

**SOCIAL SECURITY ADMINISTRATION****20 CFR Part 411****RIN 0960-AF11****The Ticket to Work and Self-Sufficiency Program****AGENCY:** Social Security Administration (SSA).**ACTION:** Final rules.

**SUMMARY:** We are publishing final regulations implementing the Ticket to Work and Self-Sufficiency Program (Ticket to Work program) authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program provides beneficiaries with disabilities with expanded options for 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:** These regulations are effective January 28, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, E-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov), or telephone (410) 965-3632 or TTY (410) 966-5609 for information about these regulations. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, SSA Online, at [www.ssa.gov](http://www.ssa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The National Organization on Disability/Harris Survey of 1998 found that only 29 percent of individuals with disabilities were working full- or part-time. From calendar year 1986 to calendar year 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. Among the factors contributing to this increase were outreach efforts of the Social Security Administration (SSA) and the aging of the work force. The Federal government spent \$51.3 billion on Social Security disability benefits in calendar year 1999, and \$22.9 billion on SSI. Many States use State funds to supplement the benefits of SSI beneficiaries.

According to the U.S. General Accounting Office, less than one percent of Social Security disability and SSI

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

These final regulations are intended to expand the options available for Social Security disability beneficiaries and disabled or blind SSI beneficiaries to access vocational rehabilitation (VR) 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 benefits. 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 (Public Law 106-170) 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, the *Ticket to Work and Work Incentives Improvement Act of 1999* (Public Law 106-170) became law.

In section 2(b) of Public Law 106-170, the Congress states that this legislation has the following four basic purposes:

- 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 beneficiaries 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 Public Law 106-170 amended 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 and maintaining self-supporting employment.

The Social Security Administration is required to develop the regulations necessary to implement section 1148 of the Act, as well as certain other amendments to the Act made by Public Law 106-170, and to provide details regarding the Ticket to Work program. Section 101(e) of Public Law 106-170 requires the Commissioner of Social Security (the Commissioner) to prescribe such regulations as are necessary to implement the amendments made by section 101. We are prescribing these regulations to address 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 whom they serve. Beneficiaries issued a ticket also will have the option of taking the ticket to their State vocational rehabilitation agency for services.

The Commissioner's intent in publishing these final regulations 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 Public Law 106–170, 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 and programs designed to help individuals with disabilities start or return to work among individuals with disabilities, their families and representatives, service providers, advocates and State agencies. The forums focused on Federal and State employment-related policies and programs for people with disabilities.

Forums were held in eleven major cities across the country. Those cities were Baltimore, Maryland (December 12, 1999); Kansas City, Missouri (February 2, 2000); Durham, North Carolina (March 9, 2000); Phoenix, Arizona (March 30, 2000); New York, New York (April 6, 2000); Austin, Texas (May 17, 2000); Seattle, Washington (June 13, 2000); Worcester, Massachusetts (June 26, 2000); Chicago, Illinois (August 1, 2000); Harrisburg, Pennsylvania (August 15, 2000); and Denver, Colorado (September 13–14, 2000).

Representatives from many national and community-based organizations participated in these forums, including 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, as well as State representatives from the Developmental Disabilities Councils, the State Independent Living Councils, and the Governors' Committees on Employment of People with Disabilities.

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 Public Law 106–170 and conduct exploratory discussions about policy issues relating to the implementation of the provisions in the legislation 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 were also 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 Public Law 106–170, facilitating discussion and obtaining recommendations that were considered in developing the provisions of the Ticket to Work program that were addressed in our 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 nine 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 Public Law 106–170 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 Public Law 106–170. 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 Public Law 106–170.

Section 101(b) of Public Law 106–170 also repealed sections 222(b) and 1615(c) of the Act, under which the Commissioner was 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.

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

Section 101(b) of Public Law 106–170 also amends sections 225(b) and 1631(a)(6) of the Act under which SSA is authorized to continue disability or blindness benefit payments to individuals who recover medically while participating in a program of vocational rehabilitation services approved by the Commissioner 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 or blindness benefit rolls. Section 101(b) of Public Law 106–170 amends these sections 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”. The proposed rules to implement this expanded definition 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 Public Law 106–170, 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 Public Law 106-170 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 Public Law 106-170, should 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, Public Law 106-170 may result in substantial savings for the Federal government and State 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 should also yield tax receipts while reducing expenses in Social Security disability and disabled and blind SSI benefits, food stamps, HUD housing rent subsidies, and certain veterans benefits. Improved employment rates of individuals with disabilities should 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 Public Law 106-170, directs the Commissioner of Social Security to establish a Ticket to Work and Self-Sufficiency Program. Section 1148(b) 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. Beneficiaries will also have the option of choosing to obtain

services from their State VR agency. 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 101(d) of Public Law 106-170 requires the Commissioner to implement the Ticket to Work program in graduated phases at phase-in sites selected by the Commissioner. This is to permit a thorough evaluation of the program and ensure that the most effective methods are in place for full implementation of the program. This section also provides that the Ticket to Work program should be available in every State not later than 2004.

SSA has decided that the Ticket to Work program will be implemented in the following manner:

During Phase I of the Ticket to Work program, we will distribute tickets to eligible beneficiaries in the following States: Arizona, Colorado, Delaware, Florida, Illinois, Iowa, Massachusetts, New York, Oklahoma, Oregon, South Carolina, Vermont and Wisconsin. We intend to implement this phase upon the effective date of these regulations.

During Phase II of the Ticket to Work program, we will distribute tickets to eligible beneficiaries in the following States: Alaska, Arkansas, Connecticut, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, Tennessee, Virginia and in the District of Columbia. We intend to implement this phase in calendar year 2002.

During Phase III of the Ticket to Work program, we will distribute tickets to eligible beneficiaries in the following States: Alabama, California, Hawaii, Idaho, Maine, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, Wyoming, as well as in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the Virgin Islands. We intend to implement this phase in calendar year 2003.

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.

The PM will recruit and recommend for selection by the Commissioner ENs for service under the program; monitor all ENs serving in the geographic areas covered under the PM's agreement to ensure that adequate choices of services are made available to beneficiaries;

assure that payment by the Commissioner to ENs is warranted; facilitate access by beneficiaries to ENs; ensure the availability of adequate services; and ensure that sufficient ENs are available and that each beneficiary under the program has reasonable access to employment services, vocational rehabilitation services, and other support services.

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 accept the assignment. Beneficiaries who are issued a ticket also will have the option of taking the ticket to their State VR agency for services.

Section 101(e) of Public Law 106-170 requires the Commissioner to prescribe such regulations as are necessary to implement the amendments made by section 101 of this legislation. These final regulations address those areas which must be regulated in order to implement the Ticket to Work program. Additional regulations necessary for the ongoing implementation of the program will be published as proposed rules 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.

#### **Notice of Proposed Rulemaking**

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 28, 2000 (65 FR 82844) proposing rules to implement the Ticket to Work program. We provided the public 60 days to submit comments. The comment period closed February 26, 2001. We received comments from over 400 commenters. We discuss the comments we received on the NPRM and provide our responses to the comments later in this preamble under "Public Comments on the Notice of Proposed Rulemaking." A summary of the public comments is available on the Internet at the SSA Office of Employment Support Programs' Work Site at <http://www.ssa.gov/work>.

As we explain below, in these final regulations, we are making a number of changes from the proposed rules in response to public comments. As suggested in a number of these comments, we are also making other changes in the interest of improved clarity, consistency, and improved organization.

### Final Regulations

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

#### Subpart A—Introduction

Subpart A of these regulations provides an introduction to the regulations in the new part 411. Section 411.100 provides an overview of the regulations in part 411. Section 411.105 describes the purpose of the Ticket to Work program. Section 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 Public Law 106–170. Section 411.115 provides definitions of terms used in part 411. In the final rules, we have reorganized the definitions of terms in § 411.115 to place the terms in alphabetical order. In final § 411.115(m) (proposed § 411.115(i)), we have clarified the definition of State vocational rehabilitation agency to indicate that in those States that have one agency that provides VR services to non-blind individuals and another agency that provides services to blind individuals, the term “state vocational rehabilitation agency” or “state VR agency” refers to either State agency. In addition, we have expanded § 411.115 in the final rules to provide definitions of the terms “employment network” or “EN,” “individual work plan” or “IWP,” “individualized plan for employment” or “IPE,” “program manager” or “PM,” and “ticket.”

#### Subpart B—Tickets Under the Ticket to Work Program

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

Section 411.120 explains that a ticket is a document that provides evidence of the Commissioner’s agreement to pay an EN or State VR agency to which a beneficiary’s ticket is assigned for providing services to the beneficiary under the Ticket to Work program if certain conditions are met. As required by section 101(e)(2)(B) of Public Law

No. 106–170, we have added a complete description of the format and the wording of the ticket to this section.

Section 411.125 states the following requirements, among others, for eligibility to receive a ticket: a title II beneficiary must be age 18 to 64, and a title XVI beneficiary must be age 18 to 64 and be eligible for disability payments under the disability standard for adults; 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; and a beneficiary’s case must either (1) have a permanent impairment or a nonpermanent impairment (i.e. an impairment for which medical improvement is possible but cannot be predicted), or (2) have an impairment that is expected to improve and have undergone at least one continuing disability review (CDR).

In developing requirements for ticket eligibility under these regulations, we considered, but decided not to extend eligibility for a ticket to three additional groups of individuals.

The first group consists of beneficiaries who have impairments that are expected to improve and for whom we have not yet conducted at least one continuing disability review. Because these beneficiaries have conditions that are expected to medically improve in a relatively short period of time, they could be expected to return to work without the need for services under the Ticket to Work program. Continuing disability reviews for this category of beneficiaries are scheduled for 6–18 months after the initial disability determination. Under these rules, if we determine in the first continuing disability review that the beneficiary remains disabled, we would then issue a ticket, provided that the beneficiary met the other ticket eligibility criteria. This approach would ensure that beneficiaries whose conditions do not improve as anticipated have the opportunity to benefit from services under the Ticket to Work program within a relatively short period of time after the initial determination.

The second group consists of individuals who have not attained age 18. Beneficiaries in this group generally are in school, still pursuing completion of their formal elementary and secondary education. For this group, participation in an employment plan under the Ticket to Work program could interfere with their pursuit of an education, completion of which many

believe should be the primary focus and goal for school-age youth.

The third group consists of those who received title XVI payments prior to attaining age 18 (i.e. under the disability standard for children) and have since attained age 18, but for whom we have not yet conducted a redetermination of their eligibility under the disability standard for adults. Because ongoing eligibility has not yet been determined for these beneficiaries, we believe that it is premature to issue a ticket to them immediately. Under the final rules, if we establish in the redetermination that a beneficiary in this group is eligible for disability payments under the disability standard for adults, we would then issue a ticket, provided that the beneficiary met the other ticket eligibility criteria.

We plan to review periodically our policy regarding ticket eligibility, including whether it would be prudent to extend eligibility to the groups discussed above. In addition, we are interested in exploring various approaches to assist youth under age 18 to transition to independence, further education, and careers in the workforce. Therefore, we are publishing a Notice elsewhere in today’s **Federal Register** in which we are seeking suggestions from the public to assist us in designing for beneficiaries in the second and third groups an approach that could complement the Ticket to Work program.

In response to public comments, in these final rules we have added § 411.125(c) to explicitly state that individuals whose entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or whose eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act, will be eligible to receive another ticket in the first month he or she is entitled to reinstated benefits, as long as the beneficiary meets certain other requirements for eligibility for a ticket. Sections 223(i) and 1631(p) of the Act were added by section 112 of Public Law 106–170.

Section 411.130 explains that SSA will distribute tickets in graduated phases.

Section 411.135 explains that participation in the Ticket to Work program is voluntary. This section explains that if beneficiaries want to participate in the program, they may take their tickets to any entity serving under the program.

Section 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 section explains that the beneficiary can obtain a list of the approved ENs in his or her area. This section also explains certain requirements that must be met in order for a beneficiary to assign a ticket. Section 411.140 provides that an individual will be eligible to assign a ticket to an EN or State VR agency only during a month in which the individual meets the requirements of § 411.125(a)(1) and (a)(2). In general, this means the individual must be age 18–64 and must be either a title II disability beneficiary in current pay status who is not receiving benefit payments under 20 CFR 404.316(c), 404.337(c), 404.352(d) or 404.1597a, or a title XVI disability beneficiary whose Federal SSI cash benefits are not suspended and who is not receiving disability or blindness benefit payments under 20 CFR 416.996 or 416.1338.

Section 411.140 also 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. In response to public comments, in these final rules we are revising § 411.140(a) to indicate that individuals may assign their ticket to a State VR agency if they are eligible to receive VR services according to 34 CFR 361.42. We are making a similar change to § 411.150 regarding reassignment of a ticket to a State VR agency. Also in response to comments, we are revising §§ 411.140 and 411.150 to indicate that a representative of the State VR agency must agree to and sign the IPE. We also have modified §§ 411.140 and 411.150 of the final rules to provide that in order for a ticket to be assigned or reassigned to a State VR agency, the beneficiary and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3) of these final regulations.

We are also making changes to § 411.140(d) and (e) and § 411.150(b) and (c) in these final rules to clarify that a copy of the signed IWP developed by the beneficiary and the EN, or the completed and signed form required for assignment or reassignment of a ticket to a State VR agency under § 411.385(a) and (b), must be submitted to and received by the PM in order for a ticket to be assigned or reassigned to the EN or State VR agency. If the IWP or required form has been submitted to and received by the PM, and if the other requirements for assignment or

reassignment of a ticket are met, we will consider the ticket assigned or reassigned to the EN or State VR agency, effective as of the first day on which such other requirements are satisfied.

Section 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. In response to public comments, we are revising § 411.145(b) to state that a State VR agency may ask the PM to take a ticket out of assignment if the State VR agency stops providing services because the individual has been determined to be ineligible for VR services under 34 CFR 361.42, and to provide a cross-reference to the reassignment rules in § 411.150.

Section 411.150 explains the beneficiary's right to reassign a ticket, if the beneficiary chooses. In response to public comments, we have revised § 411.150(b) to state that the beneficiary and a representative of the State VR agency must agree to and sign an Individualized Plan for Employment if the beneficiary wishes to reassign his or her ticket to a State VR agency. Also, as discussed above, we have modified this provision in the final rules to provide that in order for a ticket to be reassigned to a State VR agency, the beneficiary and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3). We also are modifying § 411.150(b) to clarify that one of the conditions for reassigning a ticket is that the ticket must be unassigned. We explain that if the ticket currently is assigned to an EN or State VR agency, the beneficiary must first tell the PM in writing that he or she wants to take the ticket out of assignment as provided under § 411.145. In addition, as written, proposed § 411.150(b)(2) potentially could have prevented certain individuals who were working with ENs or State VR agencies from reassigning their ticket, thus unnecessarily limiting their ability to take full advantage of the provisions of the Ticket to Work program.

Accordingly, we have modified the requirements in § 411.150(b) to provide exceptions to the general rule that in order to reassign a ticket, an individual must be age 18–64 and either a title II disability beneficiary in current pay status or a title XVI disability beneficiary whose Federal SSI cash benefits are not suspended. Final § 411.150(b)(3) provides that an individual does not have to satisfy these requirements if the individual and a

representative of the new EN sign an IWP, or if the individual and a representative of the State VR agency sign both an IPE and the required form, within certain time periods. The time periods begin from the effective date on which the ticket was no longer assigned to the previous EN or State VR agency. The applicable time period depends on whether the individual's ticket is or is not in use under the rules in § 411.170 *et seq.* For an individual whose ticket is not in use, the specified time period is 30 days from the effective date the ticket no longer was assigned to the previous EN or State VR agency. For an individual whose ticket is in use, the specified time period is the three-month period that begins with the first month the ticket no longer was assigned to the previous EN or State VR agency. This three-month period is the extension period described in § 411.220.

