-VR agreements can apply to all beneficiaries. Please explain why these agreements can, and should, be broad-based, rather than tailored to each beneficiary? Would they be administratively easier? Do you expect there to be any deviations in, for instance, the financial responsibility for a particular activity, in individual cases? If so, how would this be handled? Can a VR agency refuse a referral once the agreement is signed?

411.420 – Notes that the EN-VR agreements should include four items. Must these agreements include anything in particular? Other than these items, is there anything else you believe these agreements should include? What “weight” will these agreements have in dispute resolutions (i.e., are these agreements legal documents, or are they more informal)?

411.425 addresses referrals to VR agencies without a referral agreement. What are the consequences of this?

For State VR agencies, is compliance with all of the requirements of an IPE under Title I of the Rehab. Act sufficient to comply with all of the requirements of an IWP? If so, this should be clarified in **411.465**.

If the VR agency selects the cost reimbursement system, are they still considered an EN? Do they still accept the ticket? If not, does it mean that the beneficiary can assign the ticket to another EN while still receiving services from the VR agency outside of the ticket?

Role of One-Stop Centers as ENs

Please clarify the role of one-stop centers.

privileged?

Section **411.305** describes what entities may be eligible to be an employment network. One of the possible entities listed is one-stop delivery systems established under WIA. A complicating factor in this situation is that the State VR Services Program is a mandatory partner in the one-stop system.

Earnings Levels

Clarify the earnings levels for which an individual is considered to be working -- page 78.

Dispute resolution

~~Page 39 – A State VR agency that is dissatisfied with SSA's final decision regarding a dispute over a payment request, the agency must appeal to HHS' Department Appeals Board. Why would HHS' appeals board handle this dispute resolution, rather than some other mediator? In cases where a State VR agency makes an appeal to SSA, or HHS' appeals board, what role will the Department of Education play? Will SSA and/or HHS consult with ED about this dispute? Does HHS' appeals board typically handle SSA's appeals?~~

Page 40 – What is the rationale for creating a Dispute Resolution Board within SSA? Who in OESP would serve on the board?

Clarify dispute resolution process for EN-beneficiary.

What is SSA's process for terminating an agreement with an EN due to inadequate performance?
Page 100

State VR agencies are required to comply with all requirements of the Rehabilitation Act due process requirements set forth in section 102(c). Although section 411.640 states that dispute resolution procedures under the Rehabilitation Act apply to beneficiaries seeking services from the State VR agency, it is not clear to what extent the provisions in sections 411.600 through 411.635 apply to a State VR agency which may also serve as an employment network. Subpart I should be revised and restructured to clarify up-front that the due process requirements under the Rehabilitation Act and its implementing regulations apply to beneficiaries seeking services from the State VR agency.

PRELIMINARY EDITORIAL COMMENTS

Summary

Page 1 – We are proposing rules to implement the new “Ticket to Work and Self-Sufficiency Program” (the Ticket to Work program) authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program will provide disabled beneficiaries with expanded access to employment services, vocational rehabilitation services, or other support services. We will pay the providers of those services after the beneficiaries achieve certain levels of work.

Background

Page 2 – In the first sentence of the Background section, you note that reports indicate that the unemployment rate for individuals with disabilities is at an all time high. This seems unlikely, and could be confusing because the 75 percent “unemployment” rate is not comparable to how the “unemployment rate” is typically referred to (i.e., out of work and looking for work). What is the source for this figure?

States that “From 1986 to 1999, the number of individuals receiving disability benefits rose 80 percent, with about half receiving Social Security disability benefits and half [SSI] benefits.” Provide a rationale for this increase.

1999 benefit amounts -- \$51.3b on DI and \$22.9b on SSI – these do not match the numbers in the budget. Are these actuals? Are they for all benefits or just the disability portion?

Paragraph 2 – Why are you citing GAO instead of SSA data?

Page 3 – Top of page states: “If just one half of one percent of the current of Social Security disability and SSI recipients were to cease receiving benefits as a result of engaging in self-supporting employment, savings in cash assistance would total \$3.5 billion over the work life of those individuals.” The findings section of the bill cited the \$3.5 billion figure. Is this an OACT number?

“Some believe that Social Security disability beneficiaries are either unable to obtain all of the services necessary to achieve self-supporting employment, or are reluctant to increase their work effort to a level that affects their eligibility for cash assistance.” Is this really an either/or? Two schools of thought?

Ticket to Work and Work Incentives Improvement Act of 1999

Pages 3-6 – What is the rationale for including the findings in the law? Why isn’t it quoted directly?

Page 6 –

“Section 101(a) of TWWIIA amends Part A of title XI of the Social Security Act (the Act) by adding a new section 1148, The Ticket to Work and Self-Sufficiency Program (Ticket to Work program). The purpose of the Ticket to Work program is to expand the universe of service

providers available to beneficiaries with disabilities who are seeking employment services, vocational rehabilitation services, and other support services to assist them in obtaining, regaining ~~anandd~~ or maintaining self-supporting employment.

The implementation and details of the TWWIA are to be defined in regulations. Section 1148(l) of the Act requires the Commissioner to prescribe such regulations as are necessary to carry out the provisions of section 1148 of the Act. In addition, section 101(e) of TWWIA requires the Commissioner of Social Security to prescribe such regulations as are necessary to implement the amendments made by section 101. We are proposing these regulations to clarify a number of areas where specific policy decisions were left to the discretion of the Commissioner.”

Page 7

“Under the Ticket to Work program, the Commissioner may issue tickets to Social Security disability beneficiaries and disabled and blind SSI beneficiaries. [Need to define these populations (e.g., eligible under 223 or 202? Only SSI disability beneficiaries over age 16?)] Each beneficiary will have the option of using his or her ticket to obtain services from a provider known as an employment network (EN). The beneficiary will choose the EN, and the EN will provide or coordinate access to employment services, vocational rehabilitation services, and other support services to assist the beneficiary in obtaining, regaining and maintaining self-supporting employment. ENs will also be able to choose who they serve.”

Public Education Forum and Conferences

Page 8

Did the forums begin prior to enactment of the law (Baltimore, MD, December 12, 1999)? Are all forums complete? Did the forum topics include the design and implementation of the Ticket? Did only the forums in Chicago, San Francisco, Dallas, Denver and Philadelphia address the Ticket?

SSA’s Programs for Rehabilitation Services Prior to Implementation of the Ticket to Work Program

Page 10

States “The proposed rules to implement these statutory changes will be published in the Federal Register at a later date.” Does this only refer to the conforming amendments? Why are they not being published now? When does SSA plan to publish them?

Page 11

Two other sets of regulations are delayed – continuation of benefits while in VR and expedited reinstatement of benefits. Why are they not being published now? When does SSA plan to publish them?

General Goals of the Ticket to Work Program

Page 11

States: “As a result, the Ticket to Work program, together with other provisions of TWWIA, should substantially increase the number of beneficiaries...” What does “substantially increase” mean?

Page 12

“In addition to providing the increased opportunity for these beneficiaries to obtain services when they seek employment, TWWIA may result in substantial saving for Federal government and State ~~State and Federal~~ governments. (The Ticket portion should result in savings. It is not clear that savings will result from the health portion.) Not only should there be an increase in the number of beneficiaries leaving the Social Security and SSI disability rolls due to work or earnings, some individuals will secure work with employers who offer group health coverage, thereby reducing Medicaid and Medicare expenses. Earned income will also yield tax receipts while reducing expenses in Social Security disability and disabled and blind SSI benefits, food stamps, HUD rent subsidies, and veterans benefits. (Can this be quantified?) Improved employment rates of individuals with disabilities will increase the independence of such individuals and strengthen our communities and workforce.”

Ticket to Work Program

Page 12 – “...the Act authorizes the Commissioner to issue ~~a~~ tickets to disabled beneficiaries.”

Section 1148(d)(1) of the Act authorizes the Commissioner to conduct a competitive bidding process and enter into an agreement with one or more organizations to serve as a Program Manager (PM) to assist SSA in administering the Ticket to Work program. Add a sentence on the role of a PM

(new paragraph) Section 1148(d)(4) of the Act directs the Commissioner to select and enter into agreements with service providers that are willing to function as ENs and assume responsibility for the coordination and delivery of employment services, vocational rehabilitation services, and other support services to beneficiaries with disabilities under the Ticket to Work program. A beneficiary with a ticket may assign his or her ticket to any provider that is serving as an EN under the Ticket to Work program and is willing to take the assignment.

Addition: Under this section, please briefly explain what the benefits of this program are for an individual with a disability who is inclined to obtain services from the State VR program (i.e., other than expanding the number of employment providers, what other advantages are there for the beneficiary to participate in the Ticket program?). Why should this person obtain a ticket before going to the State VR agency? In order to receive VR services, is an individual required to provide a ticket to the VR agency?

Page 13

Notes that proposed performance measures to be used in the periodic reviews will be developed and published in the FR for comment. What is the schedule? Will these be done prior to signing contracts? Would they be published as a notice only or would they be stated in the regulations?

Proposed Regulations

Page 13

“We are proposing to **create a part 411 in** chapter III of title 20...”

Subpart B – Tickets Under the Ticket to Work Program

Page 15 – How does a beneficiary obtain a list of the approved ENs in his or her area? Is it given to them or must it be requested?

Must the PM approve the IWP/IPE prior to ticket assignment? EN needs to work with beneficiary to develop IWP/IPE but would not be “assigned” the ticket until it is signed and approved?

Subpart C – Suspension of CDRs

Page 17 – Proposed §§ 411.170 and 411.171 describe when the period of using a ticket begins and ends. We propose that the period of using a ticket begins when the ticket is first assigned to an EN. (Should this be services started? How long of a lag is allowed between assigning the ticket and beginning services? Does SSA track progress or participation before the 24 month review?)

Page 18 (Page 74 in reg language) –

Under our proposed definition, the period of using a ticket ends with the earliest of the following:

- (1) The completion of the 60-month outcome payment period; Is program eligibility extended throughout this period? Can't SSA conduct a review at this point and still pay ENs? Are there Medicare and Medicaid implications? Presumably, the extension of Medicare eligibility begins when the EPE starts, regardless of whether or not an individual is still using the ticket.
- (2) When the beneficiary is no longer making timely progress toward self-supporting employment according to our guidelines; where are these defined?
- (3) Three months after the ticket is no longer assigned, if the beneficiary fails to reassign the ticket during this 3-month period; or
- (4) When the beneficiary's entitlement to or eligibility for disability benefits terminates. Based on what? Earnings? Income and resources under SSI?

Page 22

“In proposed §§ 411.190, 411.195, 411.200, and 411.205, we discuss how it will be determined if a beneficiary is meeting the timely progress guidelines. We are proposing that the PM (should this be EN?) conduct periodic reviews to ensure that beneficiaries are meeting the timely progress guidelines.” ~~The TWWIA does not list this as a role for the PMs.~~ The TWWIA does not list this as a role for PMs, rather it is listed as a responsibility for the ENs. The PMs must make the reports public.

Subpart H – Employment Network Payment Systems

Page 30 - ~~The maximum number of~~ outcome payments under either EN payment system are payable for a maximum of 60 months. These months do not have to be consecutive. Section 1148(h)(3)(C) of the Act provides that the schedule of payments to the EN under the outcome-milestone payment system shall be designed so that the total of the payments is less than, on a

net present value basis, the total payments the EN would be limited to if the EN were paid under the outcome payment system.

Page 33 – Under the outcome-milestone payment system we propose to use, the total potential payment will be about 85 percent of the total potential payment that could be made under the outcome payment system. (What is the rationale for 85 percent? This measure does not hold if you vary the time period during which payments are made.) As stated previously, the outcome payment months do not have to be consecutive months under either EN payment system.

Additional Matters for Comment

Page 43 – SSA is inviting comments on what a national model for EN periodic reports should look like. What is the Advisory Panel’s role in developing the EN reporting requirements? When will these be developed? How would they be integrated into the contracts?

SSA also intends to solicit views regarding the development of performance measures. Again, what is the role of the Advisory Panel and the timeline for the development of the performance measures? How would they be integrated into the contracts?

Eligibility for a Ticket for Persons Under Age 18

Page 44 – What are SSA’s plans to extend coverage to individuals 16-17? Timelines? Is it appropriate to request people to defer comments on a portion of the NPRM?

Regulatory Language

§ 411.105 What is the purpose of the Ticket to Work program? Page 63

The purpose of the Ticket to Work program is to expand the universe of service providers available to individuals who are entitled to Social Security benefits **based on disability** or eligible for Supplemental Security Income (SSI) benefits **based on disability or blindness** in obtaining the services necessary to find, enter and retain employment. Expanded employment opportunities for these individuals also will increase the likelihood that these individuals will reduce their dependency on Social Security and SSI cash benefits. **Why is the distinction between disability and blindness being made between the DI and SSI programs?**

§ 411.115 Definitions of terms used in this part. – Page 65

(f) **“Disabled beneficiary”** means a title II disability beneficiary or a title XVI disability beneficiary.

(1) **“Title II disability beneficiary”** means an individual entitled to disability insurance benefits under section 223 or to monthly insurance benefits under section 202 of the Act based on such individual's disability as defined in section 223(d) of the Act. (See § 404.1505 of this chapter.) An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(2) **“Title XVI disability beneficiary”** means an individual eligible for Supplemental Security Income benefits under title XVI on the basis of blindness (within the meaning of section 1614(a)(2) of the Act) (see §§ 416.981 and 416.982 of this chapter) or disability (within the meaning of section 1614(a)(3) of the Act) (see

§ 416.905 of this chapter). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits. Why does SSI specify blindness?

(3) “Supplemental Security Income benefit under title XVI” means a cash benefit under section 1611 or 1619(a) of the Act, and does not include a State supplementary payment, administered Federally or otherwise. Why is this listed here? It is not a beneficiary. How does this differ from (h)?

(g) “Social Security disability benefits” means the benefits described in paragraph (f)(1) of this section.

(h) “Federal SSI cash benefits” means a “Supplemental Security Income benefit under title XVI” based on blindness or disability as described in paragraphs (f)(2) and (f)(3) of this section.

411.145 (b) – Page 71 -- Does the first sentence make sense in the context of a State VR agency being an EN? Could a State VR agency go out of business (theoretically, a State could discontinue its VR program; would this be the same as going out of business)? Could a State VR agency be no longer approved to participate in the program? If so, how?

This section mischaracterizes when a VR agency can cease serving an eligible individual with a disability. This paragraph includes the clause “if your EN or the State VR agency is no longer willing or able to provide services to you. . . .” This implies that the VR agency has wide discretion on when it will or will not serve an individual. However, the VR agency must satisfying certain requirements before it may cease providing services to an eligible individual.

§ 411.160 What does this subpart do?

(a) This subpart explains our rules about continuing disability reviews for disability beneficiaries who are participating in the Ticket to Work program.

(b) Continuing disability reviews are reviews that we conduct to determine if you are still disabled under our rules (see §§ 404.1594 and 416.994 of this chapter). For the purposes of this subpart, continuing disability reviews do not include—

(1) **Any review to determine if your disability has ended** because you have demonstrated your ability to engage in substantial gainful activity (SGA), as defined in §§ 404.1571 – 404.1576 of this chapter; [This should be clarified so it is clear that SSA does not plan to conduct work-triggered CDRs, rather SSA plans to continue to work and earnings information.] and

(2) Disability redeterminations for title XVI beneficiaries who attain age 18, as described in § 416.987 of this chapter.

§ 411.170 When does the period of using a ticket begin?

The period of using a ticket begins on the effective date of the assignment of your ticket to an EN or State VR agency under § 411.140. Is this when the IWP/IPE is signed? When it is approved by the PM? When services begin?

§ 411.225 What if my ticket is no longer assigned to an EN or State VR agency?

(a) If your ticket was once assigned to an EN or State VR agency and is no longer assigned, you are eligible for an extension period of up to 3 months to reassign your ticket. You are eligible for an extension period if your ticket is no longer assigned because--

(1) you retrieved your ticket because you were dissatisfied with the services being provided ~~under~~ (see § 411.145(a)); or

§ 411.245 What are a PM's responsibilities under the Ticket to Work program?

(b) Facilitating access by beneficiaries to ENs. A PM must assist beneficiaries with tickets in accessing ENs.

(1) A PM must establish and maintain lists of the ENs available to beneficiaries with tickets in its service delivery area and make these lists generally available to the public. What does this mean? Are ticketholders given a list or must they request one?

(2) A PM must ensure that all information provided to beneficiaries with tickets about ENs is in accessible formats. For purposes of this section, accessible format means by media that is appropriate to a particular beneficiary's medical impairment(s). What about multiple languages?

Page 93

(c) Facilitating Payments to ENs

(1) A PM must maintain documentation and provide regular assurances to us that payments to an EN are warranted. **How would these assurances be made? Through reports? Would SSA continue to track work activity?**

Evaluation of Program Manager Performance

§ 411.250 How will SSA evaluate a PM?

(a) We will periodically conduct a formal evaluation of the PM. The evaluation will be based on how well the PM meets the performance standards set out in its agreement with us. Performance standards will be developed to address several categories including~~ge~~, but not ~~be~~ limited to:

- (1) quality of services;
- (2) cost control;
- (3) timeliness of performance;
- (4) business relations; and
- (5) customer satisfaction.

NOTE: 1-5 are not performance standards. When will these be developed? How will they be published in the FR – as a notice or in the regulatory language?

(b) Our Project Officer will perform the evaluation. The PM will have an opportunity to comment on the evaluation, and then the Contracting Officer will determine the PM's final rating. **Who is the Project Officer? When will the evaluation be performed? Who is the Contracting Officer?**

§ 411.320 What are an EN's responsibilities as a participant in the Ticket to Work program?

An EN must--....

(d) Ensure that employment services, vocational rehabilitation services, and other support services provided under the Ticket to Work program are provided under appropriate individual work plans (IWP) or IPEs.

(e) Elect a payment system at the time of signing an agreement with us (see § 411.505). [Specify how a VR agency may be different.]

(f) Develop and implement each IWP or IPE in partnership with each beneficiary receiving services in a manner that affords the beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal. Each IWP must meet the requirements described in § 411.465.

§ 411.330 How will SSA evaluate an EN's performance?

(a) We will develop performance measurements to use in periodically reviewing each EN to ensure effective quality assurance in the provision of services by ENs. In developing these performance measurements, we will solicit and consider the views of consumers, providers of services, and the PM. What are they? When? Where? Notice in FR, not in regs?

(b) In reviewing an EN, we will consult with the PM that monitors the EN and the beneficiaries seeking or receiving services from the EN. The survey of beneficiaries receiving services from the EN will be designed to measure customer service satisfaction.

(c) ENs must make the results of these periodic reviews available to disabled beneficiaries to assist them in choosing among available ENs. How? Upon request only?

§ 411.385 What does a State VR agency do if a beneficiary who is applying for services has a ticket that is available for assignment?

Why does (a) refer to the description of how the ticket may affect CDRs?

Part (b) seems redundant to the second portion of (a)?

§ 411.465 What are the minimum requirements for an IWP?

For State VR agencies, is compliance with all requirements of an IPE under Title I of the Rehab Act sufficient to comply with all of the requirements of an IWP? If so, please clarify here.

§ 411.500 Definitions of terms used in this part.

(d) Outcome-Milestone Payment System is a system providing a schedule of payments to an EN that includes, in addition to payments during the outcome payment period, payment for completion by a beneficiary of **up to two milestones** (law states "one or more milestones") directed toward the goal of permanent employment. Milestones occur prior to the beginning of the outcome payment period. Milestone payments consist of payments in addition to any payments made during the outcome payment period. The schedule of total payments under the outcome-milestone payment system, with respect to each beneficiary who assigns a ticket to the EN, must be less than, on a present value basis (using an interest rate determined by

the Commissioner that appropriately reflects the cost of funds faced by providers), would be payable to the EN under the outcome payment system.

§ 411.510 How is the State VR agency paid under the Ticket to Work program?

(c) For each beneficiary who is already a client of the State VR agency prior to receiving a ticket, the State VR agency will notify the PM of the payment system election for each such beneficiary at the time the ticket is assigned to the State VR agency. How does this related to 411.390, that reads as if VR must choose cost reimbursement?

§ 411.515 Can the EN change its elected payment system?

(b) During the 12 months following the month the EN first elects a payment system, the EN can choose to make one change in its elected payment system at any time.

(c) After an EN first elects a payment system, as part of signing the EN agreement with us (for State VR agencies, see § 411.365), the EN will have the opportunity to change from its existing elected payment system during times announced by us. We will offer the opportunity for ENs to make a change in their elected payment system at least every 18 months following January 2001. Does this only apply after the first 12 month period is complete (i.e., per (b))?

§ 411.525 How are the EN payments calculated under each of the two EN payment systems?

...
(2) Under the outcome-milestone payment system, we can pay the EN for one or more up to two milestones achieved by a beneficiary who has assigned his or her ticket to the EN. In addition to the milestone payments, monthly outcome payments can be paid to the EN during the outcome payment period. (Specify Commissioner wants 2 milestones.)

(b) Under the outcome-milestone payment system, the EN's total payments for a beneficiary will be less than, on a present value basis (using an interest rate determined by the Commissioner that appropriately reflects the cost of funds faced by providers), if the EN were paid under the outcome payment system. ~~Under the outcome-milestone payment system, the EN's total potential payment is about 85 percent of the total that would have been potentially payable under the outcome payment system for the same beneficiary. (The 85 percent measure is not required under law. It does not hold on a present value basis given the variability in timelines of payments.)~~

§ 411.730 What happens if an alternate participant signed an employment plan with a beneficiary before Ticket to Work program implementation in the State and the required period of substantial gainful activity is not completed by January 1, 2004?

The beneficiary does not have to complete the 9-month continuous period of substantial gainful activity (SGA) prior to January 1, 2004, in order for the costs of the services to be payable under the programs for payments for VR services. The 9-month SGA period can be completed after January 1, 2004. However, SSA will not pay an alternate participant under these programs for the costs of any services provided after December 31, 2003. What is the 9-month continuous SGA period requirement?

Ticket briefing
Published by end of Calendar year

Questions

1) Who gets a Ticket? left to discretion

a) principle: widest elig.

b) should we give to people who are expected to improve

★ - give all adults benefits in 1st 4 yrs.
w/ sunset on re-in as study effect on universe of M&A's

pay the provider 40% of benefit for as long as the person works

- they want a DMEPC (to contract n/?)
int → program managers.

Jan, Feb, early spring, 13 ^{launch} states
law gives phase-in authority

Law specifies privileged relationship between ticket & one stops.

mental health community
concerned about circular
def'n

#3?

CDR

Suspend Disability review if
someone is using a ticket
but they need to meet milestones
to prove that they're really using this
1) find provider

§) Actual SGA ~~at~~ for a number of months
still ~~applicable~~ applicable
↓
TWP

#3 or 4

Process for resolving disputes b/w
beneficiaries & providers.

referred to agency only if program mgr.
can't deal w/ it.

Terms of the agreement

balance
beneficiary choice
w/ provider
~ left in the lurch

but I a way for
benefic. to get the ticket
back.

↳ can only renew at certain periods

→ a protection & advocacy component
#5 who can be an employment network

^{providers}
any entity offering e'ment
systems

Least restrictive criteria for becoming
an e'ment network

→ need to be able to ^{statewide (a wide range)} give multiple services
→ ^{must} state req's

No add'l req's other than those
directly in statute

They want to see
employers even, become
ticket takers.

In general states don't regulate
e'v services that hard.

they have an alternative providers program
(re: defining providers)
they don't
→ have to follow Title I of Rehab Act
→ lots of req's.

Creaming problem?

but not everyone needs to
go back to work if it's
hard to do.

Law allows ↑ in ticket payments if pockets of people

are not reached.

#7 ^{PnA} Comm'r had decided to
start PnA funding on
FY2001 → in those
status

ticket to work Pass-Back 9/19/2000

Same level b/w blind + non-blind to
determine whether you're "Using the ticket"
non-blind SGA \$700
Except

As payments to EN's go → they'll be same
b/c based on ave. payments?
but for milestones (outcome payments)
to say whether this is not use diff
level for blind + non-blind.

1st milestone

3 calendar mo. / 12 at SGA
2nd 7 / 12

ask same
★ VR agency that charges cost reimbursement
issue (bene has to be working for a while)

SSA is voluntary not mandatory.

DOL has \$20m in ~~TA~~ to teach
one stops about T-TW program.

Worked out through governance??

Carole Kitti will want to weigh in

Cong. could have said One stops will give out
the ticket.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 411

RIN 0960-AF-11

The Ticket to Work and Self-Sufficiency Program

AGENCY: Social Security Administration

ACTION: Notice of Proposed Rulemaking

SUMMARY: We are proposing rules to implement the new “Ticket to Work and Self-Sufficiency Program” authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program will provide disabled beneficiaries with access to employment services, vocational rehabilitation services, or other support services. We will pay the providers of those services after the beneficiaries achieve certain levels of work.

DATES: To be sure that your comments are considered, we must receive them no later than [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be submitted:

- In writing, to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703;
- By telefax to (410) 966-2830;
- By E-mail to regulations@ssa.gov; or
- Delivered to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore,

Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. You may also inspect comments during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Geoffrey Funk, Team Leader, Legislative Implementation Team, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401. Call (410) 965-9010 or TTY 1-(800) 988-5906 for information about these proposed rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-(800) 772-1213 or TTY 1-(800) 325-0778. You may also contact SSA Online at www.ssa.gov.

SUPPLEMENTARY INFORMATION:

Background

Many reports indicate that the unemployment rate for individuals with disabilities is at an all time high, almost 75 percent. From 1986 to 1999, the number of individuals receiving disability benefits rose 80 percent, with about half receiving Social Security disability benefits and half Supplemental Security Income (SSI) benefits. The Federal government spent \$51.3 billion on Social Security disability benefits in 1999, and \$22.9 billion in SSI. Many States use State funds to supplement the benefits of SSI beneficiaries.

According to the U.S. General Accounting Office, less than 1 percent of Social Security disability and SSI beneficiaries leave the Social Security rolls each year as a result of paid

employment. Of those who leave, about one third return within 3 years. If just one half of one percent of the current of Social Security disability and SSI recipients were to cease receiving benefits as a result of engaging in self-supporting employment, savings in cash assistance would total \$3.5 billion over the work life of those individuals.

Some believe that Social Security disability beneficiaries are either unable to obtain all of the services necessary to achieve self-supporting employment, or are reluctant to increase their work effort to a level that affects their eligibility for cash assistance.

These proposed rules are intended to expand the options available for Social Security disability beneficiaries and disabled or blind SSI beneficiaries to access vocational rehabilitation services, employment services, and other support services that are necessary for such beneficiaries to obtain, regain or maintain employment that reduces their dependency on cash assistance. We expect that the expansion of these options and the creation of new work incentives in the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIA) will remove some of the disincentives that many beneficiaries with disabilities face when they attempt to work or, if already working, continue working or increase their work effort. If more beneficiaries with disabilities engage in self-supporting employment, the net result will be a reduction in the Social Security and SSI disability rolls and savings to the Social Security Trust Fund and general revenues.

Ticket to Work and Work Incentives Improvement Act of 1999

On December 17, 1999, President Clinton signed into law the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170). In section 2(a) of TWWIA, the Congress made the following findings:

- (1) It is the policy of the United States to provide assistance to individuals

with disabilities to lead productive work lives.

(2) Health care is important to all Americans.

(3) Health care is particularly important to individuals with disabilities and special health care needs who often cannot afford the insurance available to them through the private market, are uninsurable by the plans available in the private sector, and are at great risk of incurring very high and economically devastating health care costs.

(4) Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as attendant services, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

(5) For individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.

(6) Social Security disability and Supplemental Security Income beneficiaries risk losing medicare or medicaid coverage that is linked to their cash benefits, a risk that is an equal, or greater, work disincentive than the loss of cash benefits associated with working.

(7) Individuals with disabilities have greater opportunities for employment than ever before, aided by important public policy initiatives such as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), advancements in public understanding of disability, and

innovations in assistive technology, medical treatment, and rehabilitation.

(8) Despite such historic opportunities and the desire of millions of disability recipients to work and support themselves, fewer than one-half of one percent of Social Security disability and Supplemental Security Income beneficiaries leave the disability rolls and return to work.

(9) In addition to the fear of loss of health care coverage, beneficiaries cite financial disincentives to work and earn income and lack of adequate employment training and placement services as barriers to employment.

(10) Eliminating such barriers to work by creating financial incentives to work and by providing individuals with disabilities real choices in obtaining the services and technology they need to find, enter, and maintain employment can greatly improve their short and long-term financial independence and personal well-being.

(11) In addition to the enormous advantages such changes promise for individuals with disabilities, redesigning government programs to help individuals with disabilities return to work may result in significant savings and extend the life of the Social Security Disability Trust Fund.

(12) If only an additional one-half of one percent of the current Social Security disability and Supplemental Security Income (SSI) recipients were to cease receiving benefits as a result of employment, the savings to the Social Security Trust Funds and to the Treasury in cash assistance would total \$3,500,000,000 over the worklife of such individuals, far exceeding the cost of providing incentives and services needed to assist them in entering work and achieving financial independence to the best of their abilities.

In section 2(b) of TWWIA, the Congress states that TWWIA has four basic purposes. In general, these are:

--To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependence on cash benefit programs.

--To encourage States to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment.

--To provide individuals with disabilities the option of maintaining Medicare coverage while working.

--To establish a "Ticket to Work and Self-Sufficiency Program" that allows Social Security disability and disabled or blind SSI recipients to seek the employment services, vocational rehabilitation services, and other support services needed to obtain, regain, or maintain employment and reduce their dependence on cash benefit programs.

Section 101(a) of TWWIA amends Part A of title XI of the Social Security Act (the Act) by adding a new section 1148, The Ticket to Work and Self-Sufficiency Program. The purpose of the Ticket to Work program is to expand the universe of service providers available to beneficiaries with disabilities who are seeking employment services, vocational rehabilitation services, and other support services to assist them in obtaining, regaining and maintaining self-supporting employment.

Section 1148(l) of the Act requires the Commissioner to prescribe such regulations as are necessary to carry out the provisions of section 1148 of the Act. In addition, section 101(e) of TWWIA requires the Commissioner of Social Security to prescribe such regulations as are necessary to implement the amendments made by section 101. We are proposing these regulations to clarify a number of areas where specific policy decisions were left to the discretion of the

Commissioner.

Under the Ticket to Work program, the Commissioner may issue tickets to Social Security disability beneficiaries and disabled and blind SSI beneficiaries. Each beneficiary will have the option of using his or her ticket to obtain services from a provider known as an employment network (EN). The beneficiary will choose the EN, and the EN will provide employment services, vocational rehabilitation services, and other support services to assist the beneficiary in obtaining, regaining and maintaining self-supporting employment. ENs will also be able to choose who they serve.

The Commissioner's intent in developing the proposed rules for the Ticket to Work program is to allow service providers that have traditionally provided employment services, vocational rehabilitation services and other support services, as well as other types of entities, to qualify as ENs and serve beneficiaries with disabilities under the program. The expansion of options available to obtain these services will provide beneficiaries with real choices in getting the services they need to obtain, regain, or maintain employment.

Public Education Forums and Conferences

Immediately following passage of TWWIIA, we began working with the U.S. Departments of Health and Human Services, Education, and Labor, as well as the Presidential Task Force on the Employment of Adults with Disabilities, the President's Committee on Employment of People with Disabilities, and the National Council on Disability. These Federal partners joined together to plan and conduct a series of public education forums. The purpose of the forums was to increase

the awareness of public disability programs among individuals with disabilities, their families and representatives, and service providers. The forums focused on Federal and State employment-related policies and programs for people with disabilities.

Forums were scheduled in eleven major cities across the country. Those cities were Baltimore, MD (December 12, 1999); Kansas City, MO (February 2, 2000); Durham, NC (March 9, 2000); Phoenix, AZ (March 30, 2000); New York, NY (April 6, 2000); Austin, TX (May 17, 2000); Seattle, WA (June 13, 2000), Worcester, MA (June 26, 2000); Chicago, IL (August 1, 2000), Harrisburg, PA (August 15, 2000); and Denver, CO (September 13-14, 2000).

Representatives from many national and community-based organizations (e.g., the SSI Coalition, Virginia Commonwealth University, Disability Rights Education and Defense Fund, the National Brain Injury Association, Consortium for Citizens with Disabilities, Robert Wood Johnson Foundation, National Council on Independent Living, Capstone Group, and State representatives from the Developmental Disabilities Councils, the State Independent Living Councils, and the Governors' Committees on Employment of People with Disabilities) participated in these forums.

The forums provided participants with both information and an opportunity for discussion. Topics included: SSA customer services and work incentives; State health care systems and models; and employment initiatives of the Departments of Education, Labor, and Health and Human Services.

The forums were also used as an opportunity to share information about TWWIIA and conduct exploratory discussions about policy issues relating to the implementation of the provisions in TWWIIA that were left to the Commissioner to interpret. New models where State and local systems are working together to serve their common customers with disabilities were

highlighted.

SSA representatives have also been involved in meetings and conferences on the national, regional, State, and local levels. These included SSA-sponsored forums in Chicago, San Francisco, Dallas, Denver, and Philadelphia conducted in January and February 2000, which focused on the Ticket to Work program. At these meetings and conferences, SSA representatives made presentations on TWWIA, facilitating discussion and obtaining recommendations that were considered in developing the provisions of the Ticket to Work program that are being addressed in these proposed rules.

SSA's Programs for Rehabilitation Services Prior to Implementation of the
Ticket to Work Program

In titles II and XVI of the Social Security Act, Congress provided that we promptly refer individuals applying for or determined eligible for Social Security disability benefits or SSI benefits based on disability or blindness to State vocational rehabilitation (VR) agencies for necessary rehabilitation services. Under the statute and by regulations, if a State VR agency does not serve a beneficiary whom we referred, we may use other public or private agencies, organizations, institutions or individuals to provide services. Under our regulations, these other providers of services are known as alternate participants. We are authorized under the Act to pay State VR agencies and alternate participants for the reasonable and necessary costs of services provided to Social Security disability beneficiaries and disabled and blind SSI beneficiaries under specific circumstances. The most frequent circumstance permitting payment under the Act is when the services provided result in the beneficiary performing substantial gainful activity (SGA) for a

period of at least 9 continuous months. These programs for referral and reimbursement for VR services are provided for in sections 222(a) and (d), and sections 1615(a), (d), and (e) of the Act.

Section 101(b) of TWWIA makes a number of conforming amendments to the Act, which require amendments to existing regulations that implement these statutory provisions. As we gradually implement the Ticket to Work program in States selected by the Commissioner, the provisions of the Act for referring beneficiaries to State VR agencies will cease to be in effect in those States as provided in sections 101(b), (c) and (d) of TWWIA. Additionally, the use of alternate participants under the title II and title XVI vocational rehabilitation reimbursement programs will be phased out in the States as the Ticket to Work program is implemented, as authorized under section 101(d)(5) of TWWIA.

Under sections 222 and 1615 of the Act, the Commissioner is authorized to impose sanctions (i.e., make deductions from Social Security disability benefits or suspend SSI benefits) with respect to any beneficiary who refused, without good cause, to accept rehabilitation services made available by a State VR agency or an alternate participant. TWWIA repeals this authority effective January 1, 2001.

The proposed rules to implement these statutory changes will be published in the Federal Register at a later date.

Section 101(b) of TWWIA also amends sections 225(b)(1) and 1631(a)(6)(A) of the Act by striking “a program of vocational rehabilitation services” and inserting “a program consisting of

the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support services". Under existing law, SSA continues to pay disability benefits to individuals who recover medically while participating in an approved program of vocational rehabilitation if the Commissioner determines that continuation in or completion of the program will increase the likelihood that the individual will be permanently removed from the disability rolls. The proposed rules to implement the expanded definition discussed above will be published in the Federal Register at a later date.

We will also publish at a later date in the Federal Register the rules for implementing section 112 of the TWWIA, Expedited Reinstatement of Disability Benefits.

General Goals of the Ticket to Work Program

The Ticket to Work program will enhance the range of choices available to Social Security disability and disabled and blind SSI beneficiaries when they are seeking employment services, VR services and other support services to obtain, regain or maintain self-supporting employment. The coordinated and interrelated public policy embodied in various provisions of TWWIA will remove several disincentives to employment faced by beneficiaries with disabilities. The Ticket to Work program will increase beneficiaries' access to public and private providers to obtain employment services, VR services, and other support services. As a result, the Ticket to Work program, together with other provisions of TWWIA, should substantially increase the number of beneficiaries who increase their work effort and leave the Social Security or SSI disability rolls due to income from employment.

In addition to providing the increased opportunity for these beneficiaries to obtain services

when they seek employment, TWWIA may result in substantial saving for State and Federal governments. Not only should there be an increase in the number of beneficiaries leaving the Social Security and SSI disability rolls due to work or earnings, some individuals will secure work with employers who offer group health coverage, thereby reducing Medicaid and Medicare expenses. Earned income will also yield tax receipts while reducing expenses in Social Security disability and disabled and blind SSI benefits, food stamps, HUD rent subsidies, and veterans benefits. Improved employment rates of individuals with disabilities will increase the independence of such individuals and strengthen our communities and workforce.

Ticket to Work Program

Section 1148 of the Act, which was added by section 101(a) of TWWIA, directs the Commissioner of Social Security to establish a Ticket to Work and Self-Sufficiency Program. Section 1148(a) of the Act authorizes the Commissioner to issue a ticket to disabled beneficiaries. Beneficiaries may choose among public or private service providers that have been approved by SSA to function as ENs under the program to obtain employment services, vocational rehabilitation services, or other support services to assist them in obtaining, regaining or maintaining employment that will reduce their dependence on cash benefits. The overall purpose of the Ticket to Work program is to expand the universe of options available to beneficiaries with disabilities for obtaining such services.

Section 1148(d)(1) of the Act authorizes the Commissioner to conduct a competitive bidding process and enter into an agreement with one or more organizations to serve as a PM to assist SSA in administering the Ticket to Work program. Section 1148(d)(4) of the Act directs the Commissioner to select and enter into agreements with service providers that are willing to function as ENs and assume responsibility for the coordination and delivery of employment services, vocational rehabilitation services, and other support services to beneficiaries with

disabilities under the Ticket to Work program. A beneficiary with a ticket may assign his or her ticket to any provider that is serving as an EN under the Ticket to Work program and is willing to take the assignment.

Section 1148(l) of the Act requires the Commissioner to prescribe such regulations as are necessary to carry out the provisions of section 1148. In addition, section 101(e) of TWWIA requires the Commissioner to prescribe such regulations as are necessary to implement the amendments made by section 101 of TWWIA. The regulations proposed in this notice address those areas which must be regulated in order to begin implementing the Ticket to Work program. Additional regulations necessary for the ongoing implementation of the program will be issued in the Federal Register at a later date. For example, proposed performance measures to be used in conducting periodic reviews as necessary to provide for effective quality assurance in the provision of services by ENs will need to be developed and published in the Federal Register for comment. Refer to the section near the end of this Supplementary Information, titled "Additional Matters for Comment," for more information on provisions that will be addressed in future regulations.

Proposed Regulations

We are proposing to add a new part 411 to chapter III of title 20 of the Code of Federal Regulations to provide the rules for the Ticket to Work program. The new part 411 is divided into the following subparts.

Subpart A - Introduction

Subpart A of these proposed rules provides an introduction to the rules in the new part 411. Proposed § 411.100 provides an overview of the proposed rules in part 411. Proposed § 411.105 describes the purpose of the Ticket to Work program. Proposed § 411.110 explains that the Ticket

to Work program will be implemented in graduated phases in sites around the country as required by section 101(d) of TWWIA. Proposed § 411.115 provides definitions of terms used in part 411.

Subpart B - Tickets Under the Ticket to Work Program

Subpart B of these proposed rules describes what a ticket is and explains who is eligible to receive a ticket.

Proposed § 411.120 explains that a ticket is a document that provides evidence of the Commissioner's agreement to pay an EN milestone or outcome payments for services to beneficiaries under the Ticket to Work program. Proposed § 411.125 states the following requirements, among others, for eligibility to receive a ticket: a beneficiary must be age 18 to 64; a beneficiary must be in current pay status for monthly cash benefits based on disability under title II of the Act or monthly Federal cash benefits based on disability or blindness under title XVI of the Act. Proposed § 411.125 also states that we will provide tickets to beneficiaries who have impairments that are expected to improve. The proposed rules provide that, unless we extend this provision, a beneficiary who has an impairment that is expected to improve and who has not undergone at least one continuing disability review, will not be eligible to receive a ticket after December 31, 2004.