The requirements that an individual be age 18–64 and be either a title II disability beneficiary in current pay status or a title XVI disability beneficiary whose Federal SSI cash benefits are not suspended are two of the basic requirements specified in § 411.125(a)(1) and (2) which an individual must meet in order to be eligible to receive a ticket under that section. In these final rules, an individual must meet these same requirements in order to be eligible to reassign a ticket under § 411.150, unless one of the conditions specified in § 411.150(b)(3) is met.

In addition, final § 411.150(a) provides that an individual will not be eligible to reassign a ticket if he or she is receiving title II disability benefits under 20 CFR 404.316(c), 404.337(c), 404.352(d) or 404.1597a, or is receiving title XVI disability or blindness benefit payments under 20 CFR 416.996 or 416.1338. This rule was reflected in proposed § 411.150(b)(2). We are retaining this rule in final § 411.150(a). This rule applies regardless of whether one of the conditions specified in § 411.150(b)(3) is met.

Other changes which we are making in final § 411.150(b) and (c) are explained above in our discussion of the revisions to § 411.140. Because of these changes, proposed § 411.150(d) is deleted in these final rules.

Section 411.155 explains when a beneficiary's ticket terminates and eligibility for participation in the Ticket to Work program ends. Once a ticket terminates, a beneficiary may not assign or reassign it to an EN or State VR agency. Under these regulations, a ticket will terminate when: (1) entitlement to Social Security disability benefits ends for reasons other than the individual's

work activity or earnings, or when eligibility for SSI benefits based on disability or blindness terminates for reasons other than the individual's work activity or earnings, whichever is later; (2) a Social Security disabled widow(er) beneficiary attains age 65; or (3) a disabled or blind SSI beneficiary reaches age 65 and may qualify for SSI benefits based on age.

In order to provide clarity regarding all of the circumstances under which a ticket will terminate and an individual's eligibility for participation in the Ticket to Work program ends, we also are expanding § 411.155 to add a description of the events that terminate the ticket after the beneficiary's entitlement to title II benefits based on disability or eligibility for title XVI benefits based on disability or blindness terminated because of work or earnings. After such termination of entitlement or eligibility (and, in the case of a concurrent title II/title XVI disability beneficiary, the termination of entitlement/eligibility under the other program), a ticket will terminate in any of the following months: (1) the month we make a final determination or decision that an individual is not entitled to have title II benefits based on disability reinstated under section 223(i) of the Act or not eligible to have title XVI benefits based on disability or blindness reinstated under section 1631(p) of the Act; (2) the month in which we make a final determination or decision that an individual is not entitled to title II benefits based on disability or eligible for title XVI benefits based on disability or blindness based on the filing of an application for benefits; (3) the month in which a beneficiary reaches retirement age (as defined in section 216(l) of the Act); (4) the month in which the beneficiary dies; (5) the month in which a beneficiary becomes entitled to a title II benefit that is not based on disability or eligible for a title XVI benefit that is not based on disability or blindness; and (6) the month in which the beneficiary again becomes entitled to title II benefits based on disability, or eligible for title XVI benefits based on disability or blindness, based on filing a new application.

In addition, consistent with the modification to § 411.125, we are modifying § 411.155 to indicate that when a beneficiary is eligible to receive another ticket as a result of benefit reinstatement under section 223(i) or 1631(p) of the Act, the ticket that the beneficiary received in connection with the previous period of entitlement or eligibility will terminate in the month

the beneficiary is eligible for the new ticket.

We have deleted reference to payment of 60 outcome payments to an EN that was described in proposed § 411.155(d), since this event properly refers to the period of using a ticket (see § 411.171(d) and (e)).

#### **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 (CDRs). Public Law 106–170 amends the Act to add section 1148(i), which states that SSA may not initiate a CDR 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 definition of using a ticket.

In developing our 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 by a CDR. Therefore, using a ticket should be defined in a way that minimizes this employment disincentive for beneficiaries participating in the Ticket to Work program. 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 definition seeks to balance these concerns by ensuring that CDRs are suspended only during the period in which beneficiaries are making timely progress toward reducing or eliminating dependence on Social Security disability or SSI benefits, while at the same time recognizing that progress toward that goal may not always be rapid or continuous.

Under our definition of using a ticket, a beneficiary will 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 time frames. Under this approach, beneficiaries will be allowed a limited period to prepare for work. At the end of this period, they will 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 suspension of CDRs. However, requiring beneficiaries to demonstrate increasing levels of employment within a defined time frame 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.

Based on the comments that we received regarding the complexity and difficulty of this subpart, we are revising and reorganizing the content to increase clarity wherever possible.

Sections 411.160 and 411.165 introduce this subpart. In response to a comment on proposed § 411.160 noting a confusion in the use of the term “continuing disability review” for both medical and work reviews, we are clarifying the language in paragraph (b) to reference our rules on when we may conduct a CDR to determine whether an individual remains eligible for disability-based benefits. In response to recommendations that we clarify proposed § 411.165 to explain when the period of using a ticket begins and ends, we are expanding § 411.165 to include cross-references to §§ 411.170 and 411.171.

We are adding § 411.166 in response to comments on our proposed rules regarding the use of new terms. This

section provides a glossary of the following terms: "active participation in your employment plan," "extension period," "inactive status," "initial 24-month period," "progress review," "timely progress guidelines," "12-month progress review period," and "using a ticket."

In our proposed rules, we used the terms "work review" or "work review period" when referring to the requirements for making timely progress toward self-supporting employment. In response to comments that these terms caused confusion with existing terms used to describe "work CDR," we are now referring to "progress review" or "progress review period," which are included in the glossary of terms in § 411.166.

Sections 411.170 and 411.171 describe when the period of using a ticket begins and ends. The period of using a ticket begins when the ticket is first assigned to an EN or State VR agency. The primary purpose of the suspension of CDRs 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.

We are revising § 411.171 to clarify that the period of using a ticket ends with the earliest of the following (1) the occurrence of one of the events listed in § 411.155, which describes the events that will result in termination of the ticket; (2) when the beneficiary is determined to be no longer making timely progress toward self-supporting employment according to our guidelines (see §§ 411.180 through 411.200); (3) when the extension period expires if the beneficiary has not reassigned the ticket within the period; or (4) when we have made 60 outcome payments to an EN, including a State VR agency functioning as an EN, under subpart H. In instances where the beneficiary assigned a ticket to a State VR agency which selected the cost reimbursement payment system, the period of using a ticket also will end with the 60th month for which an outcome payment would have been made had the State VR agency chosen to function as an EN with respect to the beneficiary.

Section 411.175 describes our rules when a beneficiary assigns a ticket after a CDR has begun. A beneficiary may assign the ticket and receive services under the Ticket to Work program. We will, however, complete the CDR.

Sections 411.180, 411.185, 411.190 and 411.191 describe our guidelines for timely progress toward self-supporting employment.

After assigning a ticket, beneficiaries will be allowed up to two years to prepare for employment. This two-year period is referred to in the final rules as the initial 24-month period. After two years, we will consider that beneficiaries are continuing to use a ticket, and are therefore eligible to receive the protection in Section 1148(i) of the Act regarding non-initiation of CDRs, if they work at progressively higher levels of employment. Such a progression would allow beneficiaries time to improve their employment capacities.

We are reordering certain paragraphs in § 411.180 to provide a more appropriate placement for the definitions of terms we use to describe the guidelines we use to determine if an individual is making timely progress toward self-supporting employment. We are also clarifying that, for purposes of counting the 24 months comprising the initial 24-month period, we will not count any month in which the ticket is not assigned or not in use.

Under our timely progress guidelines, in the 24-month progress review conducted by the PM, beneficiaries must demonstrate that their employment plan has a goal of at least three months of work, as defined in § 411.185, by the time of the first 12-month progress review. The PM also must find that beneficiaries can reasonably be expected to reach this goal. In response to public comments, we are revising § 411.180(c)(1) to allow beneficiaries to use months worked during the initial 24-month period to meet these requirements of the 24-month progress review, as long as the work was at the level applicable to the work requirements for the first 12-month progress review period under § 411.185. In the third year of participation in the Ticket to Work program (referred to in the final rules as the first 12-month progress review period), beneficiaries would be required to work at least three months at a specified level. In response to public comment, we are revising § 411.180(c)(2) to allow beneficiaries to use months worked during the initial 24-month period to meet this requirement as well, as long as the work was at the required level as described in § 411.185. We are revising § 411.185(a)(1), (b)(1) and (c)(1) to reference the rules in § 411.180(c)(1) and (c)(2) on when months of work performed during the initial 24-month period may be used to meet certain

requirements of the 24-month progress review and the work requirements of the first 12-month progress review period.

In the fourth year of participation in the program, beneficiaries will be required to work at least six months at the SGA level. In the fifth and succeeding years, in order to be considered to be using a ticket, they will be required to work at least six months in each year and have earnings in each such month that are 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 some beneficiaries may not attain full self-sufficiency. 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 three months out of 12 in the third year and six months out of 12 in succeeding years recognizes that some beneficiaries may not be able to work on a continuous basis.

Section 411.185 provides levels of earnings that an individual must have in order to be considered to be using a ticket. It defines when an individual will be considered to be working for purposes of meeting the timely progress guidelines. Under this definition, the required earnings level will increase over time. In the third and fourth years of participation in the Ticket to Work program (i.e. the first and second 12-month progress review periods), both Social Security disability beneficiaries and concurrent Social Security and SSI beneficiaries will be required to work at the SGA level applicable to non-blind beneficiaries for the specified number of months. This means that the beneficiary must have monthly earnings from employment or self-employment, after any applicable deductions under 20 CFR 404.1572 through 404.1576, that are more than the SGA threshold amount for non-blind beneficiaries.

The SGA threshold amount is set by regulation under 20 CFR 404.1574(b)(2), and is currently \$740 a month for non-blind beneficiaries. Social Security disability beneficiaries, including concurrent Social Security and SSI beneficiaries, who are in a trial work period or who are statutorily blind will 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, are more than the SGA threshold amount for non-blind



beneficiaries, or if their net earnings from self-employment, before any exclusions, are more than the SGA threshold amount for non-blind beneficiaries.

Under the definition of work for purposes of the first and second 12-month progress review periods, SSI disability and blindness beneficiaries will be considered to be working in a month in which the beneficiary has gross earnings from employment, before any exclusions, that are more than the SGA threshold amount for non-blind beneficiaries, or has net earnings from self-employment, before any exclusions, that are more than the SGA threshold amount for non-blind beneficiaries.

Earnings at the levels established in § 411.185 for the third and fourth years of participation in the program may not be sufficient to eliminate the payment of all disability benefits. 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. The earnings requirement for the third and fourth years are set at levels that allow 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 subsequent years of program participation.

In the fifth and subsequent years of participation in the program, both Social Security and SSI beneficiaries will be required to work for at least six months with earnings in each such month that are 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 CDRs 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 CDRs not continue for an undue length of time without a significant reduction in benefit payments due to earnings.

In § 411.190, we discuss how it will be determined if a beneficiary is meeting the timely progress guidelines. To place the rules in a more logical order according to the sequence of events and actions they discuss, we are expanding § 411.190 to incorporate the rules for placing a ticket in inactive status, as well as other rules relating to the initial 24-month period, that were previously set out in proposed §§ 411.192 and 411.220. (In the final rules, § 411.192 has been deleted, and proposed § 411.225 has been redesignated § 411.220.) During the initial 24-month period following assignment of a ticket, the PM will give beneficiaries the option of placing the ticket in inactive status if they are unable to participate in their employment plan for a significant period of time for any reason. Beneficiaries may decide to exercise this option because any months during which the ticket is in inactive status will not count toward the time limitations (i.e. the initial 24-month period) under the timely progress guidelines. The PM will explain, however, that since the ticket will not be in use during the period in which it is in inactive status, the beneficiary will be subject to a CDR, should one become due.

A beneficiary will be subject to initiation of a CDR during any period for which the beneficiary's ticket is considered to be not in use. A ticket is considered to be not in use during any month during which the ticket is in inactive status as described in § 411.190 or during which the ticket is unassigned following the close of the three-month extension period described in § 411.220. A ticket also is considered to be not in use after the period of using a ticket ends as described in § 411.171.

We are modifying the summary table in § 411.191 to reflect the rule we are adding to § 411.180(c)(2) which will allow beneficiaries to use months worked during the initial 24-month period to meet the work requirements of the first 12-month progress review if the work was at the requisite level. We also are making changes to the table in these final rules to clarify certain entries in the table, to reflect changes we are making to other sections of the final rules in subpart C, and to provide a more accurate description of the level of earnings required for SSI-only beneficiaries during the first and second 12-month progress review periods.

In §§ 411.195, 411.200 and 411.205, we discuss how the PM will conduct periodic progress reviews to ensure that beneficiaries are meeting the timely progress guidelines. The first review

will be a 24-month progress review occurring at the end of the initial 24-month period. This will be followed by 12-month progress reviews. After successfully completing a progress review, the beneficiary will be considered to be meeting the timely progress guidelines until the next review is completed. If a beneficiary disagrees with the PM's decision in any review, the beneficiary will have the right to ask SSA to review the PM's decision. The Commissioner or the Commissioner's designee will review the decision. The criteria for the 24-month progress review and the 12-month progress reviews are 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.

In response to public comments, we are adding a sentence to § 411.195(a)(1) to indicate that the activities outlined in the employment plan during the initial 24-month period may include employment.

In § 411.210, we explain that a determination that a beneficiary is not making timely progress toward self-supporting employment will result in our finding that the beneficiary no longer is using a ticket. The beneficiary would be allowed to continue in the Ticket to Work program, and the beneficiary's EN or State VR agency would be eligible for any payments that became due. In response to public comments, we are modifying § 411.210(a) to indicate that these payments would include not just outcome payments, but also milestone payments (or, for a State VR agency electing payment under the cost reimbursement payment system, payments under the cost reimbursement payment system) for which the ENs or State VR agencies are eligible. These beneficiaries, however, would once again be subject to CDRs.

This section also provides that a beneficiary who fails to meet the timely progress guidelines will have the opportunity to be considered to be using a ticket later if the beneficiary actively participates in the employment plan or works for a specified number of months. The requirements which a beneficiary must meet in order to re-enter in-use status (including the number of months, type of participation, and earnings level required) vary depending on how far the beneficiary had progressed when he or she failed to meet the timely progress guidelines.

We are providing this method of allowing a beneficiary to be considered



again to be using a ticket because, as previously stated, we recognize that due to the nature of disability, progress toward increased self-sufficiency is not always direct. Beneficiaries may make unsuccessful attempts before reaching their employment goals, and these unsuccessful attempts should not deprive them of the supports that they need to make renewed efforts.