Proposed § 411.130 explains that SSA will distribute tickets in graduated phases. Proposed § 411.135 explains that participation in the Ticket to Work program is voluntary. This proposed section explains that if beneficiaries want to participate in the program they can take their tickets to any entity serving under the program. Proposed § 411.140 explains that a beneficiary may assign his or her ticket to any EN or State VR agency that is willing to provide services, and that the beneficiary may discuss his or her rehabilitation and employment plans with as many entities as he

or she wishes. This proposed section explains that the beneficiary can obtain a list of the approved ENs in his or her area. This section also explains certain requirements a beneficiary must meet in order to assign a ticket. This section provides that beneficiaries and ENs must agree to and sign an individual work plan (IWP) (or, in the case of a State VR agency, an individualized plan for employment (IPE)) before a ticket can be assigned. This provision requires that a copy of the plan be submitted to the PM to facilitate the assignment of the ticket. Proposed § 411.145 describes the conditions under which a beneficiary may take a ticket back after it has been assigned to an EN or State VR agency. It also describes other conditions under which a ticket that is assigned can be taken out of assignment. Proposed § 411.150 explains the beneficiary's right to reassign a ticket, if the beneficiary chooses.

Subpart C - Suspension of Continuing Disability Reviews for Beneficiaries Who Are Using a Ticket

Under section 221(i) of the Act and under the authority granted by sections 1631 and 1633 of the Act, we conduct periodic reviews to ensure that beneficiaries continue to meet the definition of disability under sections 223(d) and 1614(a) of the Act. These reviews are called continuing disability reviews. TWWIA amends the Act to add section 1148(i), which states that SSA may not initiate a continuing disability review during any period in which a beneficiary is using a ticket. The statute states:

"During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable

State agency) may not initiate a continuing disability review or other review under section 221 of whether the individual is or is not under a disability or a review under title XVI similar to any such review under section 221."

The definition of using a ticket is to be determined by the Commissioner of Social Security. Subpart C outlines our proposed definition of using a ticket.

In developing our proposed definition of using a ticket, we considered two key factors. First, the intent of the Ticket to Work program is to allow beneficiaries with disabilities to seek the services they need to work and to reduce or eliminate dependence on Social Security disability and SSI benefits. However, anecdotal evidence suggests that some beneficiaries are afraid that working, or even receiving vocational rehabilitation services, may increase the likelihood that their benefits will be terminated in a continuing disability review. Therefore, using a ticket should be defined in a way that minimizes this employment disincentive for beneficiaries participating in the Ticket to Work program. However, in order to maintain the integrity of the disability programs, it is also important that beneficiaries who have medically improved and who no longer meet the definition of disability under sections 223(d) and 1614(a)(3) of the Act do not continue to receive disability benefits for an undue length of time.

Our proposed definition seeks to balance these concerns by ensuring that continuing disability reviews are suspended only during the period in which beneficiaries are making meaningful progress toward reducing or eliminating dependence on Social Security disability or SSI benefits, while at the same time recognizing that such progress may not always be rapid or

continuous.

Under our proposed definition of using a ticket, a beneficiary would be considered to be using a ticket during the period in which he or she was making progress toward the goal of reducing or eliminating dependence on disability benefits within reasonable timeframes. Under this approach, beneficiaries would be allowed a limited period to prepare for work. At the end of this period, they would need to show that they were progressing toward self-sufficiency by demonstrating increasing levels of employment.

An important advantage of this definition of using a ticket is that it increases employment incentives by “rewarding” beneficiaries who work and progress toward self-sufficiency with continued deferral of continuing disability reviews. However, requiring beneficiaries to demonstrate increasing levels of employment within a defined timeframe results in a fairly complex regulation. The complexity arises from our attempt to balance the concerns discussed above and, to the extent possible, to accommodate the diverse employment needs of a wide range of beneficiaries. While some level of complexity is unavoidable, we have attempted wherever possible to simplify the regulation and to make it straightforward to implement.

The following analysis discusses the major provisions of subpart C.

Proposed §§ 411.170 and 411.171 describe when the period of using a ticket begins and ends. We propose that the period of using a ticket begins when the ticket is first assigned. The primary purpose of the suspension of continuing disability reviews is to ensure that Ticket to Work

program participants are not inhibited in their attempts to work or pursue an employment plan by the fear that such activities will increase the likelihood that their benefits will be terminated in a medical review. Prior to the assignment of the ticket, a beneficiary is not participating in these activities under the Ticket to Work program.

Under our proposed definition, the period of using a ticket ends with the earliest of the following:

- (1) The completion of the 60-month outcome payment period;
- (2) When the beneficiary is no longer making timely progress toward self-supporting employment according to our guidelines;
- (3) Three months after the ticket is no longer assigned, if the beneficiary fails to reassign the ticket during this 3-month period; or
- (4) When the beneficiary's entitlement to or eligibility for disability benefits terminates.

Proposed §§ 411.180, 411.185, and 411.220 describe our guidelines for timely progress toward self-supporting employment. We propose that after assigning a ticket, beneficiaries be allowed up to two years to prepare for employment. Under the current VR system, the average time to attain employment with substantial earnings is approximately two years. Since the Ticket to Work program is an outcome-based program, we anticipate that the average time to attain employment in this program will be even less.

After 2 years, beneficiaries would be required to meet progressively higher levels of employment to continue to be considered to be using a ticket in order to receive the protection in

1148(i) of the Act regarding non-initiation of continuing disability reviews. Such a progression would allow beneficiaries time to improve their employment capacities. Under our proposed definition, in the third year of Ticket to Work program participation, beneficiaries would be required to work at least 3 months at the SGA level. In the fourth year of the program, they would be required to work at least 6 months at the SGA level. In the fifth and succeeding years, in order to be considered to be using a ticket they would be required to work at least 6 months in each year and have earnings in each such month that were sufficient to eliminate the payment of Social Security disability benefits and Federal SSI benefits.

In developing these guidelines, we recognized that progress toward self-sufficiency is not always continuous and that for some, full self-sufficiency may not be attained. Many beneficiaries have disabilities with cycles of relapse and remission. In addition, some beneficiaries may need to try more than one job before finding a situation that suits their abilities and needs. The requirement that beneficiaries need only work 3 months out of 12 in the third year and 6 months out of 12 in succeeding years recognizes that some beneficiaries may not be able to work on a continuous basis.

In addition, since beneficiaries would be required to work for only 3 months in the third year of their participation in the program, beneficiaries would actually have a total of 2 years and 9 months to prepare for employment. This should allow beneficiaries sufficient preparation time even if they are incapacitated for some portion of that time due to the disabling impairment.

Beneficiaries would also have the option of placing their ticket in inactive status if they

expected to be unable to participate in their employment plan for a significant period of time due to a relapse, or if they simply chose to stop participating in the plan temporarily. Any period in which the ticket was inactive would not count toward the time limitations under the timely progress guidelines. However, since the ticket would not be in use during this period, the beneficiary would be subject to a continuing disability review should one become due.

In § 411.185, we propose levels of earnings that an individual must have in order to be considered to be using a ticket. Under the proposed definition, the required earnings level would increase over time. In the third and fourth years, both Social Security disability beneficiaries and disabled and blind SSI beneficiaries would be required to work at the SGA level applicable to non-blind beneficiaries for the specified number of months. This level is set by regulation under 20 C.F.R. § 404.1574 and is currently \$700 a month for non-blind beneficiaries. SSI disability and blindness beneficiaries, Social Security disability beneficiaries who are in a trial work period, and Social Security disability beneficiaries who are statutorily blind would be deemed to have met the requirement to work at the SGA level applicable to non-blind beneficiaries if their gross earnings from employment, before any exclusions, were at or above the dollar amount of the non-blind SGA level, or if their net earnings from self-employment, before any exclusions, were at the SGA level applicable to non-blind beneficiaries.

Earnings at the SGA level applicable to non-blind beneficiaries may not be sufficient to eliminate the payment of all disability benefits, since the amount of earnings needed to eliminate the payment of disability benefits depends on a variety of factors, including whether the beneficiary receives Social Security or SSI benefits, or both, whether the beneficiary is blind, and whether the

beneficiary has impairment related work expenses or is eligible for other income exclusions. We are proposing that the earnings requirement for the third and fourth years be at the SGA level for non-blind beneficiaries to establish an initial earnings level that: (1) is consistent across different categories of beneficiaries, increasing simplicity; and (2) allows beneficiaries time to work toward the higher levels of earnings that may be required to eliminate the payment of disability benefits for the required months.

In the fifth and subsequent years, both Social Security and SSI beneficiaries would be required to work for at least 6 months with earnings in each such month that were sufficient to eliminate payment of Social Security disability and Federal SSI cash benefits in a month. The requirement that individuals using a ticket eventually attain this level of earnings is consistent with the payment structure of the Ticket to Work program, in which ENs receive outcome payments only when Federal disability benefit payments are eliminated. It also reflects that one of the purposes of the Ticket to Work program is to produce savings in benefit payments. Since the suspension of continuing disability reviews for individuals using a ticket means that it is possible that some beneficiaries who no longer meet the definition of disability will continue to be eligible for benefits, it is important that the suspension of continuing disability reviews not continue for an undue length of time without a significant reduction in benefit payments due to earnings.

In proposed § 411.210, we discuss beneficiaries who do not meet the timely progress guidelines. Beneficiaries who do not make timely progress toward employment in order to be considered using a ticket would be allowed to continue in the Ticket to Work program, and their ENs would still be eligible for any payments that became due. However, these beneficiaries would

no longer be considered to be using a ticket as defined by the Commissioner, and therefore would once again be subject to continuing disability reviews.

We also propose that beneficiaries who fail to meet the timely progress guidelines to be considered to be using a ticket have the opportunity to be considered to be using a ticket later. In order to be considered to be using a ticket later, a beneficiary would need to work for a specified number of months. The number of months, and earnings level required, would vary depending on how far the beneficiary had progressed when he or she failed to meet the guidelines.

We propose this method of allowing a beneficiary to once again be considered to be using a ticket because we recognize, as mentioned above, that due to the nature of disability, progress toward increased self-sufficiency is not always direct. Beneficiaries may make unsuccessful attempts before eventually reaching their employment goals, and these unsuccessful attempts should not deprive them of the supports that they need to make renewed efforts.

In proposed §§ 411.190, 411.195, 411.200, and 411.205, we discuss how it will be determined if a beneficiary is meeting the timely progress guidelines. We are proposing that the PM conduct periodic reviews to ensure that beneficiaries are meeting the timely progress guidelines. The first review would be a progress review 24 months after the assignment of the ticket. This would be followed by annual work reviews. After each successful review, the beneficiary would be considered to be meeting the timely progress guidelines until the next review was completed. If a beneficiary disagreed with the PM's decision in any review, the beneficiary would have the right to ask SSA to review the PM's decision.

The criteria for the 24-month progress review and the annual work reviews were designed to be as clear cut as possible. This feature, combined with the PM's responsibility for conducting the reviews should allow for rapid processing of reviews and decrease the administrative burden on both the beneficiary and SSA.

Subpart D - Use of One or More Program Managers to Assist in the Administration of the Ticket to Work Program

Section 1148(d)(1) of the Act requires the Commissioner to enter into an agreement with one or more organizations to serve as a PM to assist the Commissioner in administering the Ticket to Work program. Section 101(e)(2)(E) of TWWIA identifies specific regulations that SSA must promulgate regarding the terms of the agreements to be entered into with a PM. Three items are specifically required:

- (1) the terms by which a PM would be precluded from direct participation in the delivery of services;
- (2) standards which must be met by quality assurance measures and methods of recruitment of ENs; and
- (3) the format under which dispute resolution will operate under section 1148(d)(7) of the Act.

Among other things, section 1148(d)(7) requires the Commissioner to provide a mechanism for resolving disputes between PMs and ENs, and between PMs and providers of services.

Subpart D of these proposed rules explains that SSA will contract with one or more organizations to serve as a PM and assist SSA in administering the Ticket to Work program. Proposed § 411.230 explains that SSA will conduct a competitive bidding process to select one or more private organizations to perform the PM's functions. Proposed § 411.235 describes the minimum qualifications required of a PM. Proposed § 411.240 describes certain limitations that are placed on a PM regarding the provision of services under the Ticket to Work program. Proposed § 411.245 identifies key responsibilities that a PM must assume to assist SSA in administering the program and proposed § 411.250 explains how SSA will evaluate a PM.

Subpart E - Employment Networks

Section 1148(d)(4)(A) of the Act requires the Commissioner to select and enter into agreements with ENs to provide services as outlined under the Ticket to Work program. Section 1148(f)(1) states that each EN serving under the Ticket to Work program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity that assumes responsibility for the coordination and delivery of services under the program to beneficiaries assigning tickets to it.

These ENs are in addition to State agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 et seq.), known as State VR agencies, that will also be serving beneficiaries with disabilities under the Ticket to Work program. State VR agencies will have the option of serving beneficiaries with tickets either as an EN or under the existing cost reimbursement payment system authorized in sections 222(d) and 1615(d) of the Act. The Commissioner is also directed to enter into an

agreement with any alternate participant operating under the authority of section 222(d)(2) of the Act in any State where the Ticket to Work program is being implemented if the alternate participant chooses to serve as an EN. An EN may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.).

Section 1148(f) of the Act requires that entities seeking to participate in the Ticket to Work program as ENs meet certain qualifications. The Commissioner has discretion in determining the qualifications that an entity must meet to be approved to serve as an EN. We are proposing requirements for ENs that are not unduly burdensome and that are intended to permit both traditional as well as other types of entities to qualify. The Commissioner's intent is to ensure that non-traditional service providers are not prohibited from being approved as ENs, while still requiring evidence that all ENs meet certain minimum qualifications such as licensure, accreditation, academic qualifications, or experience. This inclusive approach is critically important to ensure that beneficiaries with disabilities have a real choice in services necessary to obtain, regain and maintain employment.

Section 1148(f) of the Act also addresses requirements for ENs under the Ticket to Work program. It requires each EN to serve a prescribed service area and ensure that employment services, VR services, and other support services are provided under appropriate IWP.

Proposed §§ 411.300 and 411.305 explain what an EN is and what entities are eligible to apply to serve as ENs. Proposed § 411.310 explains how public or private entities will apply to us to be approved as ENs and how we will determine whether an entity qualifies to be an EN.

Proposed § 411.315 describes the minimum qualifications for an EN under the Ticket to Work program. Proposed § 411.320 describes the major responsibilities of an entity serving as an EN. Proposed § 411.321 explains the conditions under which we will terminate an EN for inadequate performance. Proposed § 411.325 lists the reporting requirements placed on an entity serving as an EN and proposed § 411.330 explains how we will evaluate an EN's performance.

Subpart F -- State Vocational Rehabilitation Agencies' Participation

Section 1148(c) of the Act addresses participation by State VR agencies in the Ticket to Work program. Among other things, this section gives each State VR agency the opportunity to determine, on a case-by-case basis, whether it will participate in the Ticket to Work program as an EN or under the cost-reimbursement payment system authorized under sections 222(d) and 1615(d) of the Act (see 20 C.F.R. §§ 404.2101 et seq. and 416.2201 et seq.). The State VR agency must elect either the outcome payment system or the outcome-milestone payment system to be used when it chooses to function as an EN when serving a beneficiary with a ticket. The Commissioner is directed to provide for periodic opportunities to exercise this election.

Subpart F of the proposed rules establishes that the cost-reimbursement payment system is a payment option under the Ticket to Work program for State VR agencies. Proposed § 411.360 explains what a State VR agency must do to function as an EN under the Ticket to Work program with respect to a beneficiary and explains that a State VR agency may choose, on a case-by-case basis, to seek payment from SSA under the cost-reimbursement payment system or its elected EN payment system. Proposed § 411.365 describes how a State VR agency will select an EN

payment system for use when functioning as an EN. Proposed § 411.370 explains that a State VR agency may choose to serve all beneficiaries with tickets under the cost reimbursement payment system. Proposed § 411.375 explains that State VR agencies must continue to provide services to beneficiaries with tickets under the requirements for individualized plans for employment in section 102(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 et seq.).

Proposed § 411.380 describes how a State VR agency will determine if a person seeking services is a disabled beneficiary with a ticket. Proposed § 411.385 explains what the State VR agency must do when it determines that a person is a beneficiary with a ticket available for assignment and how it will work with the PM to facilitate the assignment of a beneficiary's ticket to the State VR agency when the beneficiary chooses to make such assignment. It also explains how the State VR agency will notify the PM regarding the method of payment it is selecting for a particular beneficiary.

Proposed § 411.390 describes what a State VR agency should do when it determines that a beneficiary already receiving services under an approved IPE is a beneficiary with a ticket available for assignment. Proposed § 411.395 explains that each State VR agency will be required to provide periodic reports to SSA on the specific outcomes achieved with respect to the services provided to beneficiaries under the Ticket to Work program.

Section 1148(c)(3) of the Act requires State VR agencies and ENs to enter into agreements regarding the conditions under which services will be provided when an EN that has been assigned the beneficiary's ticket refers the beneficiary to a State VR agency for services. Proposed

§ 411.400 explains that an EN may refer a beneficiary that it is serving under the Ticket to Work program to a State VR agency for services only if such an agreement is in place prior to the EN making the referral. Proposed § 411.410 explains that these agreements are broad-based and apply to all beneficiaries who may be referred by an EN to a particular State VR agency. Proposed § 411.415 explains that the PM will verify the establishment of such agreements based on the EN's submission of a copy of the agreement to the PM. Proposed § 411.420 provides guidance on what should be included in these agreements and proposed § 411.425 explains what a State VR agency should do if an EN attempts to refer a beneficiary being served under the Ticket to Work program to the State VR agency without having established such an agreement. Proposed § 411.430 explains what the PM should do when notified that a referral has been attempted in the absence of an agreement. Proposed § 411.435 establishes procedures for resolving disputes arising under these agreements.

Subpart G - Requirements for Individual Work Plans

Section 1148(g) of the Act requires each EN to ensure that employment services, vocational rehabilitation services, and other support services provided under the Ticket to Work program are provided under IWP. The minimum requirements for an IWP are spelled out in this section.

Subpart G of these proposed rules establishes the requirements for the IWP that must be developed when an EN and a beneficiary with a ticket come to a mutual understanding to work in partnership under the Ticket to Work program to assist the beneficiary in achieving employment that is self-supporting and that reduces dependence on cash assistance. Proposed § 411.455 explains the purpose of the IWP and explains that the EN must develop and implement the plan in

a manner that gives the beneficiary the opportunity to exercise informed choice in selecting an employment goal. Proposed § 411.460 explains that the beneficiary and the EN share the responsibility for determining the content of the IWP.

Proposed § 411.465 describes the specific information that must be included in each IWP and proposed § 411.470 explains that an IWP becomes effective when it has been signed on the date it was signed by a beneficiary, or the beneficiary's representative, and by the EN, provided that the program manager verifies that a beneficiary has a ticket eligible for assignment and records the assignment.

Subpart H - Employment Network Payment Systems

Section 1148(h) of the Act provides that the Ticket to Work program shall provide for payments authorized by the Commissioner to ENs. These payments shall occur under either an outcome payment system or an outcome-milestone payment system. The two systems are defined in § 411.500. This section also defines two other terms we use related to the payment systems.

The amount we can pay to an EN under either payment system is based upon the prior calendar year's national average disability benefits payable under title II or title XVI, not upon the specific benefit payable to a beneficiary with a ticket. The amount payable to an EN will depend upon whether the individual who assigned his or her ticket to the EN is entitled to benefits under title II or is eligible for benefits under title XVI. If the beneficiary is concurrently entitled under title II and eligible under title XVI, we will use the title II payment calculation base.

Payments to ENs are for specific milestones or outcomes achieved by a beneficiary who

assigns a ticket to the EN. Such payments are not based upon the costs of specific services provided by the EN.

The maximum number of outcome payments under either EN payment system is 60 months. These months do not have to be consecutive. Section 1148(h)(3)(C) of the Act provides that the schedule of payments to the EN under the outcome-milestone payment system shall be designed so that the total of the payments is less than the total payments the EN would be limited to if the EN were paid under the outcome payment system.

Section 1148(c) of the Act permits each State VR agency to participate in the program as an EN with respect to a disabled beneficiary. When the State VR agency elects to participate in the Ticket to Work program as an EN with respect to a disabled beneficiary, the State VR agency shall be paid in accordance with its elected EN payment system. If the State VR agency chooses not to participate as an EN with respect to a disabled beneficiary, the State VR agency shall be paid for services provided to that beneficiary in accordance with the cost-reimbursement payment system under sections 222(d) and 1615(d) and (e) of the Act. Our regulations concerning this cost-reimbursement payment system are at 20 CFR §§ 404.2101 through 404.2127 and §§ 416.2201 through 416.2227. Payments to State VR agencies are discussed in § 411.510.

Each EN will elect the EN payment system it will be paid under when it agrees to become an EN. Thereafter, we periodically will offer each EN the opportunity to change its elected payment system. If the EN does change its elected payment system, the change will apply only to tickets assigned to the EN after the change in the elected payment system is made known to SSA.

These provisions, including the frequency of opportunity for an EN to change its payment system, are discussed in §§ 411.505 through 411.520.

Sections 411.525 through 411.565 provide our proposed rules for computing payments to ENs under the two EN payment systems and for allocating payments to multiple ENs to whom the ticket was assigned at different times.

Section 1148(h)(2) of the Act provides that the outcome payment system shall provide for a schedule of payments to an EN, in connection with a beneficiary who assigns a ticket to the EN, for each month for which cash benefits are not payable due to work or earnings. There can be a maximum of sixty monthly payments. In § 411.525, we propose that monthly payments under the outcome payment system will be 40 percent of the payment calculation base, which is defined in § 411.500. This percentage is the maximum the law allows at the beginning of the program. Under the outcome payment system, each monthly outcome payment is the same during a calendar year. At the end of each calendar year, the payment calculation base will be re-figured for the next year.

For example, at the end of calendar year 2000 the national average disability benefits payable per month for 2000 will be calculated for title II and for title XVI. Forty percent will be multiplied by each of these two amounts to determine the monthly outcome payment amounts for calendar year 2001 under the outcome payment system. At the end of 2001, the computation will be repeated using the 2001 national average disability benefits payable per month to determine the monthly payment under the outcome payment system for 2002.

To illustrate with sample data, if outcome payments occurred in calendar year 2, the following maximum monthly outcome payments would be based upon the calendar year 1 payment calculation base as follows —

For title II and concurrent title II/XVI beneficiaries:

average national disability benefit for year 1 = \$693 per month

$\$693 \times 40\% = \$277$

\$277 is the outcome payment system monthly payment to the EN for year 2

For title XVI recipients:

average national disability payment for year 1 = \$440 per month

$\$440 \times 40\% = \$176$

\$176 is the outcome payment system monthly payment to the EN for year 2

As the national average disability benefit payable tends to rise every year due, in part, to cost-of-living adjustments, the annual computation of the payment calculation base should increase the monthly outcome payment amount for each succeeding year.

The outcome-milestone payment system provides payments to the EN when the beneficiary achieves milestones directed toward the goal of permanent employment. Payments for the milestones achieved come before, and are in addition to, payments made during the outcome payment period.

Section 411.535 describes the two milestones we are proposing. Both milestones occur

after work begins and are based upon an earnings level and duration of work. Both milestones can be attained even if there are interruptions in the work pattern. The second milestone payment is more than the first, but the beneficiary must work longer in order for the EN to receive the second milestone payment. Both milestones are based upon the dollar amount we use when we consider if work activity is SGA. For calendar year 2000, these dollar amounts are \$700 per month for beneficiaries who are not statutorily blind and \$1,170 per month for beneficiaries who are statutorily blind. Section 411.535 proposes the milestone requirements. Section 411.540 proposes how we will calculate the payment for each milestone. For milestone one, we propose using a percentage of the payment calculation base defined in § 411.500 that approximately equals two outcome payment months under the outcome-milestone payment system. For milestone two, we propose to double the percentage used for milestone one.

Section 411.545 proposes how, under the outcome-milestone payment system, we will calculate the amount payable for outcome payment period months following the payment of milestones. Monthly outcome payments during the first 12 outcome payment period months (months 1-12) will be the lowest and also will be reduced each month by an amount equal to $1/12^{\text{th}}$ of the total milestone payments made with respect to a ticket. Monthly outcome payments during the fifth interval of 12 outcome payment period months (months 49-60) will pay the highest amount per month. The outcome month payments under the outcome-milestone payment system will be a percentage of the payment calculation base applicable to the year in which the outcome payment month occurs. Under the outcome-milestone payment system we propose to use, the total potential payment will be about 85 percent of the total potential payment that could be made under the outcome payment system. As stated previously, the outcome payment months do not have to

be consecutive months under either EN payment system.

Section 411.555 proposes that an EN may generally keep its milestone and outcome payments received under the elected payment system, even if the beneficiary does not sustain work for 60 outcome payment period months. This section also states that retroactive adjustments to payments already received by ENs may occur for reasons related to our modifying our previous determination about a beneficiary's right to benefits, or due to allocating a prior payment with another EN.

Sections 411.560 and 411.565 explain that it is possible to pay more than one EN for the same milestone or outcome payment month. In this situation, the payment would be allocated among the ENs that qualify for payment. Section 1148(e)(3) of the Act provides that the PM will determine the allocation based on the services provided by each EN. We propose it also will be possible to pay more than one EN for different milestones or outcome payment months on the same ticket. When more than one EN is eligible for payment with respect to a ticket, we propose paying each EN in accordance with its elected payment system at the time the ticket was assigned to each EN.

Section 411.570 provides that the Act prohibits an EN from requesting or accepting compensation from a beneficiary for the EN's services.

Proposed § 411.575 describes how an EN will request payment for either a milestone payment, or an outcome payment month. The EN will make a written request to the PM for

payment for each milestone. The request will be accompanied by evidence showing that the milestone was achieved. We do not have to stop a beneficiary's monthly cash payment in order to pay a milestone payment to an EN.

For outcome payments under either EN payment system, a written request for payment will go to the PM. The request and evidence of work or earnings that is sufficient to reduce monthly Federal cash benefits to zero are required in order to begin outcome payments to the EN. We will make the determination that the work or earnings are sufficient to stop the beneficiary's monthly cash payment by using the same criteria we already use to make this determination. In order to continue receiving monthly outcome payments, the EN must provide ongoing evidence of work and earnings to demonstrate that it is entitled to each monthly outcome payment.

Proposed § 411.580 explains that an EN must first have had the ticket assigned to it before it can be eligible to receive milestone or outcome payments.

As a beneficiary is free to choose where to assign a ticket, proposed § 411.585 explains that a State VR agency and an EN can both be eligible for payment on a ticket if the State VR agency elects to be paid as an EN. Therefore, each entity can be paid as an EN under its respective EN payment system. However, if the State VR agency chooses to serve a beneficiary with a ticket and to be paid under the cost-reimbursement payment system, then we will pay either the State VR agency under the cost-reimbursement payment system or we will pay an EN under its elected payment system. We propose that, for each ticket, a payment either under the cost-reimbursement payment system or under an elected EN payment system will exclude any payment under the other

payment system. We propose this restriction to comply with the payment limitations that exist in the Act for the cost-reimbursement payment system and for the EN payment systems. Absent this restriction, it would be possible to pay separately under both the cost-reimbursement payment system and under the EN payment systems such amounts as, when combined, would exceed the statutory limitation of one or both of these payment systems for serving the same beneficiary under the same ticket.

Section 411.590 proposes how we will determine when to pay an EN if self-employment is the beneficiary's employment goal. For milestones, we propose measuring earnings from self-employment in terms of gross dollars, that is, absent otherwise applicable considerations which can affect the amount we consider as earnings. This approach is similar to how we propose to measure whether milestones are met by work resulting from other than self-employment. For outcome payments to be paid to the EN, the beneficiary's net earnings from self-employment income must be sufficient to reduce the payment of monthly Federal cash benefits to zero.

Following is a chart showing an example of payments under each of the two EN payment systems. This chart illustrates how we propose to calculate payments under the outcome payment system and under the outcome-milestone payment system. The payment calculation base was determined as discussed above in the preamble. Actual data, based upon calendar year 2000, should be available near the end of the calendar year for implementing the EN payment systems in calendar year 2001.

	<u>Title II & Title II/XVI</u>	<u>Title XVI only</u>
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Payment calculation base (PCB) (average monthly benefit)	\$693	\$440
Maximum fixed percentage for outcome payments	40%	40%
Monthly outcome payment	\$277	\$176

	Outcome Month Payment Period						Total*
	Milestones	Months 1-12	Months 13-24	Months 25-36	Months 37-48	Months 49-60	
<u>OUTCOME PAYMENT SYSTEM</u>							
<u>Title II and Title II/XVI</u>							
-Monthly payments (\$)	--	277	277	277	277	277	
-Yearly payments (\$)	--	3,324	3,324	3,324	3,324	3,324	\$16,620
<u>Title XVI only</u>							
-Monthly payments (\$)	--	176	176	176	176	176	
-Yearly payments (\$)	--	2,122	2,122		2,122	2,122	2,122
\$10,560							

**OUTCOME-MILESTONE
PAYMENT SYSTEM**
Title II and Title II/XVI

-Milestone 1 (68% of PCB)	\$ 470						
-Milestone 2 (136% of PCB)	\$ 940						
-Milestone total	\$ 1,410						
-Monthly payments (\$)	90 **	222	235	249	263		
-Yearly payments (\$)	1,083	2,659	2,825	2,992	3,158		\$14,127

Title XVI only

-Milestone 1 (68% of PCB)	\$ 300						
-Milestone 2 (136% of PCB)	\$ 600						
-Milestone total	\$ 900						
-Monthly payments (\$)	57 **	141	150	158	167		
-Yearly payments (\$)	684	1,690	1,795	1,901	2,006		\$ 8,976

- * Excludes year-to-year increase from the average monthly benefit recomputation
 ** Monthly outcome payment after deducting 12 equal amounts for prior milestone payments

Note: The 60 potential outcome payment months do not have to be consecutive.

Proposed § 411.595 describes what an EN or State VR agency can do if either disagrees with our decision on a payment request which is submitted. This section also explains that an EN cannot appeal our determination about a beneficiary's right to benefits even when that determination affects the payment to an EN.

Section 411.597 proposes that we periodically review the conditions affecting payment under the two EN payment systems to determine if these payment systems are providing adequate incentives and appropriate economies for ENs to assist beneficiaries to enter the workforce. Proposed § 411.598 identifies other ways we will monitor the EN payment systems for financial integrity.

Subpart I - Ticket to Work Program Dispute Resolution

Section 1148(d)(7) of the Act requires us to provide for a mechanism for resolving disputes between beneficiaries and ENs, between ENs and PMs, and between PMs and service providers. As part of this process, SSA is required to provide a party to a dispute a reasonable opportunity for a full and fair review of the matter in dispute.

Since the PM will be operating under a contract with SSA and since ENs will be operating under agreements with SSA, disputes between SSA and an EN and between SSA and a PM will be subject to the dispute resolution procedures in the Federal Acquisition Regulations (48 C.F.R. 33.202 et seq.). Since the PM will be functioning as an agent of SSA, a dispute between an EN and a PM which does not involve a payment

request and which cannot be resolved through informal procedures developed by the PM will be forwarded to the SSA Project Officer and the SSA Contracting Officer for resolution. A dispute over a payments request submitted by a EN will be resolved using the dispute resolution procedures contained in the EN's agreement with SSA (see § 411.595). A dispute over a payment request submitted by a State VR agency which is serving a beneficiary as an EN will be resolved using these same procedures.

State VR agencies, that may choose not to perform EN services under the Ticket to Work program, will be the only service providers that have a direct relationship with a PM under the Ticket to Work program (see §§ 411.380 through 411.390). All other service providers approved to serve under the Ticket to Work program will be serving as ENs. As a result, a dispute over a payment request submitted by a State VR agency which is serving a beneficiary under the vocational rehabilitation cost reimbursement system (see sections 222(d) and 1615(d) of the Act) will be resolved under existing regulations governing a request for reconsideration regarding a payment request (see 20 C.F.R. §§ 404.2127(a) and 416.2227(a)).

If a State VR agency is dissatisfied with SSA's final decision regarding a dispute over a payment request, the State VR agency must deliver or mail a written notice of appeal to the Department of Health and Human Services' Department Appeals Board.

Subpart I of these proposed rules establishes a three-step process for resolving disputes between beneficiaries and ENs. This three-step process will ensure that both beneficiaries and ENs have the opportunity to resolve disputes using informal means.

As a first step in the dispute resolution process, ENs are required to have an internal grievance procedure whereby beneficiaries have the opportunity to work with

representatives of the EN to try to resolve any disputes arising while developing, implementing, and amending an IWP. If the dispute is not resolved using the EN's internal grievance procedures, both the beneficiary and the EN will have the option of contacting the PM for assistance in resolving the dispute. Upon request, the PM will conduct a full review of the matter in dispute and make a recommendation to the beneficiary and the EN as to how the dispute might be resolved (see proposed § 411.615). This step is intended to provide the parties to the dispute the opportunity to present their case before an impartial third party, the PM.

Proposed § 411.605 explains the EN's responsibilities regarding this dispute resolution process, including informing beneficiaries of the availability of assistance from the State Protection and Advocacy (P&A) system at every step in the dispute resolution process. Proposed § 411.610 identifies specific points in the rehabilitation process when beneficiaries must be informed about the procedures for resolving disputes.

Proposed § 411.615 describes how a disputed issue will be referred to the PM, including what information should be submitted. Proposed § 411.620 tells how long the PM has to provide a written recommendation on how to resolve the dispute. Proposed § 411.625 explains that if the parties to the dispute do not agree with the PM's recommendation and the dispute continues to be unresolved, either the beneficiary or the EN has the option of bringing the dispute to the attention of a Dispute Resolution Board that will be created within SSA to resolve such disputes and issue administrative decisions. This is the third step.

The Dispute Resolution Board will consist of five members. The members will be SSA staff from the Office of Employment Support Programs who are knowledgeable regarding the Ticket to Work program. As appropriate, the membership will be

supplemented with SSA staff with specialized knowledge in other areas.

Proposed § 411.625 also describes the information that must be submitted to SSA to facilitate the Dispute Resolution Board's review of the dispute. Proposed § 411.630 explains that SSA's administrative decision is final.

Proposed § 411.635 explains that a beneficiary has the right to be represented in the dispute resolution process under the Ticket to Work program and that the State P&A system is available to provide assistance and advocacy services to beneficiaries seeking or receiving services from ENs operating under the Ticket to Work program.

Proposed § 411.640 explains that the dispute resolution procedures in the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) apply to any dispute arising between a disabled beneficiary and a State VR agency, whether the services are being provided under one of the EN payment systems or under the cost reimbursement payment system authorized under sections 222(d) and 1615(d) of the Act.

Subpart J – The Effect of the Ticket to Work Program on Alternate Participants

Section 101(d) of TWWIA requires graduated implementation of the Ticket to Work program. The program will be phased in nationally over a three-year period beginning January 1, 2001, with the first tickets being issued early in 2001. SSA will announce the States selected for participation in the Ticket to Work program in the Federal Register, until the program has been implemented nationwide. By January 1, 2004, the program will be operating in all States and U.S. Territories.

Section 1148(d)(4)(B) of the Act requires the Commissioner, in any State where the Ticket to Work program is implemented, to enter into agreements with any alternate participant that is operating under the authority of section 222(d)(2) of the Act in the State as of the date of enactment of TWWIA if the alternate participant chooses to serve as an EN under the program.

Subpart J of these proposed rules describes how implementation of the Ticket to Work program affects the current alternate participant payment process. Proposed § 411.700 explains what an alternate participant is. Proposed § 411.705 and § 411.710 explain that an approved alternate participant has the option of becoming an EN when the Ticket to Work program is implemented in a State and tells an alternate participant what it must do to become an EN. Sections 411.715 through 411.730 describe how the transition process will occur for alternate participants who choose to become ENs. These sections explain how SSA will handle payments related to beneficiaries who were being served by alternate participants under existing employment plans prior to the Ticket to Work program being implemented in the State and the alternate participant becoming an EN. These sections also provide that SSA will not provide reimbursement for any services provided to a beneficiary under the alternate participant payment system after December 31, 2003.

Clarity of These Proposed Rules

Executive Order 12866 and the President's memorandum of June 1, 1998 (63 FR 31885) require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Additional Matters for Comment

While we are proposing rules to implement the new Ticket to Work program authorized in section 101 of TWWIA, we will at a future time address the following matters:

1. Section 1148(f)(4) of the Social Security Act, as added by section 101 of TWWIA, requires that "Each employment network shall prepare periodic reports, on at least an annual basis, itemizing for the covered period specific outcomes achieved with respect to specific services provided by the employment network. Such reports shall conform to a national model prescribed under this section." We invite public comments on what this national model for periodic reports should include.
2. Section 1148(d)(6) of the Social Security Act, as added by section 101 of TWWIA, requires that "The Commissioner shall provide for such periodic reviews as are necessary to provide for effective quality assurance in the provision of services by employment networks. The Commissioner shall solicit and consider the views of consumers and the program manager under which the employment networks serve and

shall consult with providers of services to develop performance measurements.” We invite comments from consumers, service providers, and other members of the public on the performance standards we should use to provide for effective quality assurance of the Ticket to Work program.

Eligibility For A Ticket for Persons Under Age 18

Proposed § 411.125 states, among other requirements, that an individual will be eligible to receive a ticket in a month in which he or she is age 18 or older and has not attained age 65. We plan to issue a separate Notice of Intent in the Federal Register requesting comments on the issue of expanding the age requirements to include individuals age 16 through 17. Because we will specifically request comments on this issue in the future, we request that you defer comments on this issue until the Notice of Intent has been published.

Electronic Version

The electronic version of this document is available on the Internet at http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA at <http://www.ssa.gov>.

REGULATORY PROCEDURES

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they will be subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would primarily affect only individuals, and those entities that voluntarily enter into a contractual agreement with us. Thus, an initial regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The proposed regulations contain new reporting, recordkeeping and disclosure requirements in the sections listed below. As required by the Paperwork Reduction Act of 1995, we have submitted the information requirements to OMB for its review. Organizations and individuals desiring to submit comments on these requirements should direct them to the Office of Information and Regulatory Affairs, OMB, ATTN: OMB Desk Officer for SSA, New Executive Office Building, Room 10235, Washington, D.C. 20503; and to the Social Security Administration, ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235-6401. OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB will be most useful if received by OMB within 30 days of publication.

The public burden includes the time it will take to understand what is needed, gather

the necessary facts and provide the information or maintain the specified records.

SSA is soliciting comments in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology (e.g., permitting electronic submission of responses).