In response to a public comment, we are adding a new § 411.210(b)(1) to provide that a beneficiary who fails to meet the timely progress guidelines during the initial 24-month period may re-enter in-use status by demonstrating three consecutive months of active participation in the employment plan. This new provision is more consistent with the requirements of active participation during this period under the timely progress guidelines under § 411.190(a). In new § 411.210(b)(1)(iii) we explain that for a beneficiary who is reinstated to in-use status after having failed to meet the timely progress guidelines during the initial 24-month period, the next review will be the 24-month progress review. We also have added a new § 411.210(b)(2) to provide a separate provision on re-entering in-use status for a beneficiary who failed to meet the timely progress guidelines in the 24-month progress review. In new § 411.210(b)(2)(i), we explain that, consistent with the proposed rules, a beneficiary who fails to meet the timely progress guidelines in the 24-month progress review may re-enter in-use status by completing three months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) within a rolling 12-month period. We have modified this provision (which was formerly a part of proposed § 411.210(b)(1)) to provide that the beneficiary also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of the beneficiary's work during the ensuing 12-month progress review period that would begin if the beneficiary were reinstated to in-use status. We also clarify in new § 411.210(b)(2)(i) and (iii) that the work requirements for this 12-month progress review period will be the work requirements that are applicable during the second 12-month progress review period.

To accommodate new § 411.210(b)(1) and (b)(2), we have renumbered the remaining numbered paragraphs that were included under proposed § 411.210(b). In § 411.210(b)(3), (b)(4) and (b)(5) of the final rules, we have added provisions to the rules on re-entering in-use status to provide that, in addition to completing the work requirements, the beneficiary also must satisfy the test of § 411.200(a)(2)

regarding the anticipated level of the beneficiary's work during the ensuing 12-month progress review period that would begin if the beneficiary were reinstated to in-use status. This change is consistent with the two-step process for the 12-month progress reviews under § 411.200(a).

For further clarification of the process of re-entering in-use status, we are adding § 411.210(c), and revising § 411.210(b), to describe the process for requesting reinstatement to in-use status, to explain that the PM will decide whether the beneficiary has satisfied the requirements for re-entering in-use status, and to provide that a beneficiary may ask us to review the PM's decision that the beneficiary has not satisfied the requirements for re-entering in-use status. These sections explain that a beneficiary must submit a written request to the PM asking that he or she be reinstated to in-use status. If the PM decides that the beneficiary has not satisfied the requirements for re-entering in-use status, the beneficiary may request that we review the decision.

Final § 411.220 was § 411.225 in the proposed rules. Final § 411.220 explains that beneficiaries who are using a ticket are eligible for an extension period of up to three months to reassign a ticket that previously was assigned to an EN or State VR agency and no longer is assigned. We have revised this section to indicate that the ticket must be in use for the beneficiary to be eligible for the extension period. During this period, we will consider that the ticket still is in use, and the beneficiary will not be subject to CDRs. In response to public comments, we are modifying this section to show the beneficiary's moving to an area not served by the previous EN or State VR agency as a reason the ticket may no longer be assigned. We also have explained in § 411.220(e) of the final rules that a beneficiary whose extension period began during the initial 24-month period will have a new initial 24-month period when the beneficiary reassigns a ticket during the extension period to an EN or State VR agency, other than the one to which the ticket previously was assigned.

We are adding a new § 411.225 to describe the circumstance of a beneficiary reassigning a ticket after the end of the extension period. This section concerns a situation that was not discussed in the proposed rules. This section explains that a beneficiary may reassign a ticket after the end of the extension period under the conditions described in § 411.150. Section 411.225(c) explains that if the extension

period began during the initial 24-month period, a beneficiary will have a new initial 24-month period when the beneficiary reassigns a ticket to an EN or State VR agency, other than the one to which the ticket previously was assigned. The reason for providing a new initial 24-month period at this time is because the beneficiary may have to reassign his or her ticket due to no fault of his or her own. For example, the EN may have gone out of business or be no longer approved to participate in the Ticket to Work program, or the beneficiary may have to relocate or may have a relapse in his or her medical condition. Section 411.225(d) explains that if the extension period began during any 12-month progress review period, the period comprising the remaining months in that review period will begin with the first month beginning after the day on which reassignment of the ticket is effective.

#### **Subpart D—Use of One or More Program Managers To Assist in 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 Public Law 106-170 identified 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 regulations 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.

Section 411.230 explains that SSA will conduct a competitive bidding process to select one or more private organizations to perform the PM's functions.

Section 411.235 describes the minimum qualifications required of a PM.

Section 411.240 describes certain limitations that are placed on a PM regarding the direct provision of services under the Ticket to Work program.

Section 411.245 identifies key responsibilities that a PM must assume to assist SSA in administering the program, including ensuring that information provided to beneficiaries is in alternate formats, meaning media appropriate to beneficiaries' impairments. We are revising paragraph (b)(2) of § 411.245 to remove the word "medical" from the term "medical impairment" used in defining "accessible format," as recommended by one commenter, because not all impairments are medical. We are also revising paragraph (c)(2) of § 411.245, as recommended by a number of commenters, to make it clear that the PM will be responsible for making determinations regarding the allocation of outcome or milestone payments when the beneficiary has been served by more than one EN.

Section 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 under the Ticket to Work program. Section 1148(f)(1)(A) 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 (that is, to be paid under one of the EN payment systems described in subpart H of these regulations) 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 providing 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.

Sections 411.300 and 411.305 of these regulations explain what an EN is and what entities are eligible to apply to serve as ENs.

Section 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. We are changing the heading of § 411.310 to make it clear that this section is not applicable to State VR agencies and that State VR agencies do not apply to be ENs.

We are revising the first sentence of § 411.310(a) to make it clear that a State VR agency does not have to respond to our request for proposals (RFP) to function as an EN.

We are adding paragraph (c) to this section to § 411.310 to provide a cross-reference to § 411.360 on how a State VR agency begins to participate as an EN in the Ticket to Work program.

Section 411.315 describes the minimum qualifications for an EN under the Ticket to Work program. In response to public comments, we are adding language to paragraph (a)(2) of § 411.315 to provide examples of what we mean by programmatically accessible.

We are revising section 411.315(b)(2) to make it clear that ENs are not required to provide medical or related health services or be licensed to provide such services, but that the EN should take reasonable steps to assure that if any medical and related health services are provided, such medical and health related services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of these services.

Section 411.315 provides that an EN must have applicable certificates, licenses, or other credentials if State law in the entity's State requires such documentation to provide VR services, employment services or other support services in the State.

Section 411.320 describes the major responsibilities of an entity serving as an EN.

Section 411.321 explains the conditions under which we will terminate an agreement with an EN for inadequate performance. We have clarified that we will terminate an agreement with an EN for non-compliance in any of the three areas cited in this section.

Section 411.325 lists the reporting requirements placed on an entity serving as an EN. We are adding a new paragraph (e) to require that ENs submit information to assist the PM conducting the reviews necessary to determine whether a beneficiary is making timely progress towards self-supporting employment. This requirement is necessary to obtain information for determining whether a beneficiary will continue to receive CDR protection. It will make the EN reporting requirement consistent with the reporting requirement of State VR agencies regarding timely progress reviews. As a result of adding a new paragraph (e), we are redesignating the proposed paragraphs (e) through (i) as paragraphs (f) through (j) in the final rules. We are deleting the requirement from paragraph (g) in the proposed rules (redesignated as paragraph (h) in the final rules) to submit a financial report that shows the percentage of the EN's budget that was spent on serving beneficiaries with tickets, including the amount spent on beneficiaries who return to work and those who do not return to work. We are making this change because of many public comments indicating that this would be a burdensome reporting requirement.

Section 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. In general, 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 CFR §§ 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 functions as an EN when serving a beneficiary with a ticket. The Commissioner is directed to provide for periodic opportunities to exercise this election.

Generally, under the Ticket to Work program, State VR agencies will continue to operate as they do today. For example, when a State VR agency functions as an EN, it will provide services in accordance with the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), and a client will complete an individualized plan for employment with the State VR agency. If a State VR agency has a dispute over a payment under the cost reimbursement payment system, the State VR agency will use the dispute resolution procedures already in place under 20 CFR 404.2127 and 416.2227. The new functions and responsibilities for State VR agencies under the Ticket to Work program include checking with the PM if the State VR agency wants to see if a disabled beneficiary who is seeking services from the State VR agency has a ticket that is available for assignment or reassignment, submitting information to the PM required to assign or reassign a beneficiary's ticket to the State VR agency, routing EN payment dispute questions through the PM, submitting preliminary and post-employment data to the PM, and providing reports regarding the outcomes achieved by beneficiaries assigning tickets to the State VR agency in those cases where the State VR agency functioned as an EN.

Subpart F of these regulations establishes that the cost reimbursement payment system is a payment option under the Ticket to Work program for State VR agencies, subject to certain limitations described in § 411.585(a) and (b) of subpart H of these final rules.

Section 411.350 explains that a State VR agency must participate in the Ticket to Work program if it wishes to

receive payment from SSA for serving disabled beneficiaries who are issued a ticket. We have clarified this section by adding the words "who are issued a ticket".

Section 411.355 describes the different payment options available to the State VR agencies. Section 411.355 explains that, subject to the limitations in § 411.585 of subpart H, State VR agencies, on a case-by-case basis, may participate in the Ticket to Work program either as an EN or under the cost reimbursement payment system. This section also explains that the State VR agency must use the EN payment system it elected when serving a beneficiary as an EN. We have modified the language and structure of this section for added clarity.

Section 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. Paragraph (a) of § 411.360 describes the method SSA will use to communicate with State VR agencies about implementation of the Ticket to Work program in States. Paragraph (b) includes a reference to the limitations on payment in § 411.585. We have made these changes to this section to add clarity.

Section 411.365 describes how a State VR agency will select an EN payment system for use when functioning as an EN. In these final rules, we are modifying § 411.365 to eliminate the requirement that the Governor or Governor's designated representative must sign the letter advising SSA of which EN payment system the State VR agency will use when it functions as an EN with respect to a beneficiary who has a ticket. We are revising this section to provide that the director of the State agency 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.*), or the director's designee must sign the letter advising SSA of the State VR agency's election of an EN payment system. We are making this change to the final rules to respond to comments that the director or his or her designee is in a better position to make the payment election decision.

Section 411.370 explains that a State VR agency generally may choose to be paid under the cost reimbursement payment system when serving beneficiaries with tickets, subject to the limitation in § 411.585(b) of subpart H of these final rules.

Section 411.375 explains that State VR agencies must continue to provide services to beneficiaries with tickets under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

Section 411.380 describes how a State VR agency can determine if a disabled beneficiary seeking services has been issued a ticket and, if so, the status of the ticket. We have made changes to this section in the final rules to provide a more accurate description of the information the State VR agency can obtain from the PM regarding a beneficiary's ticket status.

Section 411.385 explains that once the State VR agency determines that a beneficiary is eligible for vocational rehabilitation services, the beneficiary and a representative of the State VR agency must agree to and sign an IPE. In these final rules, we are revising the provisions of § 411.385(a) to conform to the changes we are making to §§ 411.140 and 411.150 regarding the requirements that must be met in order for a beneficiary to assign or reassign a ticket. We explain that the parties must agree to and sign an IPE in order for the beneficiary to assign or reassign his or her ticket to the State VR agency. We explain that §§ 411.140(d) and 411.150(a) and (b) describe the other requirements which must be met for a ticket to be assigned or reassigned, respectively. Final § 411.385(a) explains that in order for a beneficiary's ticket to be assigned or reassigned to the State VR agency, the State VR agency must submit the information described in § 411.385(a)(1)–(a)(3) to the PM. This information includes the method of payment which the State VR agency is selecting for a particular beneficiary.

We are revising § 411.385(b) to change the designation of the person in the State VR agency who is required to sign the completed form which the State VR agency must submit to the PM in order for a ticket to be assigned or reassigned to the State VR agency. We are revising this section to permit "a representative of the State VR agency" to sign the form as this provides greater flexibility to the State VR agency than our proposed requirement that the form be signed by "the State VR agency representative working with the beneficiary."

Section 411.390 describes what a State VR agency should do when a beneficiary already receiving services under an approved IPE becomes eligible for a ticket that is available for assignment and decides to assign the ticket to the State VR agency. We are modifying this section in the final rules to provide a more accurate description

of the circumstances in which an individual who is already receiving services from the State VR agency under an IPE may become eligible for a ticket. We also are adding a provision to clarify that the State VR agency must submit the completed and signed form described in § 411.385(a) and (b) to the PM in order for the beneficiary's ticket to be assigned to the State VR agency. In addition, we explain that § 411.140(d) describes the other requirements which must be met in order for the beneficiary to assign a ticket.

Section 411.395 explains that each State VR agency will be required to provide periodic reports to the PM on the specific outcomes achieved with respect to the services provided to beneficiaries under the Ticket to Work program in cases where the State VR agency functioned as an EN.

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.

Sections 411.400 and 411.405 explain that an EN may refer a beneficiary that 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.

Section 411.410 explains that these agreements should be broad-based and apply to all beneficiaries who may be referred by an EN to a particular State VR agency. In the final rules, we are modifying § 411.410 to indicate that the general guideline that the agreements should be broad-based and apply to all beneficiaries who may be referred by an EN to a State VR agency is not intended to preclude an EN and a State VR agency from entering into an individualized agreement to meet the needs of a single beneficiary if both the EN and State VR agency wish to do so.

Section 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.

Section 411.420 provides guidance and examples of what could be included in these agreements.

Section 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.

Section 411.430 explains what the PM should do when notified that a referral has been attempted in the absence of an agreement.

Section 411.435 establishes procedures for resolving disputes arising under these agreements between ENs and State VR agencies. We are revising this section by replacing the word "should" in § 411.435(a) and (b) with "must," to establish the regulatory policy as a requirement to be followed in the dispute resolution process.

#### **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 regulations establishes the requirements for the IWP that must be developed when an EN and a beneficiary with a ticket agree to work together under the Ticket to Work program. Beneficiaries who are clients of the State VR agencies will continue to use the IPE rather than an IWP.

Section 411.450 explains what an IWP is. In response to comments on the proposed rule, we are revising this section to spell out "individual work plan" for clarity, and to add the words "(other than a State VR agency)" to clarify that IWPs would not be a requirement for State VR agencies.

Section 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.

Section 411.460 explains that the beneficiary and the EN share the responsibility for determining the content of the IWP.

Section 411.465 describes the specific information that must be included in each IWP.

Section 411.470 describes when an IWP becomes effective. In the final rules, we are revising § 411.470 to conform to the changes we are making to §§ 411.140 and 411.150 concerning the requirements which must be met in order for a beneficiary to assign or reassign his or her ticket. We are also revising § 411.470(b) to make the effective date of an IWP consistent with the effective date of the assignment or reassignment of the beneficiary's ticket.

#### **Subpart H—Employment Network Payment Systems**

Section 1148(h) of the Act provides that the Ticket to Work program shall provide for payment authorized by the Commissioner to ENs under either an

outcome payment system or an outcome-milestone payment system. Each EN must elect which payment system it will use.

The outcome payment system and the outcome-milestone payment system are defined in § 411.500. This section also defines certain other terms we use in this subpart relating to the EN payment systems.

The first term we define in § 411.500 is the "payment calculation base." This term relates to the amount we will pay an EN (including a State VR agency choosing to be paid as an EN) under either EN payment system. We will pay an EN for specific milestones or outcomes that a beneficiary who assigns the ticket to the EN achieves, not for the costs of specific services that the EN provides. We base milestone and outcome payments upon the prior calendar year's national average disability benefit payable under title II or title XVI, not upon the specific benefit payment payable to a beneficiary with a ticket. We call the national average benefit payment the payment calculation base. In § 411.500(a)(1), we define the payment calculation base applicable in connection with a title II or concurrent title II/title XVI disability beneficiary. In § 411.500(a)(2), we define the payment calculation base applicable in connection with a title XVI disability beneficiary, who is not concurrently a title II disability beneficiary.

In § 411.500(b), we define the term "outcome payment period." Both EN payment systems provide for a payment to an EN for each month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of the performance of substantial gainful activity (SGA) or by reason of earnings from work activity. Each beneficiary who is issued a ticket has one outcome payment period in connection with that ticket. In § 411.500(b), we explain that an individual's outcome payment period begins with the first month, ending after the date on which the ticket was first assigned, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual due to SGA or earnings. We also explain that the outcome payment 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.

In these final rules, we are modifying the definition of the "outcome payment system" in § 411.500(c) to clarify that this payment system provides for a schedule of payments to an EN for each

month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. We are also expanding § 411.500 in these final rules to include definitions of "outcome payment" and "outcome payment month." In final § 411.500(d), we explain that "outcome payment" means a payment for an outcome payment month. In final § 411.500(e), we explain that "outcome payment month" means a month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. Final § 411.500(e) also explains that the maximum number of outcome payment months for each ticket is 60. This provision appeared in § 411.500(c) of the proposed rules. We are moving the provision to § 411.500(e) of the final rules where we explain what we mean by an outcome payment month.

Final § 411.500(f), which we proposed as § 411.500(d), provides a general description of the term "outcome-milestone payment system." This payment system provides 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 four milestones directed toward the goal of permanent employment. In these final rules, we are increasing the number of milestones for which payment may be made under the outcome-milestone payment system from the two milestones we proposed in the NPRM to four milestones. This is one of four major changes we are making to the outcome-milestone payment system in response to public comments, all of which we discuss more fully below.

In addition, in these final rules we are modifying final § 411.500(f) to clarify that the milestones for which payment may be made must occur prior to the beginning of an individual's outcome payment period. We are also clarifying that the payments which may be made to an EN under the outcome-milestone payment system consist of milestone payments which may be made for any milestones occurring prior to the individual's outcome payment period, as well as any outcome payments which may be made for months during the individual's outcome payment period. We deleted the last sentence in proposed section 411.500(d) that compared the total payments under the outcome-milestone payment system,

because this is stated in section 411.525(a).

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, we will pay the State VR agency 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, we will pay the State VR agency 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 under the Ticket to Work program are discussed in §§ 411.510 and 411.585.

Each provider will elect, in writing, the EN payment system which it will be paid under when it agrees to become an EN. Similarly, each State VR agency will notify us in writing regarding which EN payment system it will use when it chooses to function as an EN for a beneficiary with a ticket. We will periodically offer each EN (including each State VR agency) the opportunity to change its elected payment system. If the EN (or State VR agency) does change its elected payment system, the change will apply only to tickets assigned to the EN (or State VR agency) after SSA is notified about the change in the elected payment system. These provisions, including the frequency of opportunity for an EN to change its payment system, are discussed in §§ 411.505 through 411.520.

In the final rule, we are making a number of changes to §§ 411.505 through 411.520. These changes correct grammatical errors and clarify our intentions, but do not change the intent of the proposed sections.

- In final § 411.505 we are combining the first two sentences concerning an EN's choice of payment systems into one sentence.

- In final § 411.510(b) we are placing a new parenthetical sentence between the two sentences we proposed. The first sentence of this paragraph explains that a State VR agency must communicate its decision to serve a beneficiary to the PM. The new second sentence provides a reference to that portion of the final rule where we discuss the PM and its role in the Ticket to Work program.

- In final § 411.515(a) we are making some editorial changes to the second sentence and clarifying the third sentence to note what day in the month an EN's payment system election becomes effective. Also, we are adding a new sentence to the end of this paragraph which clarifies that a State VR agency may also change its elected EN payment system.

- In final § 411.515(b) we are making some editorial changes and expanding the explanation of when the 12-month period for making a change in an EN payment system for any reason ends. We had proposed that the period would end with the 12th month following the month in which the EN first elects an EN payment system. The final rule adds an alternative month, the 12th month after the month we implement the Ticket to Work program in the State in which the EN (or State VR agency) operates, if it is later.

- In final § 411.515(c) we are correcting grammatical errors and deleting the date in the last sentence because it is unnecessary. This sentence notes that we will offer ENs the opportunity to make a change in their elected payment systems at least every 18 months.

- In final § 411.520 we are correcting grammatical errors in the title and text and clarifying that the rule applies to State VR agencies as well as to ENs.

Sections 411.525 through 411.565 provide our rules for computing payments to ENs under the two EN payment systems. They also describe what payments may be made and when, and discuss allocating payments to multiple ENs to whom the ticket was assigned at different times.

Sections 1148(h)(2) and (h)(3) of the Act provide that the outcome payment system and the outcome-milestone 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, during the individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits based on disability or blindness are not payable to the individual because of work or earnings. There can be a maximum of 60 outcome payment months and, therefore, a maximum of 60 monthly outcome payments. In § 411.525(a), we explain that we will calculate payments for outcome payment months under both EN payment systems using the payment calculation base as defined in § 411.500(a)(1) or (a)(2). We deleted the second sentence in proposed § 411.525(a). The proposed sentence referred to the fact that the payment

calculation base we use to compute the value of payments for outcome months attained in one calendar year is based on the preceding calendar year's national average disability benefit payment information. This is simply a restatement of the definition of the payment calculation base that is found in the references cited in the first sentence of § 411.525(a), which we did not change.

Section 411.525(a)(1)(i) discusses payments under the outcome payment system, explaining that an EN is eligible for a monthly outcome payment 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. This section also provides that monthly payments under the outcome payment system will be 40 percent of the payment calculation base. 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, we will refigure the payment calculation base for the next year. For clarity, we combined the last two sentences of proposed § 411.525(a)(1)(i) and added a reference to § 411.550. We also noted that we will round our computation of the outcome payment to the nearest whole dollar.

Section 411.525(a)(1)(ii) provides criteria for determining whether a month occurring after the month in which a beneficiary's entitlement to Social Security disability benefits ends or eligibility for SSI benefits based on disability or blindness terminates due to work activity or earnings will be considered to be an outcome payment month. We are making two changes to the rules we proposed. First, in final § 411.525(a)(1)(ii), we are substituting the word "with" for the word "in" to clarify that the months we are talking about are those after the month "with" which such entitlement ends or eligibility terminates. Second, in § 411.525(a)(1)(ii)(A), we are clarifying that the level of earnings required must be more than the SGA threshold amount specified in 20 CFR 404.1574(b)(2) (or 20 CFR 404.1584(d) for individuals who are statutorily blind). We had proposed that earnings could be at or above the SGA dollar amount, but this is ambiguous in that earnings at the dollar amount specified in 20 CFR 404.1574(b)(2) and 404.1584(d) are not indicative of SGA, while earnings above the SGA threshold amounts in the referenced rules are. It was our intent in this section, as well as in proposed § 411.535, to require that earnings

exceed the monthly SGA threshold amount.

As a result of these changes, final § 411.525(a)(1)(ii) provides two criteria for us to use when determining whether we will consider any month after the month with which disability entitlement ends or eligibility terminates because of work or earnings to be an outcome payment month. First, the individual must have gross earnings from employment (or net earnings from self-employment) in that month that are more than the SGA threshold dollar amount in 20 CFR 404.1574(b)(2) (for an individual who is not statutorily blind) or in 20 CFR 404.1584(d) (for an individual who is statutorily blind). Second, the individual cannot be entitled to any monthly benefits under title II or eligible for any benefits under title XVI for that month.

Section 411.525(a)(2) explains what payments we can make to an EN under the outcome-milestone payment system. This system provides payments to an 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, outcome payments made during the outcome payment period. For clarity, we inserted a new sentence after the first one we proposed. It notes that milestones must occur prior to the beginning of the beneficiary's outcome payment period and meet the requirements of § 411.535. Also, consistent with changes we are making elsewhere in these final rules, we are amending the first sentence of § 411.525(a)(2) to state that we may pay an EN for up to four milestones achieved by a beneficiary who assigned his or her ticket to the EN.

Section 411.525(b) explains the provision in section 1148(h)(3)(C) of the Act concerning the limitation on total payments to an EN under the outcome-milestone payment system. The Act requires us to design the outcome-milestone payment system so that an EN's total payments with respect to each beneficiary is less than, on a net present value basis, the total amount the EN would receive if paid under the outcome payment system. In the second sentence of § 411.525(b) we explain that an EN's total potential payments under the outcome-milestone payment system will be about 85 percent of the total that would be payable under the outcome payment system for the same beneficiary.

Section 411.525(c) explains that we will pay an EN to whom a ticket has been assigned only for milestones or outcomes that are achieved prior to the month in which an individual's ticket

terminates, as described in § 411.155.

We will not pay milestone or outcome payments based on an individual's work activity or earnings in or after the month a ticket terminates.

Sections 411.530 through 411.545 provide our rules for computing payments to ENs under the outcome-milestone payment system. In response to the public comments, we are making four major changes to this EN payment system.

- First, we are adding two milestones. We describe them in § 411.535.

- Second, we are doubling the total value of the potential milestone payments. We provide these payment amounts in § 411.540.

- Third, we are spreading, over 60 months as opposed to 12, the outcome payment reductions made on account of milestone payments received. We discuss this reduction in § 411.530.

- Fourth, we are substituting a flat outcome payment rate of 34 percent for the graduated monthly outcome payments we proposed. We discuss how we calculate the payment amounts for outcome payment months under the outcome-milestone payment system in § 411.545.

Section 411.530 describes how we will reduce outcome payments under the outcome-milestone payment system when an EN receives milestone payments. In the NPRM, we proposed to reduce the first 12 outcome payments by the amount paid out as milestone payments. However, in response to public comments, we are extending the reduction period over the full 60 months of the outcome payment period. In addition, we are clarifying two points in final § 411.530. First, we explain that an EN's outcome payments will be reduced due to the milestone payments received by that EN, not due to milestone payments paid to another EN. Second, we are broadening the language in the final rule by deleting the word "already" from the language we proposed. This change allows for adjustments should we make a retroactive payment for a milestone that a beneficiary achieved before the outcome payment period began.

Section 411.535 provides the milestone requirements. We are making three changes to this section. First, we are clarifying that the milestones occur after the date on which the ticket was first assigned and the beneficiary starts to work. Just as the outcome payment period cannot begin until after the date the beneficiary first assigns a ticket, a beneficiary cannot begin to attain a milestone until after he or she first assigns the ticket. Second, as we explained in the changes we are making

to § 411.525(a)(1)(ii)(A), we are clarifying that the level of a beneficiary's monthly earnings required for a milestone must be more than the SGA threshold amount. Third, we are including two additional milestones. The first milestone we are adding is met when a beneficiary works for one calendar month and has gross earnings from employment (or net earnings from self-employment) for that month that are more than the SGA threshold amount. The other milestone we are adding, which is the fourth milestone, is met when a beneficiary works for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self-employment) for each of the 12 months that are more than the SGA threshold amount. As a result of these additions, we are renumbering proposed milestones one and two as final milestones two and three. These milestones also require work at more than the SGA threshold amount for three and seven months, respectively, within a 12-month period. Additionally, in § 411.535 we are providing that any of the work months used to meet the first, second, or third milestone may be used to meet a subsequent milestone.

Section 411.540 provides how we will calculate the payment for each milestone. In the proposed rules we provided for the payment of two milestones and based their calculation on a percentage of the payment calculation base that together represented approximately 10 percent of the total payments possible under the outcome-milestone payment system. In final § 411.540 we are not changing our method of computing milestone payments or revising the payment percentages for the two milestones we proposed, but we are adding two more milestones and the net effect is a doubling of the total value of the milestone payments. The value of the first additional milestone payment is equal to 34 percent of the payment calculation base, and the value of the other additional milestone payment is equal to 170 percent of the payment calculation base. The total value of the additional milestone payments is equal to approximately 10 percent of the potential payments possible under the outcome-milestone payment system. When combined with the total value of the milestone payments we originally proposed and which we are retaining in these final rules, the total value of the four potential milestone payments under the outcome-milestone payment system is equal to approximately 20 percent of the total possible payments

available under the outcome-milestone payment system.

We are also making four other changes to final § 411.540. First, we are stating that after we multiply the applicable milestone percentage by the payment calculation base, we will round the resulting milestone payment computation to the nearest whole dollar. Second, we are adding two paragraphs that identify the attainment month for each of the two additional milestones. This month is important because we use the payment calculation base for the calendar year in which the attainment month occurs when computing the milestone payment. Third, we are redesignating proposed paragraphs (a) and (b) as paragraphs (b) and (c) and proposed paragraphs (c) and (d) as paragraphs (f) and (g). These paragraphs discuss the payment calculations and attainment months for the two milestones we proposed. Fourth, we are deleting the second sentence we proposed in paragraphs (a) and (b), now final paragraphs (b) and (c). The sentence referred to the two proposed milestone payments as being equal to two and four outcome payments, respectively. Technically, this is an incorrect statement because outcome payments under the outcome-milestone payment system will vary depending on how much has been paid in milestone payments.

Section 411.545 states how, under the outcome-milestone payment system, we will calculate the amount of the outcome payment. We had proposed graduated monthly outcome payments. However, in response to public comments, we are substituting a flat outcome payment rate for the one we proposed. This rate is 34 percent of the payment calculation base for the calendar year in which the outcome payment month occurs, rounded to the nearest whole dollar, and then reduced, if necessary, as described in § 411.530. This flat rate makes the total potential payments under the outcome-milestone payment system about 85 percent of the total potential payments that could be made under the outcome payment system. We did not change the rate differential between the two EN payment systems as many commenters suggested and explain our reasons for this in the responses to the public comments below.

Section 411.550 provides the payment amounts for outcome payment months under the outcome payment system. An outcome payment under the outcome payment system is equal to 40 percent of the applicable payment calculation base. Consistent with clarifications we are making in §§ 411.540 and 411.545,

we are modifying § 411.550 to state that we will round our computation of the outcome payment to the nearest whole dollar.

Section 411.555 provides that an EN may generally keep the milestone and outcome payments it receives under its elected EN payment system, even if the beneficiary does not sustain work for all 60 outcome payment months. The proposed rules for this section, by reference to § 411.560, indicated that retroactive adjustments to payments already received by ENs may occur when we allocate a prior payment with another EN. In the final rules, we expand § 411.555. We placed the general rule allowing ENs to keep the milestone and outcome payments for which they are eligible in paragraph (a) and added paragraphs (b) and (c). Paragraph (b) discusses the adjustments we may have to make should we determine that we paid an EN an incorrect amount. Paragraph (c) refers to the EN notification and dispute resolution process we have for overpayments and underpayments.

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 will 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. It also is 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 will pay each EN in accordance with its elected payment system at the time the ticket was assigned to each EN.

In response to public comments, we are expanding the discussion in the last sentence of proposed § 411.560 to clarify how the PM will make a payment allocation determination when more than one EN qualifies for a payment. The PM will base its determination on the contribution of services provided by each EN toward the achievement of the outcomes or milestones. Also, outcome and milestone payments will not be increased because the payments are shared between two ENs. In addition to these changes, we are correcting grammatical errors in the title of § 411.565.