Following is a table of the reporting (Rpt), recordkeeping (Rec) and disclosure (Dis) burdens imposed on the public (beneficiaries, ENs, PMs, State vocational rehabilitation agencies):

Section Number & Requirement	Number of Annual Responses	Frequency of Response	Average Burden per Response	Estimated Annual Burden
§ 411.140(c) – Rpt	37,500	One time	4 hr	150,000 hours
§ 411.190(a) – Rpt	1000	One time	.5 hours	500 hours
§ 411.190(b) & .195(c) – Rpt	3300	One time	1 hour	3300 hours
§ 411.192(c) – Rpt	500	Occasional	.5 hours	250 hours
§ 411.220(b)(1) – Rpt	1000 beneficiaries/ 150 ENs	Occasional	.5 hours each	575 hours
§ 411.220(c)(1) – Rpt	500	Occasional	.5 hours	250 hours
§ 411.245(b)(1) – Rec	1	In database	4 hours	4 hours
§ 411.250(c) - Rec & Rpt	25	Daily	.25 hours	1625 hours
§ 411.325(a) & 411.320(f) – Rpt	32000	Daily	4.5 hours	144,000 hours
§ 411.325(b) – Rpt	32000	Daily	.5 hours	16000 hours
§ 411.325(c) – Rpt	6400	Occasional	.5 hours	3200 hours
§ 411.325(d) – Rpt	1800	Occasional, one time	8 hours	14400 hours
§ 411.325(e) – Rpt	2500	Quarterly	2 hours	20,000 hours
§ 411.325(f) – Dis	45000	Occasional	5 min	3750 hours
§ 411.325(g) – Rpt	2500	Yearly	1 hour	2500 hours
§ 411.365	82	One time	4 hours	328 hours

Section Number & Requirement	Number of Annual Responses	Frequency of Response	Average Burden per Response	Estimated Annual Burden
§ 411.385 & .390 – Rpt	5625	Daily	5 min	469 hours
§ 411.395 – Rpt	82	Quarterly	2 hours	656 hours
§ 411.400 & .420 – Rpt	1800	Occasional, one time	8 hours	14400 hours
§ 411.435(c) – Rpt	2582	5 per year	1 hour each	12, 910 hours
§ 411.575 – Rpt	13000	Monthly	.5 hours	6500 hours
§ 411.595 - Rpt	100	Occasional	.5 hours	50 hours
§ 411.605(b) – Dis	45000	Occasional	5 min	3750 hours
§ 411.615 – Rpt	2000 beneficiary requests	1 hour	Occasional	2000 hours
	1000 EN requests	1 hour	Occasional	1000 hours
§ 411.625 – Rpt	1000 beneficiary requests	1 hour	Occasional	1000 hours
	500 EN requests	1 hour	Occasional	500 hours

Below is a brief description of each requirement subject to OMB clearance under the Paperwork Reduction Act. We have used the following abbreviations in the description:

EN - Employment Network

IWP - Individual Work Plan (between a beneficiary and an EN)

IPE - Individualized Plan for Employment (between a beneficiary and a State VR agency)

PM - Program Manager

SSA - Social Security Administration

VR - Vocational Rehabilitation Agency

<u>CFR Section</u>	<u>Reporting, Recordkeeping or Disclosure Requirement</u>
§ 411.140(c)	Information collected from beneficiary to prepare an IWP/IPE. The frequency of response considers that the claimant might prepare more than one IWP/IPE.
§ 411.190(a)	Claimant/EN/VR/PM reporting beneficiaries' non-participation
§ 411.190(b)	Beneficiary/EN/VR reporting related to conducting progress reviews.
§ 411.190(c)&195(c)	PM report to SSA on progress reviews or annual work reviews
§ 411.192(c)	EN reports regarding active participation
§ 411.200(a)(1)&(2)	Claimant reports on work requirements & PM reports on non-progress to SSA
§ 411.220(b)(1)	Reporting - Claimant requests inactive status from PM
§ 411.220(c)(1)	Reporting - Claimant requests reactivation of ticket from PM
§ 411.250(b)(1)	Recordkeeping - PMs maintain list of ENs
§ 411.250(c)	1. Recordkeeping - PMs must maintain documentation of payments to ENs 2. Reporting - PMs report to SSA that payments to ENs are warranted
§ 411.320(f) &	EN development of IWP and
§ 411.325(a)-(g)	General reporting and disclosure from EN

- § 411.635, .385&.390 VR reporting ticket assignment and payment option to PM
- § 411.395 VR reporting work review & outcome information to PM
- § 411.400 & .420 Reporting requirement from the VR to the EN on agreement to accept beneficiary referral
- § 411.435(c) Reporting - Request to PM from EN or State VR on dispute resolution
- § 411.570 Reporting - EN's request for payment & evidenciary requirements from claimant or employer
- § 411.605(b) Disclosure - Requirement to provide internal grievance procedures from EN to beneficiary
- § 411.615 Reporting - beneficiary or EN request to PM to review disputed issue
- § 411.625 Reporting - beneficiary or EN request for SSA review of PM's recommendation on resolution of dispute

(Catalog of Federal Domestic Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

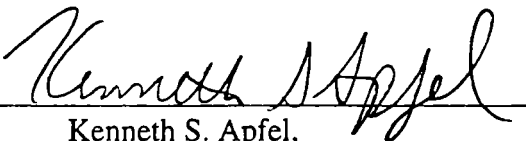
List of Subjects in 20 CFR Part 411

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

Supplemental Security Income, Public Assistance programs, Vocational Rehabilitation.

Dated:

AUG 28 2000


Kenneth S. Apfel,
Commissioner of Social Security

For the reasons set forth in the preamble, we propose to add a new part 411 to chapter III of Title 20 of the Code of Federal Regulations to read as follows:

Part 411 - The Ticket to Work and Self-Sufficiency Program

SUBPART A – INTRODUCTION

Sec.

- 411.100 Scope.
- 411.105 What is the purpose of the Ticket to Work program?
- 411.110 How is the Ticket to Work program implemented?
- 411.115 Definitions of terms used in this part.

SUBPART B - TICKETS UNDER THE TICKET TO WORK PROGRAM

- 411.120 What is a ticket under the Ticket to Work program?
- 411.125 Who is eligible to receive a ticket under the Ticket to Work program?
- 411.130 How will SSA distribute tickets under the Ticket to Work program?
- 411.135 What do I do when I receive a ticket?
- 411.140 When can I assign my ticket and how?
- 411.145 Once my ticket has been assigned to an EN or State VR agency, can it be taken out of assignment?
- 411.150 Can I reassign my ticket to a different EN or the State VR agency?

SUBPART C - SUSPENSION OF CONTINUING DISABILITY REVIEWS
FOR BENEFICIARIES WHO ARE USING A TICKET

Introduction

- 411.160 What does this subpart do?
- 411.165 How does being in the Ticket to Work program affect my continuing disability reviews?

Definition of Using a Ticket

- 411.170 When does the period of using a ticket begin?
- 411.171 When does the period of using a ticket end?
- 411.175 What if I assign my ticket after a continuing disability review has begun?

Guidelines for Timely Progress Toward Self-Supporting Employment

- 411.180 What is timely progress toward self-supporting employment?
- 411.185 How much do I need to earn to be considered to be working?
- 411.190 How is it determined if I am meeting the timely progress guidelines?
- 411.191 Table summarizing the guidelines for timely progress toward self-supporting employment.

- 411.192 What if my EN, the State VR agency, or I report that I am not actively participating in my employment plan?
- 411.195 How will the PM conduct my 24-month progress review?
- 411.200 How will the PM conduct my annual work review?
- 411.205 What if I disagree with the PM's decision about whether I am making timely progress toward self-supporting employment?
- 411.210 What happens if I do not make timely progress toward self-supporting employment?

Exceptions to the Timely Progress Guidelines

- 411.220 What if I am temporarily unable to participate in my employment plan?
- 411.225 What if my ticket is no longer assigned to an EN or State VR agency?

SUBPART D - USE OF ONE OR MORE PROGRAM MANAGERS TO ASSIST IN ADMINISTRATION OF THE TICKET TO WORK PROGRAM

- 411.230 What is a PM?
- 411.235 What qualifications are required of a PM?
- 411.240 What limitations are placed on a PM?
- 411.245 What are a PM's responsibilities under the Ticket to Work program?

Evaluation of Program Manager Performance

411.250 How will SSA evaluate a PM?

SUBPART E - EMPLOYMENT NETWORKS

411.300 What is an EN?

411.305 Who is eligible to be an EN?

411.310 How does an entity apply to be an EN and who will determine whether an entity qualifies as an EN?

411.315 What are the minimum qualifications necessary to be an EN?

411.320 What are an EN's responsibilities as a participant in the Ticket to Work program?

411.321 Under what conditions will SSA terminate an agreement with an EN due to inadequate performance?

411.325 What reporting requirements are placed on an EN as a participant in the Ticket to Work program?

411.330 How will SSA evaluate an EN's performance?

SUBPART F - STATE VOCATIONAL REHABILITATION AGENCIES'

PARTICIPATION

Participation in the Ticket to Work Program

- 411.350 Must a State VR agency participate in the Ticket to Work program?
- 411.355 What payment options does a State VR agency have under the Ticket to Work program?
- 411.360 How does a State VR agency become an EN?
- 411.365 How does a State VR agency notify SSA about its choice of a payment system for use when functioning as an EN?
- 411.370 Does a State VR agency ever have to function as an EN?
- 411.375 Does a State VR agency continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended, when functioning as an EN?

Ticket Status

- 411.380 How does a State VR agency determine whether a person seeking services has a ticket?
- 411.385 What does a State VR agency do if a beneficiary who is applying for services has a ticket that is available for assignment?
- 411.390 What does a State VR agency do if a beneficiary to whom it is already providing services has a ticket that is available for assignment?
- 411.395 Is a State VR agency required to provide periodic reports?

Referrals by Employment Networks to State VR Agencies

- 411.400 Can an EN to which a beneficiary's ticket is assigned refer the beneficiary to a State VR agency for services?

Agreements between Employment Networks and State VR Agencies

- 411.405 When does an agreement between an EN and the State VR agency have to be in place?
- 411.410 Does each referral from an EN to a State VR agency require its own agreement?
- 411.415 Who will verify the establishment of agreements between ENs and State VR agencies?
- 411.420 What information should be included in an agreement between an EN and a State VR agency?
- 411.425 What should a State VR agency do if it gets an attempted referral from an EN and no agreement has been established between the EN and the State VR agency?
- 411.430 What should the PM do when it is informed that an EN has attempted to make a referral to a State VR agency without an agreement being in place?

Resolving Disputes Arising under Agreements between Employment Networks and State VR Agencies

- 411.435 How will disputes arising under the agreements between ENs and State VR agencies be resolved?

SUBPART G – REQUIREMENTS FOR INDIVIDUAL WORK PLANS

- 411.450 What is an IWP?
- 411.455 What is the purpose of an IWP?
- 411.460 Who is responsible for determining what information is contained in the IWP?
- 411.465 What are the minimum requirements for an IWP?
- 411.470 When does an IWP become effective?

SUBPART H - EMPLOYMENT NETWORK PAYMENT SYSTEMS

- 411.500 Definitions of terms used in this part.
- 411.505 How is an EN paid by SSA?
- 411.510 How is the State VR agency paid under the Ticket to Work program?
- 411.515 Can the EN change its elected payment system?
- 411.520 How are beneficiaries whose ticket is assigned to an EN affected by an EN's change in elected payment system?
- 411.525 How are the EN payments calculated under each of the two EN payment systems?

- 411.530 How will the outcome period payments be reduced when paid under the outcome-milestone payment system?
- 411.535 What are the milestones for which an EN can be paid?
- 411.540 What are the payment amounts for each of the milestones?
- 411.545 What are the payment amounts for outcome payment months under the outcome-milestone payment system?
- 411.550 What are the payment amounts for outcome payment months under the outcome payment system?
- 411.555 Can the EN keep the milestone and outcome payments even if the beneficiary does not achieve all 60 outcome months?
- 411.560 Is it possible to pay a milestone or outcome payment to more than one EN?
- 411.565 What happens if two or more ENs qualify for payment on the same ticket but have elected a different EN payment system?
- 411.570 Can an EN request payment from the beneficiary who assigned a ticket to the EN?
- 411.575 How does the EN request payment for milestones or outcome payment months achieved by a beneficiary who assigned a ticket to the EN?
- 411.580 Can an EN receive payments for milestones or outcome payment period months that occur before the beneficiary assigns a ticket to the EN?
- 411.585 Can a State VR agency and an EN both receive payment for serving the same beneficiary?
- 411.590 How will SSA determine when to pay under the two EN payment systems

if self-employment is the employment goal?

411.595 What can an EN do if the EN disagrees with our decision on a payment request?

411.597 Will SSA periodically review the outcome payment system and the outcome-milestone payment system for possible modifications?

411.598 What other oversight procedures are planned for the EN payment systems?

SUBPART I - TICKET TO WORK PROGRAM DISPUTE RESOLUTION

Disputes between Beneficiaries and Employment Networks

411.600 Is there a process for resolving disputes between beneficiaries and ENs?

411.605 What are the responsibilities of the EN regarding the dispute resolution process?

411.610 When should a beneficiary receive information on the procedures for resolving disputes?

411.615 How will a disputed issue be referred to the PM?

411.620 How long does the PM have to recommend a resolution to the dispute?

411.625 Can the beneficiary or the EN request a review of the PM's recommendation?

411.630 Is SSA's decision final?

411.635 Can a beneficiary be represented in the dispute resolution process under

the Ticket to Work program?

Disputes between Beneficiaries and State VR Agencies

- 411.640 Do the dispute resolution procedures of the Rehabilitation Act of 1973, as amended, apply to beneficiaries seeking services from the State VR agency?

SUBPART J - THE TICKET TO WORK PROGRAM AND ALTERNATE PARTICIPANTS UNDER THE PROGRAMS OF PAYMENTS FOR VOCATIONAL REHABILITATION SERVICES

- 411.700 What is an alternate participant?
- 411.705 Can an alternate participant become an EN?
- 411.710 How will an alternate participant choose to participate as an EN in the Ticket to Work program?
- 411.715 If an alternate participant becomes an EN, will beneficiaries for whom an employment plan was signed prior to implementation be covered under the Ticket to Work program?
- 411.720 If an alternate participant chooses not to become an EN, can it continue to function under the programs for payments for VR services?
- 411.725 If an alternate participant becomes an EN and it has signed employment plans, both as an alternate participant and an EN, how will SSA pay for

services provided under each employment plan?

- 411.730 What happens if an alternate participant signed an employment plan with a beneficiary before Ticket to Work program implementation in the State and required period of substantial gainful activity is not completed by January 1, 2004?

AUTHORITY: Sec. 1148 of the Social Security Act (42 U.S.C. 1320b-19); sec. 101(b)-(e), Pub. L. 106-170, 113 Stat. 1860, 1873 (42 U.S.C. 1320b-19 note).

SUBPART A - INTRODUCTION

§ 411.100 Scope.

The regulations in this part 411 relate to the provisions of section 1148 of the Social Security Act which establishes the Ticket to Work and Self-Sufficiency Program (hereafter referred to as the “Ticket to Work program”). The regulations in this part are divided into ten subparts:

- (a) Subpart A explains the scope of this part, explains the purpose and manner of implementation of the Ticket to Work program, and provides definitions of terms used in this part.
- (b) Subpart B contains provisions relating to the ticket under the Ticket to Work program.

- (c) Subpart C contains provisions relating to the suspension of continuing disability reviews for disabled beneficiaries who are considered to be using a ticket.
- (d) Subpart D contains provisions relating to the use of one or more program managers to assist us in the administration of the Ticket to Work program.
- (e) Subpart E contains provisions relating to employment networks in the Ticket to Work program.
- (f) Subpart F contains provisions relating to State vocational rehabilitation agencies' participation in the Ticket to Work program.
- (g) Subpart G contains provisions relating to individual work plans in the Ticket to Work program.
- (h) Subpart H contains provisions establishing employment network payment systems.
- (i) Subpart I contains provisions that establish a procedure for resolving disputes under the Ticket to Work program.
- (j) Subpart J contains provisions explaining how the implementation of the Ticket to Work program affects alternate participants under the programs for payments for vocational rehabilitation services under subpart V of part 404 and subpart V of part 416 of this chapter.

§ 411.105 What is the purpose of the Ticket to Work program?

The purpose of the Ticket to Work program is to expand the universe of service providers available to individuals who are entitled to Social Security benefits based on

disability or eligible for Supplemental Security Income (SSI) benefits based on disability or blindness in obtaining the services necessary to find, enter and retain employment.

Expanded employment opportunities for these individuals also will increase the likelihood that these individuals will reduce their dependency on Social Security and SSI cash benefits.

§ 411.110 How is the Ticket to Work program implemented?

We are implementing the Ticket to Work program in graduated phases at phase-in sites around the country. We are implementing the program at sites on a wide enough scale to allow for a thorough evaluation and ensure full implementation of the program on a timely basis.

§ 411.115 Definitions of terms used in this part.

As used in this part:

- (a) “The Act” means the Social Security Act, as amended.
- (b) “Commissioner” means the Commissioner of Social Security.
- (c) “I”, “my”, “you”. or “your” means the disabled beneficiary.
- (d) “We” or “us” means the Social Security Administration.
- (e) “Ticket to Work program” or “program” means the Ticket to Work and Self-Sufficiency Program under section 1148 of the Act.
- (f) “Disabled beneficiary” means a title II disability beneficiary or a title XVI

disability beneficiary.

(1) “Title II disability beneficiary” means an individual entitled to disability insurance benefits under section 223 or to monthly insurance benefits under section 202 of the Act based on such individual's disability as defined in section 223(d) of the Act. (See § 404.1505 of this chapter.) An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(2) “Title XVI disability beneficiary” means an individual eligible for Supplemental Security Income benefits under title XVI on the basis of blindness (within the meaning of section 1614(a)(2) of the Act) (see §§ 416.981 and 416.982 of this chapter) or disability (within the meaning of section 1614(a)(3) of the Act) (see § 416.905 of this chapter). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

(3) “Supplemental Security Income benefit under title XVI” means a cash benefit under section 1611 or 1619(a) of the Act, and does not include a State supplementary payment, administered Federally or otherwise.

(g) “Social Security disability benefits” means the benefits described in paragraph (f)(1) of this section.

(h) “Federal SSI cash benefits” means a “Supplemental Security Income benefit under title XVI” based on blindness or disability as described in paragraphs (f)(2) and (f)(3) of this section.

(i) “State vocational rehabilitation agency” or “State VR agency” means a State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973, as amended.

(j) “Cost-reimbursement payment system” means the provisions for payment for vocational rehabilitation services under subpart V of part 404 and subpart V of part 416 of this chapter.

(k) “Employment plan” means an individual work plan under which an employment network (other than a State VR agency) provides services to a disabled beneficiary under the Ticket to Work program or an individualized plan for employment under which a State VR agency provides services. When used in subpart J of this part, “employment plan” also means a “similar document” referred to in §§ 404.2114(a)(2) and 416.2214(a)(2) of this chapter under which an alternate participant under the programs for payments for vocational rehabilitation services (described in subpart V of part 404 and subpart V of part 416 of this chapter) provides services to a disabled beneficiary under those programs.

SUBPART B - TICKETS UNDER THE TICKET TO WORK PROGRAM

§ 411.120 What is a ticket under the Ticket to Work program?

A ticket under the Ticket to Work program is a document which provides evidence of the Commissioner's agreement to pay, under the rules in subpart H of this part, an employment network (EN) or a State VR agency to which a disabled beneficiary's ticket is assigned, for providing employment services, vocational rehabilitation services, and other support services to the beneficiary.

§ 411.125 Who is eligible to receive a ticket under the Ticket to Work program?

(a) You will be eligible to receive a Ticket to Work in a month in which--

(1) you are age 18 or older and have not attained age 65;

(2)(i)(A) you are a title II disability beneficiary (other than a beneficiary receiving benefit payments under § 404.316(c), § 404.337(c), § 404.352(d), or § 404.1597a of this chapter); and

(B) you are in current pay status for monthly title II cash benefits based on disability (see subpart E of part 404 of this chapter for our rules on nonpayment of title II benefits); or

(ii)(A) you are a title XVI disability beneficiary (other than a beneficiary receiving disability or blindness benefit payments under § 416.996 or § 416.1338 of this chapter); and

(B) your monthly Federal cash benefits based on disability or blindness under title XVI are not suspended (see subpart M of part 416 of this chapter for our rules on suspension of title XVI benefit payments); and

(3) our records show that--

(i) you are not scheduled for a medical improvement expected diary review (see §§ 404.1590 and 416.990 of this chapter for what we mean by a medical improvement expected diary review);

(ii) you are scheduled for a medical improvement expected diary review, and we have conducted at least one continuing disability review in your case and made a final determination or decision that your disability continues (see subpart J of part 404 or

subpart N of part 416 of this chapter for when a determination or decision becomes final);
or

(iii) You are scheduled for a medical improvement expected diary review (see paragraph (c) of this section for when this provision will sunset).

(b) You will not be eligible to receive more than one ticket during any period during which you are either--

(1) Entitled to title II benefits based on disability (see §§ 404.316(b), 404.337(b) and 404.352(b) of this chapter for when entitlement to title II disability benefits ends); or

(2) Eligible for title XVI benefits based on disability or blindness and your eligibility has not terminated (see subpart M of part 416 of this chapter for our rules on when eligibility for title XVI benefits terminates).

(c) Paragraph (a)(3)(iii) of this section will no longer be effective on January 1, 2004, unless extended or revised by the Commissioner in regulations published in the Federal Register.

§ 411.130 How will SSA distribute tickets under the Ticket to Work program?

(a) We will distribute tickets in graduated phases at phase-in sites selected by the Commissioner, beginning in 2001, to permit a thorough evaluation of the Ticket to Work program and ensure that the most effective methods are in place for full implementation of the program. (See § 411.110.)