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

Section 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, an EN must also submit a written request for payment to the PM. Since outcome payments cannot be made unless the beneficiary has sufficient work or earnings to reduce the Federal cash benefits to zero, we are retaining the general requirement we proposed for an EN's payment request to be accompanied by evidence of the beneficiary's work or earnings. However, in response to public comments, we are making three changes to § 411.575(b). First, we are providing an exception to the general requirement for evidence of a beneficiary's work or earnings in order to cover those situations in which the EN requesting the payment does not currently hold the ticket because it is unassigned or reassigned to another EN. Second, we are allowing the EN to submit its request for payment and evidence of work or earnings on a quarterly basis, rather than on a monthly or bimonthly basis as we proposed. Third, we are incorporating the rules we proposed in §§ 411.575(b)(3) through (5) in § 411.575(b)(3), and deleting §§ 411.575(b)(3) through (5).

In addition to these changes, we are making other clarifying changes to § 411.575. We are adding three new paragraphs at § 411.575(a)(1)(ii), (iii) and (iv) to discuss the requirements for an EN to receive a milestone payment. These requirements are: (1) The milestone must occur prior to the outcome payment period as defined in § 411.500(b), (2) the provisions in § 411.535 must be satisfied, and (3) the milestone cannot occur in or after the month in which the ticket terminates as defined in § 411.155. We also are modifying the language in final § 411.575(a)(1)(i), which was proposed as § 411.575(a)(1). The revised language clarifies that we will pay an EN for milestones only if the EN's elected payment system in effect at the time the beneficiary assigned the ticket to the EN was the outcome-milestone payment system. The wording we proposed had suggested that the payment system election and ticket assignment had to occur simultaneously and this was incorrect. Finally, we added paragraph (b)(1)(iii) to final § 411.575 to clarify that in addition to the other requirements listed, we will pay an EN for an outcome payment month only if

the ticket has not terminated for any of the reasons listed in § 411.155.

Section 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, the opening paragraph of § 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. Each entity can be paid as an EN under its respective EN payment system. 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 the State VR agency under the cost reimbursement payment system if it meets the criteria for reimbursement and if we have not first paid an EN under its elected payment system with respect to the same beneficiary and ticket. 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. 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.

In response to a public comment, we are cross-referring § 411.560 in the opening paragraph of § 411.585. Section 411.560 explains how the PM will make a determination of payment allocation should more than one entity qualify for payment as an EN.

Section 411.587 is a new section that we are adding in response to a comment. It explains which provider we will pay if, with respect to the same ticket, we receive two requests for payment and one request is from a provider that elected an EN payment system and the other request is from a State VR agency that elected payment under the cost reimbursement payment system.

Section 411.590 describes what an EN or State VR agency serving as an EN can do if either disagrees with our decision on a payment request it submits. 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. In the final rules, we are broadening paragraph (d) of § 411.590 to clarify that any determination we make about a beneficiary's right to disability cash benefits, not just a determination

that a beneficiary appeals, could affect an EN's payment or result in an adjustment to payments already made to an EN. In addition, we made some editorial changes throughout this section.

Section 411.595 identifies various methods we will use to monitor the EN payment systems for financial integrity. Section 411.597 states that we will 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.

#### **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, we are required to provide a party to a dispute a reasonable opportunity for a full and fair review of the matter in dispute. Finally, beneficiaries and State VR agencies may have disputes. The various dispute resolution mechanisms are discussed below.

#### **PM and EN Disputes With SSA**

Since PMs and ENs, other than State VR agencies functioning as ENs, will operate under contracts with SSA, disputes between SSA and PMs and between SSA and ENs that are not State VR agencies will be subject to the dispute resolution procedures contained in the contracts with SSA.

#### **Disputes between Beneficiaries and ENs That Are Not State VR Agencies**

There is a three-step process for resolving disputes between beneficiaries and ENs that are not State VR agencies. 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, each EN is 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 during the implementation or amending of 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 § 411.615). This second step is intended to provide the parties to the dispute the opportunity to present their case before an impartial third party, the PM. The third step involves bringing the dispute to SSA.

Section 411.605 explains the responsibilities of an EN that is not a State VR agency 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. Section 411.610 identifies specific points in the rehabilitation process when an EN that is not a State VR agency must inform beneficiaries about the procedures for resolving disputes.

Section 411.615 describes how a disputed issue will be referred to the PM, including what information should be submitted. Section 411.620 tells how long the PM has to provide a written recommendation on how to resolve the dispute. Section 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 that is not a State VR agency has the option of bringing the dispute to the attention of SSA for resolution.

Section 411.625 also describes the information that must be submitted to SSA to facilitate our review of the dispute. Section 411.630 explains that SSA's decision is final.

Section 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.

#### **Disputes Between ENs and PMs**

Section 411.650 explains that a dispute between an EN that is not a State VR agency and the PM, that does not involve an EN's payment request, will be resolved using the procedures for resolving disputes developed by the PM. If the matter cannot be resolved using these procedures, it will be forwarded to SSA for resolution. Section 411.655 explains how a PM will refer disputes to us. Section 411.660 explains that SSA's decision on a dispute between an EN that is not a State VR agency and a PM is final.

A dispute over a payment request submitted by an EN, including a State

VR agency serving as an EN, will be resolved using the dispute resolution procedures contained in § 411.590.

#### **Disputes Between Service Providers and PMs**

We are required to provide a mechanism for resolving disputes between service providers and PMs. Most service providers approved to serve beneficiaries under the Ticket to Work program will be serving as ENs. Disputes between ENs and PMs over payments are discussed in subpart H. Other disputes between ENs and PMs are discussed above, and in §§ 411.650, 411.655, and 411.660. State VR agencies that choose not to serve beneficiaries with tickets as ENs will be the only other service providers having a relationship with a PM under the Ticket to Work program. Disputes between a State VR agency that is not functioning as an EN and a PM, that involve issues related to ticket assignment and do not involve a request for payment or other reimbursement issue, will be handled in accordance with the PM's dispute resolution procedures. A dispute over a payment request submitted by a State VR agency which is serving a beneficiary with a ticket under the vocational rehabilitation cost reimbursement system (see sections 222(d) and 1615(d) of the Social Security Act) will be resolved under existing regulations governing the resolution of disputes regarding a payment request (see 20 CFR §§ 404.2127(a) and 416.2227(a)).

#### **Disputes Between Beneficiaries and State VR Agencies**

Section 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, regardless of 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 Social Security Act.

In response to comments on the proposed rules, we are revising rules in subpart I (§§ 411.600, 411.605, 411.610, 411.615, 411.625, 411.630, 411.635, 411.640, and 411.650) to clarify whether they refer to ENs that are not State VR agencies, or those that are State VR agencies.

#### **Subpart J—The Ticket to Work Program and Alternate Participants Under the Programs for Payments for Vocational Rehabilitation Services**

Section 101(d) of Public Law 106–170 provides for a graduated implementation of the Ticket to Work Program. 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 Public Law 106–170 if the alternate participant chooses to serve as an EN under the program.

Subpart J of these regulations describes how implementation of the Ticket to Work program affects the current alternate participant payment programs under 20 CFR 404.2101 *et seq.* and 416.2201 *et seq.* Section 411.700 explains what an alternate participant is. Sections 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.

#### **Public Comments on the Notice of Proposed Rulemaking**

When we published the NPRM in the **Federal Register** on December 28, 2000 (65 FR 82844), we provided interested parties 60 days to submit comments. We received comments from over 400 commenters, including national, State and community-based agencies and private organizations serving people with disabilities, beneficiaries, and other individuals. We considered carefully the comments we received on the proposed rules in publishing these final regulations. The comments we received and our responses to the comments are set forth below. Although

we condensed, summarized, or paraphrased the comments, we believe that we have expressed the views accurately and have responded to all of the relevant issues raised.

#### *Comments and Responses*

#### **Subpart B—Tickets Under the Ticket to Work Program**

*Comment:* Several commenters indicated that we should delay the issuance of tickets until these final regulations were published.

*Response:* After consideration of the public comments on our proposed rules as well as other views on the best time to begin the release of the tickets, we have decided to delay releasing tickets until after these final regulations are effective. These regulations are effective 30 days after the date of their publication in the **Federal Register**. We believe that this will allow for the development of an infrastructure of public and private sector employment networks to serve beneficiaries who receive a ticket. We also believe that it is critical to issue tickets as soon as possible after these regulations are effective.

#### *Section 411.120 What Is a Ticket Under the Ticket to Work Program*

*Comment:* One commenter suggested that, in the interest of making these regulations user-friendly, we add a cross-reference from § 411.120, regarding what is a ticket under the Ticket to Work Program, to § 411.140, which describes when an individual can assign the ticket.

*Response:* We are not adopting this comment. However, we agree that this section requires clarification to include a more complete description of the format and wording of the ticket, as provided by section 101(e)(2) of Public Law 106–170. Accordingly, we have expanded § 411.120 in the final rules to include a fuller description of the format and wording of the ticket.

#### *Section 411.125 Who is Eligible To Receive a Ticket Under the Ticket to Work Program?*

*Comment:* We received many comments in response to proposed § 411.125(a)(1) which provided 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. Some commenters agreed that it would not be appropriate to provide transitional youth with tickets, as it might interfere with their pursuit of an education. The majority of commenters, though, indicated that we should allow individuals under age 18 access to a

Ticket, to try to ensure that they do not begin a life-long dependency on public benefits.

*Response:* As we indicated in the Preamble to the proposed rules, as we gain experience with the Ticket to Work program, we plan, at a later time, to explore the possibility of expanding the age criteria for receiving a ticket to include those SSI beneficiaries age 16 and older who are eligible for disability benefit payments based on the childhood disability standard. While we are not adopting the recommendation to provide these individuals with tickets in these final rules, we are publishing a separate notice in this issue of the **Federal Register** to request public input for our consideration in developing possible approaches to serve the needs of transition-age youth with disabilities who are receiving payments under programs we administer under the Act.

*Comment:* Proposed § 411.125(a)(3)(i) and (ii) provide that an individual will only be eligible for a ticket in a month in which our records show that the individual's case has not been designated as a medical improvement expected (MIE) diary review case, or that we have conducted at least one continuing disability review (CDR) on such an individual and have made a final determination or decision that disability continues. Many commenters stated that we should provide tickets to beneficiaries regardless of whether they have been designated as a medical improvement expected diary review case. They stated that the MIE categorization is an administrative convenience to determine the frequency of CDRs, and is not a sufficiently precise tool to deny beneficiaries immediate access to a ticket. Others indicated that SSA should examine, on a disability-by-disability basis, which people whose cases have been designated as a MIE diary case are likely to remain on the rolls after initial CDR, and issue those people a ticket. Other commenters indicated that the majority of individuals designated as MIE remain on the rolls after the first CDR, and that we would, therefore, needlessly be delaying the opportunity to participate in the Ticket to Work program for these individuals.

*Response:* We are not adopting this comment. As we indicated in the Preamble of the proposed rules, “Because these beneficiaries have conditions that are expected to medically improve in a relatively short period of time, they could be expected to return to work without the need for services under the Ticket to Work program.” Moreover, we do not believe, as some commenters stated, that the

MIE classification is merely an “administrative convenience” and that it, therefore, has no relevance for determining who gets a ticket.

We also believe that using a medical improvement diary system to help identify beneficiaries who should receive tickets is the most administratively feasible approach currently available to us. We believe that the approach outlined in the proposed rules, and provided in these final rules, strikes the proper balance between equitable treatment of disability beneficiaries and ensuring, to the extent possible, that the resources that will be available in the Ticket to Work program are distributed in the most effective and efficient manner.

We believe that the use of the medical improvement diary system is the most practical and efficient means available to identify those beneficiaries with impairments that are expected to improve within a relatively short period of time so as to permit the individual to engage in SGA. However, we believe that it may be possible to find ways to improve that system for its use in connection with the Ticket to Work program. Therefore, we plan to conduct an evaluation of the methodology for the existing MIE category within the CDR classification system to assess possible ways to improve the system for use in identifying those beneficiaries for whom near-term medical improvement should preclude the immediate receipt of a Ticket.

*Comment:* Many commenters indicated that there should not be a limit on the number of tickets a person can receive in a lifetime, as long as a person is not using more than one ticket at a time. Other commenters added that a person should be eligible for another ticket when the cash value of the first one has been exhausted. They cited potential inequities involving beneficiaries (1) Whose benefits are reinstated under the provisions of section 223(i) or 1631(p) of the Act (as added by section 112 of Public Law 106–170); (2) who retain eligibility under section 1619(b) of the Act; and (3) who receive services from the State VR agency that elects payment under the cost reimbursement payment system.

*Response:* As in the proposed rules, § 411.125(b) of the final rules does not limit the total number of tickets that an individual may be eligible to receive during his or her lifetime under the Ticket to Work program. Rather, consistent with section 1148 of the Act, the regulation limits the number of tickets an individual may receive during any period during which the individual is either a title II disability beneficiary

or a title XVI disability beneficiary and his or her title XVI eligibility has not terminated. If an individual's entitlement to title II benefits based on disability or eligibility for title XVI benefits based on disability or blindness terminates, and the individual again becomes entitled to or eligible for benefits, the individual may be eligible to receive a new ticket.

Section 411.125(b) of the final regulations provides that an individual will not be eligible to receive more than one ticket during any period during which the individual is either: (1) Entitled to title II benefits based on disability; or (2) eligible for title XVI benefits based on disability or blindness and the eligibility has not terminated. This rule is based on section 1148 of the Act, which authorizes the Commissioner to issue "a ticket" to disabled beneficiaries for participation in the Ticket to Work program. The Act defines "disabled beneficiary" for purposes of this section to mean "a title II disability beneficiary or a title XVI disability beneficiary." Section 1148 of the Act also provides that an individual is a title II disability beneficiary for each month for which the individual is entitled to title II benefits based on disability as described in that section. This section also indicates that an individual is a title XVI disability beneficiary for each month for which the individual is eligible for a Federal cash benefit under section 1611 or 1619(a) of the Act based on disability or blindness.

In addition, section 1148 of the Act indicates that an individual may be issued only one ticket while he or she is a disabled beneficiary. That section provides that the limitation on the total number of outcome payments that may be paid to an EN applies with respect to each beneficiary. Section 1148 also authorizes the Commissioner to pay an outcome payment to an EN, "in connection with each individual who is a beneficiary, for each month, during the individual's outcome payment period, for which benefits . . . are not payable. \* \* \*" This section indicates that each individual who is a beneficiary has one outcome payment period, consisting of 60 months. Thus, under section 1148 of the Act, the Commissioner is authorized to pay a maximum of 60 outcome payments to an EN with respect to each individual who is a beneficiary. Accordingly, the final regulations provide that an individual may not receive more than one ticket during any period during which the individual is either a title II disability beneficiary or a title XVI

disability beneficiary and his or her title XVI eligibility has not terminated.

We are adding a provision to § 411.125 in these final rules to clarify that individuals whose entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or whose eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act, will be eligible to receive another ticket in the first month he or she is entitled to or is eligible for reinstated benefits, as long as the beneficiary meets certain other requirements for eligibility for a ticket.

*Comment:* Many commenters stated that SSA must address issues specifically related to individuals who are entitled to child's insurance benefits as disabled adult children (DACs). They indicated that our title II program regulations should allow these beneficiaries to move on and off the title II program (in other words, to have their benefits reinstated) to the same extent that other beneficiaries with disabilities are allowed to do so. Otherwise, they argue, the purpose of the Ticket program will be thwarted.

*Response:* Section 202(d)(1)(B) of the Act provides that an individual who is an adult child (18 years old or older) of an insured person who is entitled to old-age or disability benefits, or who has died, is eligible for benefits if the individual is unmarried and has a disability that began before the individual is 22 years old. Under the provisions of section 202(d)(6) of the Act, an individual whose entitlement to child's insurance benefits based on disability has terminated may again become entitled to such benefits if he or she has not married and he or she is under a disability which began before the end of the 84th month following the month in which his or her most recent entitlement to child's insurance benefits terminated because he or she ceased to be under a disability. Therefore, these individuals would be eligible to receive another ticket in the first month they again become entitled to benefits, as long as they meet all other requirements for eligibility for a ticket.

Further, such individuals whose benefits are reinstated under section 223(i) of the Act also will be eligible to receive another ticket in the first month they are entitled to reinstated benefits, as long as they meet certain other requirements for eligibility for a ticket.

*Comment:* Several commenters stated that we should eliminate the requirement in proposed § 411.125(a)(2) that a beneficiary be in current pay status in order to be eligible to receive a ticket. They stated that this provision

would disadvantage individuals who are in overpayment, extended period of eligibility or 1619(b) status.

*Response:* The rule which provides that a disabled or blind title XVI beneficiary may be eligible to receive a ticket only in a month in which his or her Federal SSI cash benefits are not suspended is based on section 1148 of the Act. Under section 1148, the Commissioner is authorized to issue a ticket to a title XVI disability beneficiary for participation in the Ticket to Work program. This section also provides that an individual is a title XVI disability beneficiary for each month for which the individual is eligible for a Federal cash benefit under section 1611 or 1619(a) of the Act based on disability or blindness. If payment of an individual's monthly Federal SSI cash benefits is suspended under 20 CFR 416.1321–416.1330 due to ineligibility, such individual is not a title XVI disability beneficiary for that month for purposes of section 1148 of the Act since he or she is not eligible for Federal SSI cash benefits.

We are providing a similar requirement regarding current pay status for title II disability beneficiaries to make the criteria for issuing a ticket the same for title II beneficiaries as for title XVI beneficiaries. This will provide consistent and equitable treatment of beneficiaries under the two programs with respect to the issuance of tickets. We also believe that limiting the issuance of tickets to title II disability beneficiaries who are receiving cash benefits is consistent with the purpose of the Ticket to Work program, which is to enable beneficiaries to seek the services they need to return to work and reduce their dependency on cash benefits. In addition, we believe that providing tickets only to title II disability beneficiaries who are receiving title II cash benefits is consistent with Congress' expectation regarding who would be eligible to participate in the Ticket to Work program. In its report on the legislation to establish the Ticket to Work program, the House of Representatives Committee on Ways and Means explained that the legislation would "define 'disabled beneficiary' for purposes of Program participation to include SSI disability benefits recipients and Social Security beneficiaries receiving disability insurance, disabled widow's, and childhood disability benefits." (H.R. Rep. No. 393, 106th Cong., 1st Sess. 41 (1999).)

*Section 411.140 When Can I Assign My Ticket and How?*

*Comment:* One commenter indicated that we should revise proposed § 411.140(b) to clarify that individuals may assign the ticket to a State VR agency if they are eligible to receive VR services according to 34 CFR 361.42. The commenter also indicated that we should revise § 411.145(b) to clarify that a State VR agency does not have discretion on when it will or will not serve an individual. Rather, they indicated, Title I of the Rehabilitation Act provides that a VR agency must cease providing services to individuals who are no longer eligible for VR services. They further suggested that we revise both § 411.140(c) and 411.150(b) to reflect that the VR counselor must agree to and sign an Individualized Plan for Employment.

*Response:* We agree, and we have made the appropriate changes to §§ 411.140, 411.145 and 411.150.

*Section 411.150 Can I Reassign My Ticket to a Different EN or to the State VR Agency?*

*Comment:* Some commenters indicated that we should limit, in § 411.150, the reasons a beneficiary can reassign a ticket. They also suggested that we impose limits as to how many times a beneficiary will be allowed to reassign a ticket.

*Response:* Section 1148(e)(3) of the Act provides that the PM will ensure that beneficiaries are allowed changes in ENs without being deemed to have rejected services under the program. Therefore, we are not adopting this comment.

*Comment:* We received a comment which we decided to group with the comments on this section because it most closely related to reassigning a ticket to a different EN or State VR agency. The commenter asked if, from a State VR agency's perspective, a legal guardian's decisions with regard to the Ticket to Work program would be controlling. For example, would we require a legal guardian's permission before the ticket could be taken back from one EN and reassigned to another?

*Response:* We assume that the commenter is referring to a court-appointed legal guardian of an individual who has been declared legally incompetent. In such a case, the legal guardian is responsible for making decisions on behalf of the individual and for exercising any rights of such individual. In the Ticket to Work program, the court-appointed legal guardian of a beneficiary who is legally incompetent would be responsible for

exercising the beneficiary's rights under the program, including deciding whether the beneficiary's ticket should be assigned or reassigned to an EN. In such circumstances, in order for the beneficiary's ticket to be assigned or reassigned, the IWP under which services are provided to the beneficiary by an EN must be agreed to and signed by the beneficiary's court-appointed legal guardian. According to the Rehabilitation Services Administration, the same would be true for approval of an IPE under which services are provided by a State VR agency. In the case of a beneficiary who is a legally competent adult, it is up to the beneficiary to decide whether to assign or reassign his or her ticket.

*Section 411.155 When Does My Ticket Terminate?*

*Comment:* One commenter stated that we should revise § 411.155 to indicate that we will pay a State VR agency after the month in which a ticket terminates if the VR agency has elected and is eligible to claim payment under the cost reimbursement payment system authorized under sections 222(d) and 1615(d) and (e) of the Social Security Act. This modification would clarify, according to the commenter, that if a state VR agency chooses current law reimbursement, which is possible on a case-by-case basis, the use of a ticket is not relevant, and the VR agency can be paid for services.

*Response:* We do not agree with this recommendation to revise the final rules because it is unnecessary. The final rules provide that we will make payment to a State VR agency under the cost reimbursement payment system if all of the following conditions exist: (1) the beneficiary's ticket is assigned to the State VR agency under the rules in subpart F; (2) the cost reimbursement payment system is the State VR agency's payment system with respect to that beneficiary; (3) we have not made payment to an EN or a State VR agency functioning as an EN under one of the EN payment systems with respect to the ticket, as discussed in § 411.585; and (4) the requirements of sections 222(d) and 1615(d) of the Act and applicable regulations relating to cost reimbursement are met.

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

*Section 411.160 What Does This Subpart Do?*

*Comment:* One commenter noted that the Ticket to Work program exempts beneficiaries who are using a ticket from

medical reviews, but not work reviews. The commenter indicated that the language in § 411.160(b) would confuse beneficiaries and would not allay beneficiary fears about continuing disability reviews (CDRs) because SSA uses the term continuing disability reviews in the context of the disability programs when referring to the process of conducting both medical and work reviews. The commenter suggested that we establish a different process for work reviews.

*Response:* We did not establish a different process for work reviews because programmatically they are a type of CDR. However, in response to this comment, we clarified the language in final § 411.160(b). The revised language references our rules on when we may conduct a CDR (i.e. 20 CFR 404.1589, 416.989, and 416.989a) to determine whether an individual remains eligible for disability-based benefits. It then explains that, for purposes of subpart C, the term continuing disability review includes the medical reviews we conduct when determining if a beneficiary's medical condition has improved, as described in 20 CFR 404.1594 and 416.994, but does not include the CDRs we do under 20 CFR 404.1594(d)(5) to determine whether a title II beneficiary's work activity demonstrates the ability to engage in SGA. In light of this clarification, we removed the parenthetical reference to §§ 404.1594 and 416.994 that we included in proposed § 411.165.

*Section 411.165 How Does Being in the Ticket to Work Program Affect My Continuing Disability Reviews?*

*Comment:* Two commenters recommended that we clarify proposed § 411.165 by referencing the specific sections that explain when the period of using a ticket begins (§ 411.170) and ends (§ 411.171).

*Response:* We concur with the recommendation and are adding these cross-references to final § 411.165.

*Comment:* Another commenter, referencing proposed § 411.165, expressed concern that if a beneficiary places his or her ticket into inactive status (e.g. due to health reasons) we would be able to consider the activities he or she engaged in while actively participating in the Ticket to Work program when we conduct a subsequent medical CDR. The commenter said that our consideration of such activities would create a significant disincentive for beneficiaries to participate in the Ticket to Work program and recommended that we amend final § 411.165 to assure beneficiaries that we

would not consider these activities when we conduct subsequent medical CDRs.

*Response:* Section 1148 of the Act does not specifically address the factors we consider when we conduct medical CDRs and thus we are not amending § 411.165 in the final rules in the manner suggested. However, we will address this issue when we implement section 111 of Public Law 106–170, Work Activity Standard as a Basis for Review of an Individual's Disabled Status, which becomes effective on January 1, 2002. In general, this section amends section 221 of the Act to provide that, with regard to individuals who are entitled to title II benefits based on disability, and have received these benefits for at least 24 months, we will not schedule a CDR solely as a result of work activity, and we will not use work activity engaged in by the individual as evidence that the individual is no longer disabled.

*Comment:* A commenter asked what happens to those beneficiaries who are eligible to use a ticket, but are already working with a provider who is not an EN. The commenter notes that these beneficiaries, unlike those who are using a Ticket, have to undergo CDRs even though they may already be making progress towards fuller employment.

*Response:* In order for CDRs to be suspended for an individual under section 1148(i) of the Act, the beneficiary must be using a ticket as defined by the Commissioner of Social Security. In the situation described by the commenter, the beneficiary may wish to encourage his or her current provider to become an EN.

#### *Section 411.166 Glossary of Terms Used in This Subpart*

*Comment:* Several comments suggested that we define the terms we use in subpart C in a central location in order to assist with the clarity and flow of the subpart.

*Response:* We agree and have added new § 411.166 to provide a glossary of key terms which we use in Subpart C. In new § 411.166 we explain the following eight terms:

- active participation in your employment plan
- extension period
- inactive status
- initial 24-month period
- progress review
- timely progress guidelines
- 12-month progress review period,
- using a ticket

In the proposed rules we called the “12-month progress review period” the “12-month work review period” and a

“progress review” a “work review.” We renamed these concepts in these final rules to distinguish these progress reviews from the “work reviews” we conduct for title II beneficiaries, following the completion of their trial work periods, to determine whether their work and earnings demonstrate the ability to engage in SGA. When we do a work review under the title II disability program, we make a determination about whether an individual is no longer disabled because of work and earnings. When we do a progress review under the rules in subpart C, we are simply deciding whether a Ticket is “in use” so that we can determine whether an individual is exempt from periodic medical reviews.

#### *Section 411.171 When Does the Period of Using a Ticket End?*

*Comment:* One commenter stated we should ensure that the events cited in proposed § 411.171(b) and (c), that would signify that the period of using a ticket has ended, are not beyond the control of the individual. Proposed § 411.171(b), which is redesignated in the final rules as § 411.171(e), provides that, if a beneficiary has assigned a ticket to a State VR agency which selects the cost reimbursement payment system, the period of using a ticket will end with the 60th month for which an outcome payment would have been made had the State VR agency chosen to serve the beneficiary as an EN. Proposed § 411.171(c), which is redesignated in the final rules as § 411.171(b), provides that the period of using a ticket will end the day before the effective date of a decision under § 411.192 (which has been incorporated in final § 411.190), § 411.195, § 411.200 or § 411.205 that an individual no longer is making timely progress toward self-supporting employment.

*Response:* Section 1148(h)(4)(B) of the Act provides that we will make up to 60 outcome payments to an EN based on a ticket. Final § 411.171 (d) and (e), therefore, provide that the period of using a ticket will terminate at the same point, with reference to potential outcome payment months, regardless of whether a State VR agency elects to serve a beneficiary as an EN or elects to be paid under the cost reimbursement payment system. In order for the period of using a ticket to terminate in this situation, a beneficiary will have had to work 60 months with monthly earnings sufficient to preclude the payment of Social Security disability benefits and Federal SSI cash benefits.

The rules described in §§ 411.190, 411.195, 411.200 and 411.205 contemplate that the beneficiary will

have the opportunity to participate in the decision-making process before the PM or SSA makes a decision that the beneficiary is no longer making timely progress toward self-supporting employment.

*Comment:* One commenter recommended that we add a provision to the section of the rules regarding when the period of using a ticket ends to assure that the State VR agency will receive payment for services furnished to a beneficiary when a beneficiary applies and seeks services from the State VR agency after his or her period of using a ticket has ended.

*Response:* The determination regarding ticket use affects whether a CDR may be initiated with respect to a beneficiary. The conduct of a CDR could affect payment to providers if the beneficiary's entitlement to or eligibility for benefits is determined to have ended for reasons other than work or earnings. The specific determination as to whether the period of using a ticket has ended for a particular beneficiary is not relevant to the determination of whether or not a State VR agency can be paid under either the cost reimbursement payment system or its elected EN payment option. Unless the restrictions on payment described in § 411.585 apply, we will pay the State VR agency if all requirements for payment are met, even if the beneficiary's ticket is not in use.

#### *Section 411.175 What if I Assign My Ticket After a Continuing Disability Review Has Begun?*

*Comment:* We received two comments suggesting that we add a statement to this section to indicate that, if a beneficiary chooses to have benefits continued pending an appeal of a medical cessation determination and does not prevail in the appeal, he or she may be required to repay the benefits received during this period.

*Response:* While we understand the concern of the commenters, we did not adopt the recommendation to add this statement to § 411.175 in these final regulations, since this section provides appropriate cross-references to §§ 404.1597a and 416.996, which provide this statement.

*Comment:* Two commenters indicated that, since no other individuals have CDRs conducted while they are receiving services with a ticket, we should suspend CDRs when a beneficiary assigns the ticket after a CDR has begun. The commenters suggested that allowing the individual to continue to receive services and supports through an established EN should be consistent with the legislative intent to help ensure

access and entry into improved work opportunities. They concluded that SSA has more to gain in terms of positive outcomes by allowing suspension of such reviews and having the person continue with their individual work plan.

*Response:* Section 1148(i) of the Act precludes the initiation of a CDR for a beneficiary who is using a ticket as defined by the Commissioner. Section 411.175 deals with the situation where a CDR is initiated before the beneficiary assigns and begins using the ticket. Mere receipt of a ticket does not preclude the conduct of a CDR. Further, § 411.175 does not preclude the beneficiary from receiving services if he or she assigns a ticket after a CDR has begun.

#### *Section 411.180 What Is Timely Progress Toward Self-Supporting Employment?*

*General:* By far, the overwhelming number of comments received relating to subpart C of the NPRM related to this section on timely progress toward self-supporting employment and other sections which specify the guidelines for timely progress. We have divided these comments into five topic areas. These topic areas are:

- (1) Allowing the individual and the EN or State VR agency to define what timely progress is in the IWP/IPE;
- (2) "Banking" of work performed in the initial 24-month period;
- (3) Allowing enough time in the time frames for the completion of college degrees and/or other post-secondary education;
- (4) Allowing for consideration of relapses, setbacks, and episodes of illness in setting time frames; and
- (5) Miscellaneous, such as the complexity of the timely progress guidelines and the contention that the timely progress guidelines are more lenient than the EN payment rules.