(b) We will distribute a ticket to you when we distribute tickets in your State,

if you are eligible to receive a ticket under § 411.125.

§ 411.135 What do I do when I receive a ticket?

Your participation in the Ticket to Work program is voluntary. When you receive your ticket, you are free to choose when and whether to assign it (see § 411.140 for information on assigning your ticket). If you want to participate in the program, you can take your ticket to any EN you choose or to your State VR agency.

§ 411.140 When can I assign my ticket and how?

(a) You may assign your ticket only during a month in which you meet the requirements of § 411.125(a)(1) and (a)(2). You may assign your ticket to any EN which is serving under the program and is willing to provide you with services, or you may assign your ticket to a State VR agency that is willing to provide you with services. You may not assign your ticket to more than one provider of services (i.e., an EN or a State VR agency) at a time. However, if you have assigned your ticket to an EN or State VR agency and you are dissatisfied with the services being provided, you may retrieve your ticket under the rules in § 411.145. Also, you may reassign your ticket under the rules in § 411.150.

(b)(1) In determining which EN you want to work with, you may discuss your rehabilitation and employment plans with as many ENs in your area as you wish. You also may discuss your rehabilitation and employment plans with the State VR agency.

(2) You can obtain a list of the approved ENs in your area from the program manager (PM) we have enlisted to assist in the administration of the Ticket to Work program.

(c) Both you and the EN of your choice need to agree upon an individual work plan (IWP). If you are working with a State VR agency, both you and the State VR agency need to agree upon an individualized plan for employment (IPE). The IWP or IPE outlines the services necessary to assist you in achieving your chosen employment goal.

(d) In order to assign your ticket, you and the EN must agree to and sign an IWP, or you and the State VR agency must agree to and sign an IPE. In addition, you must be eligible to assign your ticket under the rules in paragraph (a) of this section. If these requirements are met, we will consider your ticket assigned to the EN or the State VR agency. The effective date of the assignment of your ticket will be the date on which you and the EN or State VR agency sign your employment plan. See subpart C (§ 411.160 through § 411.225) for an explanation of how assigning your ticket may affect medical reviews that we conduct to determine if you are still disabled under our rules.

(e) The EN will submit a copy of your IWP to the PM to facilitate the assignment of your ticket to that EN. If you are working with a State VR agency, your VR counselor will submit a form to the PM to facilitate the assignment of your ticket to that agency.

§ 411.145 Once my ticket has been assigned to an EN or State VR agency, can it be taken out of assignment?

(a) If you assigned your ticket to an EN or a State VR agency and you are dissatisfied with the services being provided, you may retrieve your ticket from the EN or State VR agency. You must notify the PM that you wish to retrieve your ticket. The ticket will be no longer assigned to that EN or State VR agency effective with the first day of the month following the month in which you notify the PM that you wish to retrieve your ticket. You may reassign your ticket under the rules in § 411.150.

(b) If your EN goes out of business or is no longer approved to participate as an EN in the Ticket to Work program, the PM will take your ticket out of assignment with that EN. The ticket will be no longer assigned to that EN effective on the first day of the month following the month in which the EN goes out of business or is no longer approved to participate in the Ticket to Work program. You will be sent a notice informing you that your ticket is no longer assigned to that EN or State VR agency. In addition, if your EN or the State VR agency is no longer willing or able to provide services to you, the EN or State VR agency may ask the PM to take your ticket out of assignment with that EN or State VR agency. The ticket will be no longer assigned to that EN or State VR agency effective on the first day of the month following the month in which the EN or State VR agency makes a request to the PM that the ticket be taken out of assignment. You will be sent a notice informing you that your ticket is no longer assigned to that EN or State VR agency.

(c) For information about how taking a ticket out of assignment may affect medical reviews that we conduct to determine if you are still disabled under our rules, see §§ 411.171(d) and 411.225.

§ 411.150 Can I reassign my ticket to a different EN or the State VR agency?

(a) Yes. If you previously assigned your ticket and your ticket is no longer assigned (see § 411.145) or you wish to change the assignment, you may reassign your ticket. If you previously assigned your ticket to an EN, you may reassign your ticket to a different EN which is serving under the program and is willing to provide you with services, or you may reassign your ticket to the State VR agency. If you previously assigned your ticket to the State VR agency, you may reassign your ticket to an EN which is serving under the program and is willing to provide you with services.

(b) In order for you to reassign your ticket--

(1) you and the new EN must agree to and sign a new IWP or, if you wish to reassign your ticket to a State VR agency, you and the State VR agency must agree to and sign an IPE;

(2) you must meet the requirements of § 411.125(a)(1) and (a)(2) in the month you and the new EN or State VR agency sign your employment plan; and

(3) you must tell the PM that you want to reassign your ticket.

(c) If the requirements in paragraph (b) of this section are met, we will consider your ticket reassigned to the new EN or State VR agency. The reassignment of your ticket is effective on the first day of the month following the month in which you and the new EN or State VR agency sign your employment plan.

(d) The new EN will submit a copy of your new IWP to the PM to facilitate the reassignment of your ticket to that EN. If you wish to reassign your ticket to the State VR agency, your VR counselor will submit a form to the PM to facilitate the

reassignment of your ticket to that agency.

SUBPART C - SUSPENSION OF CONTINUING DISABILITY REVIEWS FOR
BENEFICIARIES WHO ARE USING A TICKET

Introduction

§ 411.160 What does this subpart do?

(a) This subpart explains our rules about continuing disability reviews for disability beneficiaries who are participating in the Ticket to Work program.

(b) Continuing disability reviews are reviews that we conduct to determine if you are still disabled under our rules (see §§ 404.1594 and 416.994 of this chapter). For the purposes of this subpart, continuing disability reviews do not include—

(1) Any review to determine if your disability has ended because you have demonstrated your ability to engage in substantial gainful activity (SGA), as defined in §§ 404.1571 – 404.1576 of this chapter; and

(2) Disability redeterminations for title XVI beneficiaries who attain age 18, as described in § 416.987 of this chapter.

§ 411.165 How does being in the Ticket to Work program affect my continuing disability reviews?

We periodically review your case to determine if you are still disabled under our rules. (See §§ 404.1594 and 416.994 of this chapter.) However, if you are in the Ticket to Work program, we will not begin a continuing disability review during the period in which you are using a ticket. You must meet certain requirements for us to consider you to be using a ticket.

Definition of Using a Ticket

§ 411.170 When does the period of using a ticket begin?

The period of using a ticket begins on the effective date of the assignment of your ticket to an EN or State VR agency under § 411.140.

Exception: If you have previously failed to meet the timely progress guidelines under §§ 411.180 through 411.190, the period of using a ticket will not begin until you complete the requirements for reentering in-use status. (See § 411.210.)

§ 411.171 When does the period of using a ticket end?

The period of using a ticket ends with the earliest of the following-

- (a) The 60th month for which an outcome payment is made to your EN (including a State VR agency) under § 411.530;
- (b) If you have assigned your ticket to a State VR agency which selects the

cost-reimbursement payment system, the 60th month for which an outcome payment would have been made had the State VR agency chosen to participate in the Ticket to Work program as an EN;

(c) The day before the effective date of a decision under § 411.192, § 411.195, § 411.200, or § 411.205 that you are no longer making timely progress toward self-supporting employment;

(d) The close of the 3-month period which begins with the first month in which your ticket is no longer assigned to an EN or State VR agency (see § 411.145), unless you reassign your ticket within this 3-month period (see § 411.225 for an explanation of the 3-month extension period which begins when your ticket is no longer assigned); or

(e) The month with which your entitlement to Social Security disability benefits ends or your eligibility for Federal SSI cash benefits terminates. If you are a concurrent title II and title XVI beneficiary, the period of using a ticket will end with the month with which your entitlement to Social Security disability benefits ends or your eligibility for Federal SSI cash benefits terminates, whichever is later. (See §§ 404.316(b), 404.337(b), 404.352(b) and 416.1331 – 416.1335 of this chapter.)

Although you will no longer be considered to be using a ticket after this month, your EN may still be eligible for payments under the Ticket to Work program if your entitlement to or eligibility for disability benefits terminated due to your work activity or earnings.

§ 411.175 What if I assign my ticket after a continuing disability review has begun?

(a) If we begin a continuing disability review before the date on which you assign a ticket, you may still assign the ticket and receive services under the Ticket to Work program. However, we will complete the continuing disability review. If in this review we determine that you are no longer disabled, in most cases you will no longer be eligible to receive benefits. However, if you assigned your ticket before we determined that you are no longer disabled, in certain circumstances you may continue to receive benefits (see §§ 404.316(c), 404.337(c), 404.352(d), and 416.1338 of this chapter). If you appeal the decision that you are no longer disabled, you may also choose to have your benefits continued pending reconsideration and/or a hearing before an administrative law judge on the cessation determination (see §§ 404.1597a and 416.996 of this chapter).

(b) The date on which we begin the continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

Guidelines for Timely Progress toward Self-Supporting Employment

§ 411.180 What is timely progress toward self-supporting employment?

(a) General. The purpose of the Ticket to Work program is to provide you with the services and supports you need to work and reduce or eliminate your dependence on Social Security disability benefits and SSI benefits based on disability or blindness. We consider you to be making timely progress toward self-supporting employment when you show an increasing ability to work at levels which will reduce or eliminate your dependence on these benefits.

(b) Guidelines. We will determine whether you are making timely progress toward self-supporting employment by using the following guidelines:

(1) During the initial 24-month period after you assign your ticket, you must be actively participating in your employment plan. "Actively participating in your employment plan" means that you are engaging in activities outlined in your employment plan on a regular basis and in the approximate time frames specified in the employment plan.

(2) During your first 12-month work review period, you must work (as defined in § 411.185) for at least 3 of these 12 months. The 3 months do not need to be consecutive.

(3) During your second 12-month work review period, and in later 12-month work review periods, you must work (as defined in § 411.185) for at least 6 of these 12 months. The 6 months do not need to be consecutive.

(c) Definitions. As used in this subpart--

(1) The initial 24-month period means the 24-month period which begins with the month following the month in which you first assigned your ticket. When we count the 24 months, we will not include any month during which your ticket is not assigned to an EN or State VR agency, as described in § 411.145, or any period in which your ticket is in inactive status, as defined in § 411.220.

(2) The 12-month work review period means the 12-month period that begins either following the end of the initial 24-month period or following the previous 12-month work review period. When we count the 12 months, we will not include any month during which your ticket is not assigned to an EN or State VR agency, as described

in § 411.145.

§ 411.185 How much do I need to earn to be considered to be working?

For the purpose of determining if you are meeting the timely progress requirements for continued ticket use, we will consider you to be working in each month in which you have earnings at the following levels:

(a) For title II disability beneficiaries:

(1) During your first and second 12-month work review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment at the SGA level for non-blind beneficiaries, as defined in §§ 404.1572 through 404.1576 of this chapter. For a month in which you are in a trial work period (see § 404.1592 of this chapter), or if you are statutorily blind as defined in § 404.1581 of this chapter, we will consider the following as fulfilling this requirement—

(i) Gross earnings from employment, before any deductions for impairment-related work expenses under § 404.1576 of this chapter, that are at or above the dollar amount of the SGA level for non-blind beneficiaries in § 404.1574 of this chapter; or

(ii) Net earnings from self-employment (as defined in § 416.1110(b) of this chapter), before any deductions for impairment-related work expenses under § 404.1576 of this chapter, that are at or above the dollar amount of the SGA level for non-blind beneficiaries in § 404.1574 of this chapter.

(2) During your third 12-month work review period, and during later 12-month work review periods, we will consider you to be working in a month for which

Social Security disability benefits are not payable to you because of your work or earnings.

(b) For title XVI beneficiaries:

(1) During your first and second 12-month work review periods, we will consider you to be working in a month in which you have--

(i) Gross earnings from employment, before any SSI income exclusions, that are at or above the dollar amount of the SGA level for non-blind beneficiaries in § 404.1574 of this chapter; or

(ii) Net earnings from self-employment (as defined in § 416.1110(b) of this chapter), before any SSI income exclusions, that are at or above the dollar amount of the SGA level for non-blind beneficiaries in § 404.1574 of this chapter.

Example: If you earn \$750 in January 2001, but exclude \$200 of this income in a Plan for Achieving Self Support (see §§ 416.1180-416.1182 of this chapter), you would still be considered to be working in that month.

(2) During your third 12-month work review period, and during any later 12-month work review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment that are sufficient to preclude the payment of Federal SSI cash benefits for a month.

(c) For concurrent title II and title XVI beneficiaries:

(1) During your first and second 12-month work review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment at the SGA level for non-blind beneficiaries as defined in §§ 404.1572 through 404.1576 of this chapter. For a month in which you are in a trial work period

(see § 404.1592 of this chapter), or if you are statutorily blind as defined in § 404.1581 of this chapter, we will consider the following as fulfilling this requirement—

(i) gross earnings from employment, before any SSI income exclusions or deductions for impairment-related work expenses under § 404.1576 of this chapter, that are at or above the dollar amount of the SGA level for non-blind beneficiaries in § 404.1574 of this chapter; or

(ii) net earnings from self-employment (as defined in § 416.1110(b) of this chapter), before any SSI income exclusions or deductions for impairment-related work expenses under § 404.1576 of this chapter, that are at or above the dollar amount of the SGA level for non-blind beneficiaries in § 404.1574 of this chapter.

(2) During your third 12-month work review period, and during later 12-month work review periods, we will consider you to be working in a month in which you have earnings from employment or self-employment sufficient to preclude the payment of Social Security disability benefits and Federal SSI cash benefits for a month.

§ 411.190 How is it determined if I am meeting the timely progress guidelines?

(a) During the initial 24-month period of using a ticket, you must be actively participating in your employment plan, as defined in § 411.180(b)(1). Active participation in your employment plan will be presumed unless you or your EN or State VR agency tell the PM that you are not actively participating. If you or your EN or State VR agency tell the PM that you are not actively participating in your employment plan, the PM will follow the procedures outlined in § 411.192.

(b) After the initial 24-month period, the PM will conduct reviews to determine if you are meeting the timely progress guidelines for continuing to be considered to be using a ticket.

(1) The PM will conduct a 24-month progress review at the end of the initial 24-month period. (See § 411.195.)

(2) If you successfully complete your 24-month progress review, the PM will conduct annual work reviews at the end of each 12-month work review period. (See § 411.200.)

§ 411.191 Table summarizing the guidelines for timely progress toward self-supporting employment.

You may use the following table to determine what you need to do to meet the guidelines for timely progress toward self-supporting employment. For more detail, refer to §§ 411.180 through 411.190.

If you:	You are in this period:	You must work:	With this level of earnings:	At the end of the period we will conduct your:
First assigned your ticket less than 24 months ago (not counting any months in which your ticket was unassigned or inactive)	Initial 24-month period	No work requirement. Must be actively participating in employment plan.	Not applicable	24-month progress review
First assigned your ticket 25 to 36 months ago (not counting any months in which your ticket was unassigned or inactive)	First 12-month work review period	3 months out of 12	SGA level for non-blind beneficiaries*	First work review

First assigned your ticket 37 to 48 months ago (not counting any months in which your ticket was unassigned or inactive)	Second 12-month work review period	6 months out of 12	SGA level for non-blind beneficiaries*	Second work review
First assigned your ticket 49 to 60 months ago (not counting any months in which your ticket was unassigned or inactive)	Third 12-month work review period	6 months out of 12	Earnings sufficient to preclude Social Security disability and Federal SSI cash benefits for a month	Third work review
In later 12-month work review periods, the work and earnings requirements are the same as in the third 12-month work review period.				

* For an explanation of how we determine if you meet this requirement if you are in a trial work period, you are blind, or you are a title XVI disability beneficiary, see §411.185.

§ 411.192 What if my EN, the State VR agency, or I report that I am not actively participating in my employment plan?

(a) If you or your EN or State VR agency report to the PM that you are not actively participating in your employment plan, the PM will give you the choice of resuming participation in your employment plan or placing your ticket in inactive status.

(b) If you choose to place the ticket in inactive status, your ticket will be placed in inactive status beginning with the first day of the month following the month in which you make your request. You are not considered to be using a ticket during months in which your ticket is in inactive status, and months in which your ticket is in inactive status do not count toward the time limitations for making timely progress toward self-supporting employment. For more information about inactive status, see § 411.220.

(c) If you choose to resume active participation in your employment plan, you will be allowed 3 months to demonstrate this active participation to the PM. During this

period, you will be considered to be making timely progress toward self-supporting employment. The PM will contact your EN or State VR agency after the 3 months to determine whether you have been actively participating in your employment plan during these 3 months. If the EN or State VR agency report that you have not been actively participating in your employment plan during these 3 months, the PM will find that you are no longer making timely progress toward self-supporting employment. The PM will send a written notice of this decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. The decision will become effective 30 days after the date on which the PM sends the notice of the decision to you, unless you request that we review the decision under § 411.205.

§ 411.195 How will the PM conduct my 24-month progress review?

- (a) In this review the PM will consider the following:
 - (1) Are you actively participating in your employment plan? By “actively participating in your employment plan,” we mean that you are engaging in activities outlined in your employment plan on a regular basis and in the approximate time frames specified in the plan.
 - (2) Does your employment plan have a goal of at least 3 months of work (as defined in § 411.185) during your next 12-month work review period?
 - (3) Given your current progress in your employment plan, can you reasonably be expected to reach this goal of at least 3 months of work (as defined in § 411.185)

during your next 12-month work review period?

(b) If the answer to all three of these questions is yes, the PM will find that you are making timely progress toward self-supporting employment. We will consider you to be making timely progress toward self-supporting employment until your first annual work review.

(c) If the answer to any of these questions is no, the PM will find that you are not making timely progress toward self-supporting employment. The PM will send a written notice of the decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. The decision will be effective 30 days after the date on which the PM sends the notice of the decision to you, unless you request that we review the decision under § 411.205.

§ 411.200 How will the PM conduct my annual work review?

(a) The annual work review is a two step process:

(1) Step one--Retrospective Review. Did you complete the work requirements (as specified in § 411.180 and § 411.185) in the last 12-month work review period?

(i) If you have not completed the work requirements, the PM will find that you are not making timely progress toward self-supporting employment.

(ii) If you have completed the work requirements, the PM will go to step two.

(2) Step two--Anticipated Work Level. Do both you and your EN or State VR agency expect that you will work at the level required during the next 12-month work

review period?

(i) If not, the PM will find that you are not making timely progress toward self-supporting employment.

(ii) If so, the PM will find that you are making timely progress toward self-supporting employment. We will consider you to be making timely progress toward self-supporting employment until your next annual work review.

(b) If the PM finds that you are not making timely progress toward self-supporting employment, the PM will send a written notice of the decision to you at your last known address. The notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. The decision will be effective 30 days after the date on which the PM sends the notice of the decision to you, unless you request that we review the decision under § 411.205.

§ 411.205 What if I disagree with the PM's decision about whether I am making timely progress toward self-supporting employment?

If you disagree with the PM's decision, you may request that we review the decision. You must make the request before the 30th day after the date on which the PM sends the notice of its decision to you. We will consider you to be making timely progress toward self-supporting employment until we make a decision. We will send a written notice of our decision to you at your last known address. If we decide that you are no longer making timely progress toward self-supporting employment, our decision will be effective on the date on which we send the notice of the decision to you.

§ 411.210 What happens if I do not make timely progress toward self-supporting employment?

(a) General. If it is determined that you are not making timely progress toward self-supporting employment, we will find that you are no longer using a ticket. If this happens, you will once again be subject to continuing disability reviews. However, you may continue participating in the Ticket to Work program. Your EN also may receive any outcome payments for which it is eligible under § 411.450 et seq.

(b) Reentering In-Use Status. If you failed to meet the timely progress guidelines for continuing to use a ticket, you may reenter in-use status. The requirements for reentering in-use status depend on how far you progressed before you failed to meet the timely progress guidelines.

(1) If you failed to meet the timely progress guidelines during the initial 24-month period, in your 24-month progress review, or in your first annual work review.

(i) If you failed to meet the timely progress guidelines during the initial 24-month period, in your 24-month progress review, or in your first annual work review, you may reenter in-use status by completing 3 months of work at the SGA level (as defined in § 411.185) within a rolling 12-month period. The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines.

(ii) When you have completed this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency.

(iii) After you are reinstated to in-use status, your next 12-month work review period will begin. During this 12-month work review period, you will be required to work at least 6 months at the SGA level (as defined in § 411.185). We will conduct an annual work review at the end of this 12-month work review period to determine if you have met this requirement. After this, we will conduct annual work reviews in the usual manner.

(2) If you failed to meet the timely progress guidelines in your second annual work review.

(i) If you failed to meet the timely progress guidelines in your second annual work review, you may reenter in-use status by completing 6 months of work at the SGA level (as defined in § 411.185) within a rolling 12-month period. The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines.

(ii) When you have completed this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency.

(iii) After you are reinstated to in-use status, your next 12-month work review period will begin. During this 12-month work review period, you will be required to work at least 6 months with earnings at the level specified in § 411.185(a)(2), § 411.185(b)(2), or § 411.185(c)(2). The PM will conduct an annual work review at the end of this 12-month work review period to determine if you have met this requirement. After this, the PM will conduct annual reviews in the usual manner.

(3) If you failed to meet the timely progress guidelines in any work review after your second work review.

(i) If you failed to meet the timely progress guidelines in any work review after your second work review, you may reenter in-use status by completing 6 months of work within a rolling 12-month period with earnings in each of the 6 months at the level specified in § 411.185(a)(2), § 411.185(b)(2), or § 411.185(c)(2). The rolling 12-month period must begin after the effective date of the decision that you failed to meet the timely progress guidelines.

(ii) When you have completed this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency.

(iii) After you are reinstated to in-use status, your next 12-month work review period will begin. During this 12-month work review period, you will be required to work at least 6 months with earnings at the level specified in § 411.185(a)(2), § 411.185(b)(2), or § 411.185(c)(2). The PM will conduct an annual work review at the end of this 12-month work review period to determine if you have met this requirement. After this, the PM will conduct annual work reviews in the usual manner.

Exceptions to the Timely Progress Guidelines

§ 411.220 What if I am temporarily unable to participate in my employment plan?

(a) General. (1) If you are temporarily unable to participate in your employment plan during the initial 24-month period of using a ticket, you may choose to place your ticket in inactive status.

(2) Periods in which your ticket is inactive do not count toward the time

limitations for making timely progress toward self-supporting employment.

(3) Your ticket is not considered to be in use during periods in which it is inactive. Therefore you will once again be subject to continuing disability reviews.

(4) You may not place your ticket in inactive status after the initial 24-month period of using a ticket.

(b) How to place your ticket in inactive status. (1) To place a ticket in inactive status, you must submit a written request to the PM asking that your ticket be placed in inactive status. The request must include a statement from your EN or State VR agency that you will not be participating in your plan or receiving services from them during the period of inactive status.

(2) The period of inactive status begins on the first day of the first month after the PM receives your request.

(c) How to reactivate your ticket. (1) If your ticket is still assigned to an EN or State VR agency, you may reactivate your ticket and return to in-use status at any time by submitting a written request to the PM.

(2) Your ticket will be reactivated beginning with the first day of the month following the month in which the PM receives your request.

(d) If the PM is told that you are not actively participating in your employment plan. If the PM is told that you are not actively participating in your employment plan, the PM will give you the choice of resuming active participation in your employment plan or placing your ticket in inactive status. See § 411.192.

§ 411.225 What if my ticket is no longer assigned to an EN or State VR agency?

(a) If your ticket was once assigned to an EN or State VR agency and is no longer assigned, you are eligible for an extension period of up to 3 months to reassign your ticket. You are eligible for an extension period if your ticket is no longer assigned because--

(1) you retrieved your ticket under § 411.145(a); or

(2) your EN went out of business or is no longer approved to participate as an EN in the Ticket to Work program, or your EN or State VR agency is no longer willing or able to provide you with services for any other reason (see § 411.145(b)).

(b) During the extension period, the ticket will still be considered to be in use. This means that you will not be subject to continuing disability reviews during this period.

(c) Time spent in the extension period will not count toward the time limitations for the timely progress guidelines.

(d) The extension period--

(1) begins on the first day on which the ticket is no longer assigned (see § 411.145); and

(2) ends 3 months after it begins or when you assign your ticket to a new EN or State VR agency, whichever is sooner.

(e) If you do not assign your ticket by the end of the extension period, the ticket will no longer be in use and you will once again be subject to continuing disability reviews.

SUBPART D – USE OF ONE OR MORE PROGRAM MANAGERS TO ASSIST IN
ADMINISTRATION OF THE TICKET TO WORK PROGRAM

§ 411.230 What is a PM?

A program manager (PM) is an organization in the private or public sector that has entered into an agreement to assist us in administering the Ticket to Work program. We will use a competitive bidding process to select one or more PMs.

§ 411.235 What qualifications are required of a PM?

A PM must have expertise and experience in the field of vocational rehabilitation or employment services.

§ 411.240 What limitations are placed on a PM?

A PM is prohibited from directly participating in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries with tickets in the PM's designated service delivery area. A PM is also prohibited from holding a financial interest in an employment network (EN) or service provider that provides services under the Ticket to Work program in the PM's designated service delivery area.

§ 411.245 What are a PM's responsibilities under the Ticket to Work program?

A PM will assist us in administering the Ticket to Work program by conducting the following activities:

(a) Recruiting, recommending, and monitoring ENs. A PM must recruit and recommend for selection by us public and private entities to function as ENs under the program. A PM is also responsible for monitoring the ENs operating in its service delivery area. Such monitoring must be done to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries with tickets. A PM may not limit the number of public or private entities being recommended to function as ENs.

(b) Facilitating access by beneficiaries to ENs. A PM must assist beneficiaries with tickets in accessing ENs.

(1) A PM must establish and maintain lists of the ENs available to beneficiaries with tickets in its service delivery area and make these lists generally available to the public.

(2) A PM must ensure that all information provided to beneficiaries with tickets about ENs is in accessible formats. For purposes of this section, accessible format means by media that is appropriate to a particular beneficiary's medical impairment(s).

(3) A PM must take necessary measures to ensure that sufficient ENs are available and that each beneficiary under the Ticket to Work program has reasonable access to employment services, vocational rehabilitation services, and other support services. The PM shall ensure that services such as the following are available in each

service area, including rural areas: case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and other services that we may require in an agreement with a PM.

(4) A PM must ensure that each beneficiary with a ticket is allowed to change ENs. When a change in the EN occurs, the PM must reassign the ticket based on the choice of the beneficiary.

(c) Facilitating payments to ENs. A PM must facilitate payments to the ENs in its service delivery area. Subpart H explains the EN payment systems and the PM's role in administering these systems.

(1) A PM must maintain documentation and provide regular assurances to us that payments to an EN are warranted. The PM shall ensure that an EN is complying with the terms of its agreement and applicable regulations.

(2) Upon the request of an EN, the PM shall make a determination of the allocation of the outcome or outcome-milestone payments due to an EN based on the services provided by the EN.

(d) Administrative requirements. A PM will perform such administrative tasks as are required to assist us in administering and implementing the Ticket to Work program. Administrative tasks required for the implementation of the Program may include, but are not limited to:

(1) Reviewing individual work plans (IWPs) submitted by ENs for ticket assignment. These reviews will be conducted to ensure that the IWPs meet the requirements of § 411.465.

(2) Reviewing amendments to IWPs to ensure that the amendments meet the requirements in § 411.465.

(3) Ensuring that ENs only refer an individual to a State VR agency for services pursuant to an agreement regarding the conditions under which such services will be provided.

(4) Resolving a dispute between an EN and a State VR agency with respect to agreements regarding the conditions under which services will be provided when an individual is referred by an EN to a State VR agency for services.

Evaluation of Program Manager Performance

§ 411.250 How will SSA evaluate a PM?

(a) We will periodically conduct a formal evaluation of the PM. The evaluation will be based on how well the PM meets the performance standards set out in its agreement with us. Performance standards will include, but not be limited to:

- (1) quality of services;
- (2) cost control;
- (3) timeliness of performance;
- (4) business relations; and
- (5) customer satisfaction.

(b) Our Project Officer will perform the evaluation. The PM will have an opportunity to comment on the evaluation, and then the Contracting Officer will

requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended, even when functioning as an EN.

Ticket Status

§ 411.380 How does a State VR agency determine whether a person seeking services has a ticket?

Once the State VR agency determines that a person seeking VR services is a disabled beneficiary, the State VR agency must contact the program manager (PM) to verify the beneficiary's ticket status to see if—

- (a) the beneficiary has a ticket which is available for assignment (see § 411.140); or
- (b) the beneficiary has a ticket that has already been assigned to an EN.

§ 411.385 What does a State VR agency do if a beneficiary who is applying for services has a ticket that is available for assignment?

- (a) Once the State VR agency determines that a beneficiary who is applying for services has a ticket that is available for assignment (see § 411.140) and the State VR agency and the beneficiary have agreed to and signed the individualized plan for employment (IPE) required under section 102(b) of the Rehabilitation Act of 1973, as amended, the beneficiary's ticket is considered to be assigned. (See § 411.165 et seq. for

a description of how assigning a ticket may affect continuing disability reviews.) The State VR agency must submit the following information to the PM to ensure the assignment of the beneficiary's ticket to the State VR agency and the recording of the payment system selected for that beneficiary.

(1) A statement that the beneficiary has decided to assign his ticket to the State VR agency and that an IPE has been agreed to and signed by both the beneficiary and a representative of the State VR agency.

(2) A statement of the vocational goal outlined in the beneficiary's IPE.

(3) A statement of the State VR agency's selection of the system (either cost-reimbursement or the previously elected EN payment system) under which the State VR agency will seek payment for providing services to the beneficiary.

(b) This information must be submitted to the PM in a format prescribed by us and must include the signatures of both the beneficiary, or a representative of the beneficiary, and the State VR agency representative working with the beneficiary.

§ 411.390 What does a State VR agency do if a beneficiary to whom it is already providing services has a ticket that is available for assignment?

If, upon implementation of the Ticket to Work program in a State, a beneficiary who is receiving services from the State VR agency under an existing IPE has a ticket available for assignment and decides to assign the ticket to the State VR agency, the State VR agency must submit the information required in § 411.385 to the PM to ensure the assignment of that beneficiary's ticket to the State VR agency. Since the services for that

beneficiary were initiated under an IPE prior to implementation of the Ticket to Work program, the State VR agency may only seek payment under the cost-reimbursement payment system (see subpart V of part 404 and subpart V of part 416 of this chapter).

§ 411.395 Is a State VR agency required to provide periodic reports?

(a) A State VR agency will be required to prepare periodic reports on the specific outcomes achieved with respect to the specific services the State VR agency provided to or secured for disabled beneficiaries whose tickets it accepted for assignment. These reports must be submitted to the PM at least annually.

(b) The State VR agency must also submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress towards self-supporting employment to determine if a beneficiary is using a ticket for purposes of suspending continuing disability reviews (see §§ 411.165 - 411.200).

Referrals by Employment Networks to State VR Agencies

§ 411.400 Can an EN to which a beneficiary's ticket is assigned refer the beneficiary to a State VR agency for services?

Yes. An EN may refer a beneficiary it is serving under the Ticket to Work program to a State VR agency for services. However, a referral can be made only if the State VR agency and the EN have an agreement that specifies the conditions under which

services will be provided by the State VR agency. This agreement must be in writing and signed by the State VR agency and the EN prior to the EN referring any beneficiary to the State VR agency for services.

Agreements between Employment Networks and State VR Agencies

§ 411.405 When does an agreement between an EN and the State VR agency have to be in place?

Each EN must have an agreement with the State VR agency prior to referring a beneficiary it is serving under the Ticket to Work program to the State VR agency for specific services.

§ 411.410 Does each referral from an EN to a State VR agency require its own agreement?

No. The agreements between ENs and State VR agencies should be broad-based and apply to all beneficiaries who may be referred by the EN to the State VR agency for services.

§ 411.415 Who will verify the establishment of agreements between ENs and State VR agencies?

The PM will verify the establishment of these agreements. Each EN is required to submit a copy of the agreement it has established with the State VR agency to the PM.

§ 411.420 What information should be included in an agreement between an EN and a State VR agency?

The agreement between an EN and a State VR agency should state the conditions under which the State VR agency will provide services to a beneficiary when the beneficiary is referred by the EN to the State VR agency for services. Examples of this information include--

- (a) procedures for making referrals and sharing information that will assist in providing services;
- (b) a description of the financial responsibilities of each party to the agreement;
- (c) the terms and procedures under which the EN will pay the State VR agency for providing services; and
- (d) procedures for resolving disputes under the agreement.

§ 411.425 What should a State VR agency do if it gets an attempted referral from an EN and no agreement has been established between the EN and the State VR agency?

The State VR agency should contact the EN to discuss the need to establish an

agreement. If the State VR agency and the EN are not able to negotiate acceptable terms for an agreement, the State VR agency should notify the PM that an attempted referral has been made without an agreement.

§ 411.430 What should the PM do when it is informed that an EN has attempted to make a referral to a State VR agency without an agreement being in place?

The PM will contact the EN to explain that a referral cannot be made to the State VR agency unless an agreement has been established that sets out the conditions under which services will be provided when a beneficiary's ticket is assigned to the EN and the EN is referring the beneficiary to the State VR agency for specific services.

Resolving Disputes Arising under Agreements between Employment Networks and State VR Agencies

§ 411.435 How will disputes arising under the agreements between ENs and State VR agencies be resolved?

Disputes arising under agreements between ENs and State VR agencies should be resolved using the following steps—

- (a) When procedures for resolving disputes are spelled out in the agreement between the EN and the State VR agency, those procedures should be used.
- (b) If procedures for resolving disputes are not included in the agreement

between the EN and the State VR agency and procedures for resolving disputes under contracts and interagency agreements are provided for in State law or administrative procedures, the State procedures should be used to resolve disputes under agreements between ENs and State VR agencies.

(c) If procedures for resolving disputes are not spelled out in the agreement or in State law or administrative procedures, the EN or the State VR agency may request that the PM recommend a resolution to the dispute.

(1) The request must be in writing and include:

(i) a copy of the agreement;

(ii) information on the issue(s) in dispute; and

(iii) information on the position of both the EN and the State VR agency

regarding the dispute.

(2) The PM has 20 calendar days after receiving a written request to recommend a resolution to the dispute. If either the EN or the State VR agency does not agree with the PM's recommended resolution to the dispute, the EN or the State VR agency has 30 calendar days after receiving the PM's recommendation to request a decision by us on the matter in dispute.

SUBPART G – REQUIREMENTS FOR INDIVIDUAL WORK PLANS

§ 411.450 What is an IWP?

An IWP is a required written document signed by an EN and a beneficiary, or a

representative of a beneficiary, with a ticket. It is developed and implemented in partnership when a beneficiary and an EN have come to a mutual understanding to work together to pursue the beneficiary's employment goal under the Ticket to Work program.

§ 411.455 What is the purpose of an IWP?

The purpose of an IWP is to outline the specific employment services, vocational rehabilitation services and other support services that the EN and beneficiary have determined are necessary to achieve the beneficiary's stated employment goal. An IWP provides written documentation for both the EN and beneficiary. Both parties should develop and implement the IWP in partnership. The EN will develop and implement the plan in a manner that gives the beneficiary the opportunity to exercise informed choice in selecting an employment goal. Specific services needed to achieve the designated employment goal are discussed and agreed to by both parties.

§ 411.460 Who is responsible for determining what information is contained in the IWP?

The beneficiary and the EN share the responsibility for determining the employment goal and the specific services needed to achieve that employment goal. The EN will present information and options in a way that affords the beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal.

§ 411.465 What are the minimum requirements for an IWP?

- (a) An IWP must include at least --
 - (1) A statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;
 - (2) A statement of the services and supports necessary for the beneficiary to accomplish that goal;
 - (3) A statement of any terms and conditions related to the provision of these services and supports;
 - (4) A statement that the EN may not request or receive any compensation for the costs of services and supports from the beneficiary;
 - (5) A statement of the conditions under which an EN may amend the IWP or terminate the relationship;
 - (6) A statement of the beneficiary's rights under the Ticket to Work program, including the right to retrieve the ticket at any time if the beneficiary is dissatisfied with the services being provided by the EN.
 - (7) A statement of the remedies available to the beneficiary, including information on the availability of advocacy services and assistance in resolving disputes through the State P&A System;
 - (8) A statement of the beneficiary's rights to privacy and confidentiality regarding personal information, including information about the beneficiary's disability.
 - (9) A statement of the beneficiary's right to seek to amend the IWP (the IWP

can be amended if both the beneficiary and the EN agree to the change); and

(10) A statement of the beneficiary's right to have a copy of the IWP made available to the beneficiary, including in an accessible format chosen by the beneficiary.

(b) The EN will be responsible for ensuring that each IWP contains this information.

§ 411.470 When does an IWP become effective?

(a) An IWP becomes effective if the following conditions are met --

(1) It has been signed by the beneficiary or the beneficiary's representative, and by a representative of the EN; and

(2) The PM verifies that the beneficiary has a ticket that is eligible for assignment and records the beneficiary's decision to assign his or her ticket.

(b) If the conditions in paragraph (a) of this section are met, the IWP becomes effective on the date it was signed by both parties.

SUBPART H – EMPLOYMENT NETWORK PAYMENT SYSTEMS

§ 411.500 Definitions of terms used in this part.

(a) Payment Calculation Base means for any calendar year—

(1) For title II disability beneficiaries and concurrent title II/title XVI disability beneficiaries, the nationwide average disability benefit payable under section

223 of the Act for all beneficiaries for months during the preceding calendar year; or

(2) For title XVI disability beneficiaries, the nationwide average payment of SSI benefits based on disability payable under title XVI (excluding State supplementation) for months during the preceding calendar year to beneficiaries ages 18 to 64, inclusive.

(b) Outcome Payment Period means a period of 60 months, not necessarily consecutive, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of SGA or by reason of earnings from work. This period begins with the first month ending after the date on which the ticket was first assigned, for which such benefits are not payable due to SGA or earnings. This period ends with the 60th month, consecutive or otherwise, ending after such date, for which such benefits are not payable due to SGA or earnings.

(c) Outcome Payment System is a system providing a schedule of payments to an EN for each month, up to a total of 60 months, during the outcome payment period. The maximum number of outcome payment months for each ticket is sixty.

(d) Outcome-Milestone Payment System is a system providing a schedule of payments to an EN that includes, in addition to payments during the outcome payment period, payment for completion by a beneficiary of up to two milestones directed toward the goal of permanent employment. Milestones occur prior to the beginning of the outcome payment period. Milestone payments consist of payments in addition to any payments made during the outcome payment period. The schedule of total payments under the outcome-milestone payment system, with respect to each beneficiary who assigns a ticket to the EN, must be less than would be payable to the EN under the

outcome payment system.

§ 411.505 How is an EN paid by SSA?

An EN can elect either of two payment systems. These systems are the outcome payment system and the outcome-milestone payment system. The EN will elect a payment system at the time the EN enters into an agreement with SSA. (For State VR agencies, see § 411.365). The EN may periodically change its elected payment system as described in § 411.515.

§ 411.510 How is the State VR agency paid under the Ticket to Work program?

- (a) The State VR agency's payment choices are described in § 411.355.
- (b) The State VR agency's decision to serve the beneficiary must be communicated to the PM. At the same time, the State VR agency must notify the PM of its selected payment system for that beneficiary.
- (c) For each beneficiary who is already a client of the State VR agency prior to receiving a ticket, the State VR agency will notify the PM of the payment system election for each such beneficiary at the time the ticket is assigned to the State VR agency.

§ 411.515 Can the EN change its elected payment system?

(a) Yes. Any change in the elected EN payment system will apply to beneficiaries who assign their ticket to the EN after the EN's change in election becomes effective. A change in the EN's election will become effective with the month following the month in which the EN notifies us of the change. For beneficiaries who already assigned their ticket to the EN under the EN's earlier elected payment system, the EN's earlier elected payment system will continue to apply.

(b) During the 12 months following the month the EN first elects a payment system, the EN can choose to make one change in its elected payment system at any time.

(c) After an EN first elects a payment system, as part of signing the EN agreement with us (for State VR agencies, see § 411.365), the EN will have the opportunity to change from its existing elected payment system during times announced by us. We will offer the opportunity for ENs to make a change in their elected payment system at least every 18 months following January 2001.

§ 411.520 How are beneficiaries whose ticket is assigned to an EN affected by an EN's change in elected payment system?