#### *1. Allowing the Individual and the EN or State VR Agency To Define What Timely Progress Is in the IWP/IPE*

*Comment:* We received a large number of specific comments from various individuals and organizations recommending that we allow the individual and the EN or State VR agency to define what timely progress is in the beneficiary's IWP or IPE. In general, these commenters stated that people with disabilities have unique needs and, consequently, that the measurement of timely progress should be flexible and individualized.

*Response:* There appears to have been some misunderstanding that beneficiaries must meet the timely

progress guidelines in order to participate in the Ticket to Work program. Therefore, we believe that it is appropriate to restate here that the timely progress guidelines are only used to determine whether a beneficiary is using a ticket for purposes of protection against initiation of a CDR as provided under section 1148(i) of the Act. Beneficiaries who do not meet the timely progress guidelines may still participate in the Ticket to Work program, receive services and generate outcome and milestone payments to ENs. However, these beneficiaries may be subject to CDRs.

With reference to the specific recommendation, we appreciate that individuals with disabilities have unique needs, and we believe that there is sufficient flexibility in our timely progress rules to accommodate these needs. Further, if we allowed the individual and the EN or State VR agency to define timely progress, it would not be possible to develop a consistent and standardized method to determine timely progress for program administration and integrity purposes. Absent these consistent standards, our ability to measure the effectiveness of the Ticket to Work program would be significantly hampered.

#### *2. "Banking" of Work in the Initial 24-Month Period*

*Comment:* There were a large number of commenters who recommended improving the timely progress guidelines by providing for "banking" months of work completed in the initial 24-month period. These commenters noted that many beneficiaries have disabilities that are episodic and intermittent. While some people may not be able to work right away, others might be able to work sooner but may experience difficulties later. The commenters considered that it would be more equitable if we allowed those who can work earlier than the time frames described in the proposed rules to receive credit for their work effort.

These commenters recommended that a beneficiary should be allowed to "bank" work months in the first two years of a beneficiary's participation in the program to count towards the work requirements in later years. They further recommended that, in year 5 and beyond, work in excess of the six-month requirement should count toward the next year's work requirements. Finally, these commenters recommended that increasing amounts of work or earnings, even if below SGA, should be evaluated as meeting the requirements for progress reviews.

*Response:* As a result of these recommendations, we are modifying § 411.180 and other appropriate sections to allow a beneficiary who has worked in months during the initial 24-month period to use those months of work to meet the work requirements of the first 12-month progress review period if the work was at the requisite level. However, we did not adopt the recommendations to allow for "banking" of work to satisfy the requirements of progress review periods beyond the first 12-month progress review period, or to consider increasing amounts of work or earnings that are below the SGA level for non-blind beneficiaries as meeting the requirements for progress reviews. These recommendations would be inconsistent with the intent of the timely progress guidelines, which is to require that beneficiaries demonstrate an increasing ability to work at levels which will reduce their dependence on cash benefits.

#### *3. Allowing Enough Time in the Time Frames for the Completion of College Degrees and/or Other Post-Secondary Education*

*Comment:* We received a large number of comments that indicated that the timely progress guidelines we proposed do not allow enough time for an individual to prepare for employment by pursuing a college degree and/or post-secondary education.

*Response:* We understand the concerns of the commenters and agree that a college degree and/or post-secondary education may enhance employment outcomes for individuals with disabilities. We anticipate that the provision we are adding in response to recommendations to allow for "banking" months of work will provide many beneficiaries with additional time for the pursuit of college and/or post-secondary education, while suspending CDRs for them. Further, as we have stated, the timely progress guidelines are only intended to determine whether a beneficiary will be considered to be using a ticket for purposes of suspending initiation of CDRs. Therefore, a beneficiary pursuing post-secondary education can continue to participate in the Ticket to Work program, receive services and remain in the education program. However, if the beneficiary does not meet the timely progress guidelines, he or she would be subject to CDRs.



#### 4. Allowing for Consideration of Relapses, Setbacks and Episodes of Illness in Setting Time Frames

*Comment:* We received a substantial number of comments stating that the proposed timely progress guidelines would not allow for relapses, setbacks and episodes of illness.

*Response:* We have built into the timely progress guidelines several mechanisms that will allow for the episodic nature of many impairments. These mechanisms include the provision allowing a beneficiary to place a ticket in inactive status during the initial 24-month period; the progressive nature of the work requirements; the fact that we do not require that work activity has to be continuous to satisfy the timely progress guidelines, even in the fifth and subsequent years; and the modification that we are making in the final regulation to allow a beneficiary who has worked in months during the initial 24-month period to use those months to meet the requirements of the first 12-month progress review if the work was at the requisite level. Further, as we have stated, these guidelines are only used to determine whether a beneficiary will be considered to be using a ticket for purposes of suspension of initiation of CDRs, not to determine whether the beneficiary can participate in the Ticket to Work program.

#### 5. Miscellaneous Comments

*Comment:* We received several comments from Federal and State VR agencies indicating that the active participation requirement during the initial 24-month period should be eliminated because it is not consistent with principles set forth in title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), which governs the Federal/State VR program. The commenters noted that, in contrast with our proposed requirements, the Rehabilitation Act does not set a time period for achieving an employment outcome as long as the terms of the IPE are being met.

*Response:* The Ticket to Work program under section 1148 of the Act is not intended to mirror the Federal/State program for rehabilitation services under title I of the Rehabilitation Act. Rather, the purpose of the Ticket to Work Program is to provide Social Security or SSI beneficiaries who are disabled or blind the opportunity to choose from a variety of providers to obtain the services and supports that they need to become self-supporting. As we have stated, the timely progress guidelines are only used to determine

whether a beneficiary will be considered to be using a ticket for purposes of suspending initiation of CDRs. They are not designed to measure overall success of the program or a beneficiary's ability to participate in the program. In this context, we must establish consistent standards that would apply to both beneficiaries receiving services from ENs and to beneficiaries receiving services from State VR agencies.

*Comment:* One commenter remarked that the timely progress guidelines that we proposed in § 411.180 and in succeeding sections were more generous than the payment requirements that we proposed in subpart H of these rules. The commenter noted that a beneficiary could keep the CDR protection afforded by the ticket by working for as little as nine months at the SGA level over a four-year period, while an EN working with such a beneficiary may receive only nine payments. The commenter said such a funding scheme was unrealistic for those providers who do not have additional funding sources.

*Response:* The timely progress guidelines and the rules governing milestone and outcome payments are not designed for the same purpose. As we have stated, the timely progress guidelines only are used to determine whether a beneficiary will be considered to be using a ticket for purposes of the protection against initiation of a CDR as provided in section 1148(i) of the Act. The rules for determining if an EN or State VR agency will be eligible to receive a payment under the EN payment systems under the Ticket to Work program measure the ability of the service provider to assist beneficiaries in their efforts to become self-supporting. See subpart H for a further discussion of the EN payment systems.

*Comment:* Several commenters remarked that there appears to be no incentive for either an EN or a State VR agency to maintain a case open in the initial 24-month period because the regulations do not provide any financial payment for providing services to an individual in this status. These commenters predicted that if we do not change our regulations that ENs and State VR agencies will not serve beneficiaries with significant disabilities or will be quick to terminate individuals who do not make progress towards achieving SGA.

*Response:* The Ticket to Work program is an outcome-based program, and provides for milestone payments when a beneficiary starts to work, and/or outcome payments when Federal disability benefits are not payable to a

beneficiary due to work or earnings. While there is no requirement that a beneficiary work during the initial 24-month period in order to be making timely progress, there is no penalty for or prohibition against work. In fact, we have modified the timely progress rules to specifically respond to comments that some beneficiaries can and do work early in their period of rehabilitation. In addition, enhancements to the outcome-milestone payment system described in subpart H of these rules make it possible for an EN to receive a milestone payment if a beneficiary works for only one month and has gross earnings from employment (or net earnings from self-employment) for that month that are more than the SGA threshold amount. Therefore, payment to ENs is possible during the initial 24-month period if they serve beneficiaries who work during this period.

*Comment:* We received three related questions about proposed §§ 411.185 and 411.190. They were: (a) What will happen to beneficiaries whose disabilities incapacitate them to the point that they remain on the disability benefit rolls after fully utilizing the ticket? (b) How much time does a consumer have to keep the ticket in inactive status? and (c) Will the beneficiary have a penalty?

*Response:* We will make outcome payments to ENs to which beneficiaries have assigned a ticket only if monthly cash benefits are not payable because of the performance of SGA or by reason of earnings from work. Generally, by the time 60 outcome payment months have occurred, entitlement to title II benefits based on disability or eligibility for title XVI benefits based on disability or blindness will have terminated because of work or earnings for most beneficiaries. However, these beneficiaries may be entitled to have their benefits reinstated under section 223(i) or section 1631(p) of the Act. As we explain in § 411.125 of the final rules, beneficiaries whose entitlement to or eligibility for benefits is reinstated under these sections of the Act would be eligible to receive another ticket if they meet certain other requirements for eligibility for a ticket.

The option of placing a ticket in inactive status is available to beneficiaries only during the initial 24-month period following the assignment of the ticket. During this period there is no penalty or time limit for keeping the ticket in inactive status, *per se*. What happens is that the clock stops and the ensuing months during which the ticket is in inactive status do not count towards the initial 24-month period. However, the ticket is considered to be

not in use and the beneficiary is subject to continuing disability reviews during this time.

**Section 411.185 How Much Do I Need To Earn To Be Considered To Be Working?**

*Comment:* One commenter questioned whether the earnings guidelines we proposed in § 411.185(a)(1) and (b)(1) for meeting the timely progress requirements during the first and second 12-month work reviews would lessen the effect of existing work incentive provisions.

*Response:* The earnings guidelines we proposed only deal with determining whether a beneficiary meets timely progress requirements for purposes of suspending medical CDRs. The guidelines do not affect any of the existing work incentive provisions.

**Section 411.190 How is it Determined if I am Meeting the Timely Progress Guidelines?**

*Comment:* One commenter was concerned that proposed § 411.190 may conflict with other Federal regulations governing a State VR agency's use and release of confidential information (see 34 CFR 361.38). This commenter suggested that we modify our final rule by adding a new paragraph that would require a State VR agency or an EN to satisfy all applicable Federal and State confidentiality requirements before sharing any personal information about the beneficiary with the PM.

*Response:* We do not believe that such a modification is necessary. Nothing in this rule overrides Federal and State confidentiality rules. We provide in 20 CFR Part 401 a description of SSA's policies and procedures related to the Privacy Act of 1974, and section 1106 of the Social Security Act concerning disclosure of information about individuals. ENs, as SSA's contractors, are subject to these rules. Similarly, § 411.375 states that State VR agencies are required to provide VR services under a plan approved under title I of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 720 *et seq.*), even when functioning as an EN. This includes the confidentiality requirement that a State VR agency must follow.

**Section 411.191 Table Summarizing the Guidelines for Timely Progress Toward Self-Supporting Employment**

*Comment:* One commenter, referencing the table in proposed § 411.191, suggested that we have one SGA level for all beneficiaries and that it be the one that currently applies to those who are blind. The commenter said the higher level would support the

Ticket program's goal of transitioning beneficiaries from benefits to self-sufficiency and would encourage more beneficiaries to participate in the Ticket to Work program.

*Response:* We did not adopt this suggestion because the SGA level for individuals who are not blind is not the subject of these rules. The rules relating to the SGA levels for those who are not blind can be found in 20 CFR 404.1574 and 416.974, and the rules relating to the SGA levels for those who are blind can be found in 20 CFR 404.1584.

**Section 411.192 What if My EN, the State VR Agency, or I Report That I Am Not Actively Participating in My Employment Plan?**

*Comment:* One commenter suggested that we add a third choice to the two we proposed in § 411.192(a) (§ 411.190(a)(1) in the final regulations) for beneficiaries who are not actively participating in their employment plans during the initial 24-month period. It would allow them to reassign their tickets to a different EN.

*Response:* We did not adopt this suggestion because we state in another section of these final rules that beneficiaries will have the right to reassign their tickets to other ENs or to a State VR agency (see § 411.150(a)). Such reassignments can occur regardless of whether the beneficiaries are making timely progress toward self-supporting employment.

**Section 411.195 How Will the PM Conduct My 24-Month Progress Review?**

*Comment:* One commenter stated that the timely progress reviews we proposed in § 411.195 did not take into consideration the fact that beneficiaries may not be able to obtain or retain employment due to circumstances beyond their control. Reasons cited included a downward turn in the economy that increases competition for available jobs, an employment goal that requires more than two years to obtain, and a lack of transportation to look for jobs. This commenter indicated that it was unfair to subject beneficiaries to medical CDRs if they fail to obtain employment through no fault of their own.

*Response:* The timely progress review to which this commenter referred is the 24-month progress review, which does not contain a specific requirement for work within the first 24 months after the beneficiary assigns a ticket. However, the 12-month progress reviews, which come after the 24-month progress review, contain a work requirement. We did not modify those requirements because we believe that they are

sufficiently generous and flexible enough to accommodate individual needs. They do not require work in every month. They require work in three months for the first 12-month progress review period and in six months for subsequent 12-month progress review periods.

We believe these rules are consistent with the intent of the Ticket to Work program, which is to allow beneficiaries to choose from a variety of providers to obtain the services and supports that they need to become self-supporting. While beneficiaries may be subject to a CDR if they do not successfully complete the 12-month progress reviews, the Ticket does not terminate and beneficiaries may later qualify for CDR protection.

*Comment:* One commenter recommended rewording § 411.195(a)(1) so that it does not sound like work is not an expectation within the initial 24-month period.

*Response:* We agree with the comment and have reworded § 411.195 consistent with this recommendation.

*Comment:* We received one comment about § 411.195(a)(3). The commenter stated that the EN or State VR agencies, rather than the PM, should determine if the beneficiary can reasonably be expected to reach the goal of at least three months of work during the next 12-month work review period. The commenter continued that if we do not make this change, then this section should be deleted.

*Response:* We have not adopted this comment. Under the law, we had to define what it means to be using a ticket for purposes of receiving protection against initiation of a CDR. We have chosen to use clear standards (active participation in the employment plan during the first 24 months, then months of work activity at a certain level during succeeding 12-month periods). We believe it is better to have the PM, who is charged with helping us to administer the program, use the criteria we have established to help us determine whether a beneficiary will be considered to be using a ticket for purposes of CDR protection. We believe having a single entity perform these reviews will lead to more fair and efficient administration of the program.

**Section 411.200 How Will the PM Conduct My Annual Work Review?**

*Comment:* We received six comments that questioned the ability of the PM to accurately anticipate and assess timely progress for individuals whose tickets are assigned to ENs or State VR agencies.

*Response:* We believe that we have developed clear standards for determining whether a beneficiary is making timely progress toward self-supporting employment for purposes of being considered to be using a ticket. We further believe that it is better to have the PM, who is charged with helping us to administer the program, use these criteria to help us to determine whether a beneficiary is using a ticket for purposes of CDR protection. We believe that having a single entity perform these reviews, with significant input from ENs and State VR agencies, will lead to more fair and efficient administration of the program.