A change in an EN's elected payment system has no affect upon the beneficiaries who have assigned their ticket to an EN.

§ 411.525 How are the EN payments calculated under each of the two EN payment systems?

(a) For payments for outcome period months, both EN payment systems use the payment calculation base as defined in § 411.500. This base uses the preceding calendar year's national average disability benefit payment information to compute the values for payments made to ENs during the next calendar year.

(1) Under the outcome payment system, we can pay up to 60 monthly payments to the EN. For each month for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings, the EN is eligible for a monthly outcome payment. Payment for an outcome payment month under the outcome payment system is equal to a fixed percentage of the payment calculation base for the calendar year in which such month occurs. This percentage is 40 percent.

(2) Under the outcome-milestone payment system, we can pay the EN for up to two milestones achieved by a beneficiary who has assigned his or her ticket to the EN. In addition to the milestone payments, monthly outcome payments can be paid to the EN during the outcome payment period.

(b) Under the outcome-milestone payment system, the EN's total payments for a beneficiary will be less than if the EN were paid under the outcome payment system. Under the outcome-milestone payment system, the EN's total potential payment is about 85 percent of the total that would have been potentially payable under the outcome payment system for the same beneficiary.

§ 411.530 How will the outcome period payments be reduced when paid under the outcome-milestone payment system?

Under the outcome-milestone payment system, the outcome payment for each of the first 12 outcome payment months is reduced by an amount equal to $1/12^{\text{th}}$ of the milestone payments already made based on a ticket.

§ 411.535 What are the milestones for which an EN can be paid?

(a) Under the outcome-milestone payment system, there are two milestones for which the EN can be paid. Both milestones occur after the beneficiary starts to work. The earnings levels for both milestones are the dollar amounts we use when we consider if work activity is SGA. We will use these dollar amounts in order to measure if the beneficiary's gross earnings level meets the milestone objective.

(1) The first milestone is met when the beneficiary has worked for 3 calendar months within a 12-month period and has gross earnings at the SGA dollar amount or above for each of the 3 months.

(2) The second milestone is met when the beneficiary has worked for 7 calendar months within a 12-month period and has gross earnings at the SGA dollar amount or above for each of the 7 months. Any of the 3 months used to meet the first milestone can be included in the 7 months used to meet the second milestone.

(3) We will use the same dollar amounts to meet the milestone requirements for self-employment (see § 411.590).

(b) An EN can be paid for a milestone only if the milestone is met after a beneficiary has assigned his or her ticket to the EN. A milestone is met when the 3rd

month is attained for milestone one, and when the 7th month is attained for milestone two as described under paragraph (a) of this section.

§ 411.540 What are the payment amounts for each of the milestones?

(a) The payment for the first milestone is equal to 68 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs. The payment approximates the average value of two monthly outcome payments under the outcome-milestone payment system.

(b) The payment for the second milestone is equal to 136 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs. The payment approximates the average value of four monthly outcome payments under the outcome-milestone payment system.

(c) The month of attainment of the first milestone is the 3rd month, within a 12-month period, in which the individual has the required earnings as described in § 411.535.

(d) The month of attainment of the second milestone is the 7th month, within a 12-month period, in which the individual has the required earnings as described in § 411.535.

§ 411.545 What are the payment amounts for outcome payment months under the outcome-milestone payment system?

The amount of each monthly outcome payment under the outcome-milestone payment system is as follows—

(a) Beginning with the 1st outcome payment month and ending with the 12th outcome payment month, the payment for an outcome payment month is equal to 30 percent of the payment calculation base for the calendar year in which the month occurs, reduced by an amount equal to $1/12^{\text{th}}$ of the total of the milestone payments made with respect to a ticket.

(b) Beginning with the 13th outcome payment month and ending with the 24th outcome payment month, the payment for an outcome payment month is equal to 32 percent of the payment calculation base for the calendar year in which the month occurs.

(c) Beginning with the 25th outcome payment month and ending with the 36th outcome payment month, the payment for an outcome payment month is equal to 34 percent of the payment calculation base for the calendar year in which the month occurs.

(d) Beginning with the 37th outcome payment month and ending with the 48th outcome payment month, the payment for an outcome payment month is equal to 36 percent of the payment calculation base for the calendar year in which the month occurs.

(e) Beginning with the 49th outcome payment month and ending with the 60th outcome payment month, the payment for an outcome payment month is equal to 38 percent of the payment calculation base for the calendar year in which the month occurs.

§ 411.550 What are the payment amounts for outcome payment months under the outcome payment system?

Under the outcome payment system, the payment for an outcome payment month is equal to 40 percent of the payment calculation base for the calendar year in which the month occurs.

§ 411.555 Can the EN keep the milestone and outcome payments even if the beneficiary does not achieve all 60 outcome months?

Yes. The EN can keep each milestone and outcome payment for which the EN is eligible, subject to adjustment under § 411.560 and § 411.595.

§ 411.560 Is it possible to pay a milestone or outcome payment to more than one EN?

Yes. It is possible for more than one EN to receive payment based on the same milestone or outcome. If the beneficiary has assigned the ticket to more than one EN, and more than one EN requests payment for the same milestone or outcome payment under its elected payment system, the PM will make a determination of the allocation of payment to each EN. The PM will make this determination based upon the services provided by each EN.

§ 411.565 What happens if two or more ENs qualify for payment on the same ticket but have elected a different EN payment system?

We will pay each EN according to its elected EN payment system in effect at the time the beneficiary assigned the ticket to the EN.

§ 411.570 Can an EN request payment from the beneficiary who assigned a ticket to the EN?

No. Section 1148(b)(4) of the Act prohibits an EN from requesting or receiving compensation from the beneficiary for the services of the EN.

§ 411.575 How does the EN request payment for milestones or outcome payment months achieved by a beneficiary who assigned a ticket to the EN?

The EN will send its request for payment, evidence of the beneficiary's work or earnings and other information to the PM.

(a) Milestone payments. (1) We will pay the EN for milestones only if the outcome-milestone payment system is the elected EN payment system at the time the beneficiary assigned a ticket to the EN.

(2) The EN must request payment for each milestone achieved by a beneficiary who has assigned a ticket to the EN. The request must include evidence that the milestone was achieved, and other information as we may require, to evaluate the EN's request. We do not have to stop monthly benefit payments to the beneficiary before we can pay the EN for milestones achieved by the beneficiary.

(b) Outcome payments. (1) We will pay an EN for an outcome payment

month if—

(i) Social Security disability benefits and Federal SSI cash benefits are not payable to the individual for a month due to work or earnings; and

(ii)(A) we have not already paid for 60 outcome months on the same ticket; or

(B) we have already paid 60 outcome payments and the EN subsequently requests and is eligible for an allocation of the previously made payments.

(2) The EN must submit a request for payment for an outcome payment month in order to begin receiving outcome payments for a ticket assigned to the EN by a beneficiary. The request for payment must include proof of the beneficiary's work or earnings that is sufficient for us to determine that we can stop the beneficiary's monthly Federal cash benefit payments due to work or earnings. This evidence is best obtained from the employer or the employer's designated payroll preparer.

(3) Before we stop a beneficiary's monthly benefit(s) payment because of work or earnings, we review his or her work effort. A request accompanied by a Work Activity Report (form SSA-821) can expedite processing the payment request. The Work Activity Report is a form that the beneficiary completes.

(4) While an EN does not need to submit separate requests to continue payments for each outcome month, an EN must continue to submit evidence that the beneficiary's level of work or earnings is sufficient to preclude payment of monthly Social Security disability and Federal SSI cash benefits. An EN cannot receive an outcome payment for any month for which a Social Security disability benefit or a Federal SSI cash benefit is payable to the beneficiary.

(5) ENs can submit the evidence of work or earnings to the PM on a monthly

basis or an EN can submit 2 months worth of evidence every other month.

§ 411.580 Can an EN receive payments for milestones or outcome payment period months that occur before the beneficiary assigns a ticket to the EN?

No. An EN may be paid only for milestones or outcome payment months that are achieved after the ticket is assigned to the EN.

§ 411.585 Can a State VR agency and an EN both receive payment for serving the same beneficiary?

Yes. It is possible if the State VR agency serves the beneficiary as an EN. In this case, both the EN and the State VR agency may be eligible for payment based on the same ticket.

(a) If a State VR agency is paid by us under the cost-reimbursement payment system with respect to a ticket, such payment precludes any subsequent payment by us based on the same ticket to an EN or to a State VR agency serving as an EN under either the cost-reimbursement payment system or the outcome-milestone payment system.

(b) If an EN or a State VR agency serving a beneficiary as an EN is paid by us under one of the EN payment systems with respect to a ticket, such payment precludes subsequent payment to a State VR agency under the cost-reimbursement payment system based on the same ticket.

§ 411.590 How will SSA determine when to pay under the EN payment systems if self-employment is the employment goal?

(a) For outcome payments under either EN payment system, the same requirements in §§ 411.500 through 411.585 of this chapter will apply. A beneficiary's monthly Federal cash benefit must not be payable due to work or earnings in order for the EN to be paid an outcome month payment for a particular month. In determining if the income is sufficient to stop monthly cash benefits, we consider the beneficiary's net earnings from self-employment, any unincurred business expenses and either impairment-related work expenses (IRWEs) or blind work expenses (BWEs) as applicable. (See §§ 404.1575 through 404.1576 for a discussion of our guidelines for evaluating self-employment and for a discussion of IRWEs.)

(b) In determining if the income is sufficient to stop monthly cash benefits, we do not count any earned income used to meet any expenses reasonably attributable to the earning of the income if the beneficiary is blind. Also, we do not count any earned income received and used by the beneficiary to fulfill an approved plan to achieve self-support per §§ 416.1110 through 416.1112.

(c) Since self-employment income cannot always be accurately determined each month, we will look at the beneficiary's actual reported self-employment income for a longer time period (e.g., a calendar quarter or longer) and average the actual net earnings from self-employment to see if it meets the requirements for a milestone or outcome payment. For milestone payments, we will consider gross earnings from self-employment.

§ 411.595 What can an EN do if the EN disagrees with our decision on a payment request?

(a) If an EN other than a State VR agency has a payment dispute with us, the dispute shall be resolved under the dispute resolution procedures contained in the EN's agreement with us.

(b) If a State VR agency serving a beneficiary as an EN has a dispute with us regarding payment under an EN payment system, the State VR agency may, within 60 days of receiving notice of our decision, request reconsideration in writing. The State VR agency should send the request for reconsideration to the PM. The PM will forward the request for reconsideration with a recommendation, and will notify the State VR agency of our reconsidered decision in writing. (See § 404.2127(a) for State VR agency appeal of our decision.)

(c) An EN cannot appeal determinations we make which affect a beneficiary's right to benefits. Only the beneficiary or his or her representative can appeal these determinations. (See §§ 404.900 through 404.999 and 416.1400 through 416.1499 of this chapter.)

(d) If an appeal by a beneficiary regarding entitlement or eligibility for disability benefits results in a revised determination, our revised determination could affect the EN's payment or result in an adjustment to payments already made to the EN. While the EN cannot appeal our determination about a beneficiary's right to benefits, the EN may furnish any evidence the EN has which may support a change in our

determination on the beneficiary's appeal.

§ 411.597 Will SSA periodically review the outcome payment system and the outcome-milestone payment system for possible modifications?

(a) Yes. We will periodically review the system of payments and their programmatic results to determine if they provide an adequate incentive for ENs to assist beneficiaries to enter the work force, while providing for appropriate economies.

(b) We will specifically review the limitation on monthly outcome payments as a percentage of the payment calculation base, the difference in total payments between the outcome-milestone payment system and the outcome payment system, the length of the outcome payment period, and the number and amount of milestone payments, as well as the benefit savings and numbers of beneficiaries going to work. We will consider altering the payment system conditions based upon the information gathered and our determination that an alteration would better provide for the incentives and economies described above.

§ 411.598 What other oversight procedures are planned for the EN payment systems?

We use audits, reviews, studies and observation of daily activities to identify areas for improvement. Internal reviews of our systems security controls are regularly performed. These reviews provide an overall assurance that our business processes are functioning as intended. The reviews also ensure that our management controls and

financial management systems comply with the standards established by the Federal Managers' Financial Integrity Act and the Federal Financial Management Improvement Act. These reviews operate in accordance with the Office of Management and Budget Circulars A-123, A-127 and Appendix III to A-130. Additionally, our Executive Internal Control Committee meets periodically and provides further oversight of program and management control issues.

SUBPART I – TICKET TO WORK PROGRAM DISPUTE RESOLUTION

Disputes between Beneficiaries and Employment Networks

§ 411.600 Is there a process for resolving disputes between beneficiaries and ENs?

Yes. After an IWP is signed, a process is available which will assure each party a full, fair and timely review of a disputed matter. This process has three steps.

(a) The beneficiary can seek a solution through the EN's internal grievance procedures.

(b) If the EN's internal grievance procedures do not result in an agreeable solution, either the beneficiary or the EN may seek a resolution from the PM.

(c) If either the beneficiary or the EN is dissatisfied with the resolution proposed by the PM, either party may request a decision from the us.

§ 411.605 What are the responsibilities of the EN regarding the dispute resolution process?

The EN must:

(a) have grievance procedures that a beneficiary can use to seek a resolution to a dispute under the Ticket to Work program;

(b) give each beneficiary seeking services a copy of its internal grievance

procedures;

(c) inform each beneficiary seeking services of the right to refer a dispute first to the PM for review, and then to us for a decision; and

(d) inform each beneficiary of the availability of assistance from the State P&A system.

§ 411.610 When should a beneficiary receive information on the procedures for resolving disputes?

Each EN must inform each beneficiary seeking services under the Ticket to Work program of the procedures for resolving disputes when—

- (a) the EN and the beneficiary complete and sign the IWP;
- (b) services in the beneficiary's IWP are reduced, suspended or terminated;

and

(c) a dispute arises related to the services spelled out in the beneficiary's IWP or to the beneficiary's participation in the Program.

§ 411.615 How will a disputed issue be referred to the PM?

The beneficiary or the EN may ask the PM to review a disputed issue. The PM will contact the EN to submit all relevant information within 10 working days. The information should include:

- (a) a description of the disputed issue(s);

- (b) a summary of the beneficiary's position, prepared by the beneficiary or a representative of the beneficiary, related to each disputed issue;
- (c) a summary of the EN's position related to each disputed issue; and
- (d) a description of any solutions proposed by the EN when the beneficiary sought resolution through the EN's grievance procedures, including the reasons the beneficiary rejected each proposed solution.

§ 411.620 How long does the PM have to recommend a resolution to the dispute?

The PM has 20 working days to provide a written recommendation. The recommendation should explain the reasoning for the proposed resolution.

§ 411.625 Can the beneficiary or the EN request a review of the PM's recommendation?

(a) Yes. After receiving the PM's recommendation, either the beneficiary or the EN may request a review by us. The request must be in writing and received by the PM within 15 working days of the receipt of the PM's recommendation for resolving the dispute.

(b) The PM has 10 working days to refer the request for a review to us. The request for a review must include:

- (1) a copy of the beneficiary's IWP;
- (2) information on the disputed issue(s);

- (3) any relevant evidence; and
- (4) the PM's conclusion(s) and recommendation(s).

§ 411.630 Is SSA's decision final?

Yes. Our decision is final. If either the beneficiary or the EN is unwilling to accept our decision, either has the right to terminate its relationship with the other.

§ 411.635 Can a beneficiary be represented in the dispute resolution process under the Ticket to Work program?

Yes. Both the beneficiary and the EN may use an attorney or other individual of their choice to represent them at any step in the dispute resolution process. The P&A system in each State and U.S. Territory is available to provide assistance and advocacy services to beneficiaries seeking or receiving services under the Ticket to Work program, including assistance in resolving issues at any stage in the dispute resolution process.

Disputes between Beneficiaries and State VR Agencies

§ 411.640 Do the dispute resolution procedures of the Rehabilitation Act of 1973, as amended, apply to beneficiaries seeking services from the State VR agency?

Yes. The procedures in the Rehabilitation Act of 1973, as amended, apply to any beneficiary who has assigned a ticket to a State VR agency. The Rehabilitation Act requires the State VR agency to provide each person seeking or receiving services with a description of the services available through the Client Assistance Program authorized under section 112 of the Rehabilitation Act of 1973, as amended. It also provides the opportunity to resolve disputes using formal mediation services or the impartial hearing process in section 102(c) of the Rehabilitation Act of 1973, as amended.

SUBPART J – THE TICKET TO WORK PROGRAM AND ALTERNATE
PARTICIPANTS UNDER THE PROGRAMS FOR PAYMENTS FOR VOCATIONAL
REHABILITATION SERVICES

§ 411.700 What is an alternate participant?

An alternate participant is any public or private agency (other than a participating State VR agency described in §§ 404.2104 and 416.2204 of this chapter), organization, institution, or individual with whom the Commissioner has entered into an agreement or contract to provide VR services to disabled beneficiaries under the programs described in subpart V of part 404 and subpart V of part 416 of this chapter. In this subpart J, we refer to these programs as the programs for payments for VR services.

§ 411.705 Can an alternate participant become an EN?

In any State where the Ticket to Work program is implemented, each alternate participant whose service area is in that State will be asked to choose if it wants to participate in the program as an EN.

§ 411.710 How will an alternate participant choose to participate as an EN in the Ticket to Work program?

(a) When the Ticket to Work program is implemented in a State, each alternate participant whose service area is in that State will be notified of its right to choose to participate as an EN in the program in that State. The notification to the alternate participant will provide instructions on how to become an EN and the requirements that an EN must meet to participate in the Ticket to Work program.

(b) An alternate participant who chooses to become an EN must meet the requirements to be an EN, including—

- (1) enter into an agreement with SSA to participate as an EN under the Ticket to Work program (see § 411.320);
- (2) agree to serve a prescribed service area (see § 411.320);
- (3) agree to the EN reporting requirements (see § 411.325); and
- (4) elect a payment option under one of the two EN payment systems (see § 411.505).

§ 411.715 If an alternate participant becomes an EN, will beneficiaries for whom an employment plan was signed prior to implementation be covered under the Ticket to Work program payment provisions?

No. When an alternate participant becomes an EN in a State in which the Ticket to Work program is implemented, those beneficiaries for whom an employment plan was signed prior to the date of implementation of the program in the State, will continue to be covered for a limited time under the programs for payments for VR services (see § 411.730).

§ 411.720 If an alternate participant chooses not to become an EN, can it continue to function under the programs for payments for VR services?

Once the Ticket to Work program has been implemented in a State, the alternate participant programs for payments for VR services begin to be phased-out in that State. We will not pay any alternate participant under these programs for any services that are provided under an employment plan that is signed on or after the date of implementation of the Ticket to Work program in that State. If an employment plan was signed before that date, we will pay the alternate participant, under the programs for payments for VR services, for services provided prior to January 1, 2004 if all other requirements for payment under these programs are met. We will not pay an alternate participant under these programs for any services provided on or after January 1, 2004.

§ 411.725 If an alternate participant becomes an EN and it has signed employment plans, both as an alternate participant and an EN, how will SSA pay for services provided under each employment plan?

We will continue to abide by the programs for payments for VR services in cases where services are provided to a beneficiary under an employment plan signed prior to the date of implementation of the Ticket to Work program in the State. However, we will not pay an alternate participant under these programs for services provided on or after January 1, 2004. For those employment plans signed by a beneficiary and the EN after implementation of the program in the State, the EN's elected EN payment system under the Ticket to Work program applies.

§ 411.730 What happens if an alternate participant signed an employment plan with a beneficiary before Ticket to Work program implementation in the State and the required period of substantial gainful activity is not completed by January 1, 2004?

The beneficiary does not have to complete the 9-month continuous period of substantial gainful activity (SGA) prior to January 1, 2004, in order for the costs of the services to be payable under the programs for payments for VR services. The 9-month SGA period can be completed after January 1, 2004. However, SSA will not pay an alternate participant under these programs for the costs of any services provided after December 31, 2003.

Joseph F. Lackey Jr.

 08/31/2000 03:09:58 PM

Record Type: Record

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Subject: Ticket-to-Work Reg.

Each of you should already have--or will be getting--this afternoon a copy of SSA's Ticket to Work proposed regulation that was just submitted to OMB. We are trying to put together all comments by Sept. 13th, after which we will be passing back to SSA.