**Section 411.210 What Happens if I Do Not Make Timely Progress Toward Self-Supporting Employment?**

*Comment:* Four commenters asked us to clarify the proposed rules in § 411.210(a) to indicate whether a State VR agency would be able to receive payment under the cost-reimbursement payment system if a beneficiary, who is found to be no longer using a ticket for CDR protection purposes, continues to participate in the Ticket to Work program. Also, another commenter asked us whether a State VR agency or an EN would still be eligible for the payment option it selected should the beneficiary work but not meet the requirements for re-entering in-use status.

*Response:* In these final rules, we made changes to § 411.210(a) to indicate that a State VR agency which selects the cost reimbursement payment system may be eligible for payment under that system even though the beneficiary is determined to be no longer using a ticket. We also made changes to indicate that an EN or State VR agency serving a beneficiary as an EN may receive milestone or outcome payments for which it is eligible even though the beneficiary is considered to be no longer using a ticket. The proposed rules had referred only to outcome payments. Under the final rules, beneficiaries who do not meet the timely progress guidelines may continue to receive services from their service providers.

*Comment:* One commenter was concerned that an EN that first serves a beneficiary might not receive its appropriate share of any future EN payments if a beneficiary puts a ticket in inactive status or switches ENs when seeking to re-enter in-use status. This commenter recommended that we amend proposed § 411.210(b)(1)(ii) to provide that when a beneficiary completes the required three months of work at the requisite level for

reinstatement, he/she may re-enter in-use status, provided the ticket is reassigned to the previous EN or State VR agency.

*Response:* We did not adopt this commenter's suggestion. We initially note that under the situation described in this section, the ticket does not have to be "reassigned" if it has never been taken out of assignment. This section merely provides that for a beneficiary to re-enter in-use status, his or her ticket must be assigned to an EN or State VR agency. We further believe that we do not have authority under section 1148 of the Act to restrict the beneficiary's choices regarding assigning a ticket in the manner suggested. With regard to this commenter's concerns about a former EN sharing in any future EN payments, our rules in § 411.560 allow us to allocate a payment to more than one EN when the ENs request payment for the same milestone or outcome and the beneficiary has assigned the ticket to them at different times.

*Comment:* A comment referenced § 411.210 and suggested adding a new provision to the regulations to indicate that if SSA determined that individuals were not using a ticket, and, after a CDR, determined that they no longer were disabled, they still could continue to receive benefits if they meet the requirements in section 225(b) of the Social Security Act.

*Response:* We are not adopting this recommendation to add a section to the Ticket to Work program regulations concerning the provisions for continuation of benefits. The rules for continuation of benefit payments to persons who recover medically while participating in a rehabilitation program are in 20 CFR 404.316(c), 404.337(c), 404.352(d), and 416.1338. As previously stated, we plan to publish proposed rules to amend those sections of the regulations to take account of the amendments made by section 101(b) of Public Law 106-170 to sections 225(b) and 1631(a)(6) of the Act.

*Comment:* This commenter also indicated that § 411.210(b)(1)(i) should be revised to make the requirement for re-entering in-use status during the initial 24-month period or in the 24-month progress review consistent with the actual requirements for this phase, in other words, actively participating in the activities outlined in the IWP/IPE, rather than completing three months of work at the prescribed level. The commenter indicated that this provision is not consistent with the purpose, as explained in the preamble and the proposed rules themselves, for the first 24-month period. The commenter further recommended that the

requirements for reinstatement after subsequent work reviews also should be consistent with the requirements of that phase of timely progress.

*Response:* We have revised the requirements for re-entering in-use status during the initial 24-month period in § 411.210(b)(1). We have not changed the requirements for re-entering in-use status after failing to meet the timely progress guidelines in the 24-month progress review or in the 12-month progress reviews because these requirements are consistent with the requirements of the reviews.

**Section 411.220 What if I Am Temporarily Unable To Participate in My Employment Plan?**

*Comment:* We received five comments about proposed § 411.220(a). All of these comments indicated that we should allow use of the "inactive status" (as defined in proposed §§ 411.192(b) and § 411.220(a)) not only in the initial 24-month period, but throughout the life of the ticket as long as the ticket is in use.

*Response:* To improve the organization of the rules in subpart C, the rules that were set out in proposed §§ 411.192 and 411.220 have been incorporated in § 411.190 in the final regulations. We did not adopt the suggestion to expand the scope of the rules to allow the placement of a ticket in inactive status after, as well as during, the initial 24-month period. While the placement of a ticket in inactive status is only permitted during the initial 24-month period in these final rules, the work requirements in subsequent progress review periods are designed to allow for intermittent employment (that is, three months of work out of 12, or six months of work out of 12) and to take into account relapses in health.

*Comment:* We received a comment regarding proposed § 411.220(b)(1) that indicated a belief that an individual would not be eligible to receive services from an EN or State VR agency if the individual chooses to place the ticket in inactive status. This commenter indicated that State VR agencies must continue to provide services to their clients under the terms of the IPE.

*Response:* Section 411.190 of these regulations indicates that the option of placing a ticket in inactive status is designed to accommodate individuals who temporarily are unable to participate or are not actively participating in their employment plan. This presumes that these individuals will not be receiving services under an IPE during this period of inactivity.

*Comment:* We received a comment suggesting that we modify proposed § 411.220(d) to include reassignment of the ticket as one of the options that the PM will offer a beneficiary who is not actively participating in his or her employment plan. This option would be in addition to the options of resuming active participation or placing the ticket in inactive status.

*Response:* We are not making this change because the rules in proposed § 411.220(d), which have been moved to § 411.190(a)(1) in the final regulations, concern the timely progress guidelines. In §§ 411.145 and 411.150 of the final rules, we explain that a beneficiary has the option of taking a ticket out of assignment and then reassigning the ticket. We will ensure that beneficiaries are advised of their options regarding ticket reassignment by providing public information materials, notices, operating instructions and procedures to the PM.

**Section 411.225 What if My Ticket Is No Longer Assigned to an EN or State VR Agency?**

*Comment:* We received two comments about this section (which is § 411.220 in the final regulations) which allows the individual an extension period of up to three months, during which the individual will be considered to be using a ticket even though the ticket is no longer assigned, to give the individual time to find another EN willing and able to serve the individual. One commenter expressed support for the provision and did not recommend any changes. The other commenter suggested adding a numbered paragraph to § 411.225(a) as follows: "You have relocated to an area not served by your previous EN or State VR agency."

*Response:* We agree with the suggested change to this section, with a modification. We are adding language to § 411.220(a)(1) of the final rules (formerly proposed § 411.225(a)(1)), instead of adding another numbered paragraph, to indicate that a beneficiary may have retrieved the ticket because the beneficiary relocated to an area not served by the beneficiary's previous EN or State VR agency.

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

**Section 411.230 What Is a PM?**

*Comments:* The comments on proposed § 411.230 generally questioned the ability of a PM to administer a program as large and complex as the Ticket to Work program. One of the commenters expressed

concern about the selection of a private organization as PM and recommended that the program be administered only by a designated State agency. The commenter indicated that there is a proven history of State administration of Federal programs to support their recommendation. Other issues included the PM's ability to provide sufficient access for beneficiaries with disabilities, to deal with the diversity issues of persons with disabilities, and to coordinate the program equitably nationwide.

*Response:* Section 1148(d)(1) of Public Law 106–170 specifically provides that PM(s) can be either private or public sector organizations. Therefore, the selection of the PM cannot be restricted to only State agencies as recommended in the comments. All organizations, both public and private, must be considered under the competitive bidding process as stated in § 411.230. The Commissioner may terminate a PM for inadequate performance. Public and private entities that serve as a PM for us will be held to the same level of accountability.

While the regulation provides general information about the PM's administration of the Ticket to Work program, specific details regarding program administration are provided in the PM contract. The contract contains a comprehensive business plan, a listing of specific tasks required of the PM, and a delivery schedule for completion of the required tasks. We believe that the questions raised about access and diversity are sufficiently addressed in the contract. For example, the Business Plan in the contract requires the PM to operate a toll-free Text Telephone Communication Service and provide Spanish language services. Further, the Business Plan designates the hours of service to be provided across the country and requires that inquiries be monitored on a State-by-State basis to ensure that the program is successfully implemented nationwide.

In September 2000, we contracted with MAXIMUS, Inc., to serve as the PM for the Ticket to Work program. Specific information about their duties and responsibilities as the PM can be obtained through their toll-free number at 1–866–968–7842, or TTY 1–866–833–2967.

**Section 411.245 What Are the PM's Responsibilities Under the Ticket to Work Program?**

*Comment:* The majority of comments on proposed subpart D of the regulation addressed the provisions of § 411.245. Several of the comments on proposed

§ 411.245(a) questioned the PM's ability to recruit sufficient numbers of ENs. Specifically, the commenters expressed concern about whether enough ENs would be recruited in all States and all areas to provide beneficiaries with EN choices. To address this issue, one commenter recommended that a formal referral process be created for the beneficiaries to refer service providers to the PM as potential ENs. Another commenter wanted the evaluation of the PM as described in proposed § 411.250 to specifically identify "the recruitment of sufficient ENs" as one of the assessment criteria.

Another comment addressed the issue of beneficiary options from a different perspective. The commenter recommended that the PM provide each EN with a list of ticket holders in their area that had not yet assigned their ticket. Each EN could then contact the beneficiaries and discuss with them services the EN could offer. Through this process, beneficiaries would be provided a variety of options from which to choose when assigning their ticket.

*Response:* As we indicated previously, the regulation provides general information regarding the responsibilities of the PM. The PM contract gives much greater detail about the PM's responsibilities, including the marketing activities that the PM will undertake.

While the contract does not specifically identify a referral program for beneficiaries as part of their recruitment efforts, it does require the PM to use a variety of resources in their recruitment efforts. Since neither the regulation nor the PM contract precludes the beneficiary as a source for potential EN referrals, we do not believe a formal referral process specifically for beneficiaries is needed in order for the PM to use this source when appropriate. We do not believe that it is necessary to identify "recruitment of sufficient ENs" as a separate assessment criterion in the regulation. The regulation provides assessment criteria such as quality of services and customer satisfaction. We believe that these criteria can be used in determining whether or not the PM recruited sufficient ENs to provide beneficiaries with choices in the assignment of their tickets. In addition to the assessment criteria listed in the regulations, the PM's contract identifies the enrollment of sufficient ENs as a performance standard required under the Government Performance and Results Act.

The process for the PM to provide ENs with information about beneficiaries eligible to receive tickets is

addressed in the Business Plan of the PM's contract. We will provide the PM with a list of all ticket-eligible beneficiaries by geographic area and disability impairment. The PM will provide, within the limitations of the Privacy Act, the ENs with information from this list for beneficiaries eligible to receive tickets in their area. The PM will encourage the ENs to use the lists to market their services with the beneficiaries.

*Comment:* Several comments on proposed § 411.245(b) addressed the issue of providing information in accessible formats. The language in the proposed regulation defined accessible format as "media that is appropriate to a particular beneficiary's medical impairment(s)". Other commenters were concerned that all information about the Ticket to Work program should be provided in an accessible format and that the beneficiary's preference should be taken into consideration. One commenter requested that "medical" be removed from the term "medical impairment," in defining "accessible format" in paragraph (b)(2).

*Response:* The Business Plan of the PM contract identifies certain requirements that address accessibility issues. The PM is required to operate a toll-free Text Telephone Communication Service for people with hearing and speech impairments+ to provide service through their toll-free telephone number. In addition, the website operated by the PM will be fully accessible to visitors with disabilities via software-based assistive technologies such as screen readers, screen magnifiers, speech synthesizers, and voice input software that operate in conjunction with graphical desktop browsers. Informational materials will be made available to beneficiaries in Braille format upon request. We agree with the comment regarding the word "medical," as not all impairments are "medical" in nature. We have changed the language in the final regulations to omit the word "medical".

*Comment:* Comments on proposed § 411.245(b) and (d) recommended adding time frames to the regulation. One was a fifteen-day time frame for the PM to respond to the beneficiaries about the reassignment of their tickets. The second was a ten-day time frame for the PM to respond to the EN about the assignment of a beneficiary's ticket. In both instances, the commenters were concerned about the delays that beneficiaries and ENs might experience if the PM did not respond timely.

*Response:* In both of the situations addressed in the comments, there is an assumption that services to the

beneficiary cannot begin until a formal notice is received from the PM about the assignment or reassignment of a Ticket. This is not the case. The Business Plan of the PM contract outlines the process the PM will use for assigning or reassigning a ticket. When a beneficiary brings the Ticket to an EN, the EN will verify that the beneficiary has a ticket eligible for assignment. If the beneficiary and EN agree to work together, they develop an individual work plan. At this time, the beneficiary and the EN may begin working together. Therefore, there is no delay in service as anticipated by the comments. When the PM receives the plan signed by both the beneficiary and EN, the PM will verify that the ticket is eligible for assignment, update the database to show the ticket has been assigned, and notify the appropriate parties.

*Comment:* Comments on proposed § 411.245(c)(2) and § 411.245(d) requested that additional language be included to clarify the PM's involvement in certain dispute resolution situations. Commenters wanted both sections to identify the PM's responsibility to resolve payment disputes between two or more ENs when a ticket is re-assigned and multiple ENs have provided services to the same beneficiary.

*Response:* We agree and we are revising § 411.245(c)(2) to clarify that the PM will be responsible for making determinations regarding the allocation of outcome or milestone payments when the beneficiary has been served by more than one EN. We believe that the changes to § 411.245(c)(2) address the commenter's concerns and additional changes in § 411.245(d) are not needed.

*Comment:* We received several comments on proposed § 411.245(d) from State VR agencies regarding the PM's review of individual work plans and individualized plans for employment. The commenters wanted the regulation to clarify that the PM could review only individual work plans and not individualized plans for employment. They stressed that the PM had no authority to review an individualized plan for employment submitted by a State VR agency serving as an EN. The comments cited 34 CFR 361.45 and 361.46 as the only authority for the content and the development of individualized plans for employment.

*Response:* Section 411.245(d) of the regulation does not require the PM to review individualized plans for employment or amendments to those plans. We have revised this section, as recommended, to state that the PM will not review individualized plans for employment developed by beneficiaries

and State VR agencies. Section 411.385 of the regulation describes how an individualized plan for employment is used in the Ticket to Work program. Section 411.385 does not require these plans to be submitted to the PM in connection with the assignment of a ticket to a State VR agency, and we did not intend for the PM to review individualized plans for employment.

*Comment:* Several comments on proposed § 411.245(d) discussed the PM's oversight of referrals between the ENs and the State VR agencies. Commenters requested additional language that would clarify the PM's responsibility when an EN that chooses not to take a beneficiary's ticket makes a referral to a State VR agency. The commenters wanted the regulation to reflect the PM's lack of jurisdiction regarding such referrals.

*Response:* While a referral to the State VR agency in this situation is possible, the referral would be outside the parameters of the Ticket to Work program and the PM's authority. So, we do not believe that we need to clarify the PM's lack of authority to oversee such referrals.

#### *Section 411.250 How Will SSA Evaluate a PM?*

*Comment:* We received many comments about the evaluation process for the PM. The commenters wanted to ensure that evaluation included input from a variety of stakeholders. Several commenters recommended that we solicit input from ENs and beneficiaries as part of the evaluation process for the PM. In addition, one commenter urged that we submit the evaluation to the Ticket to Work and Work Incentives Advisory Panel for comment and recommendations.

*Response:* The evaluation will gather input from parties served by the PM including beneficiaries and ENs. We agree that such input is a valuable resource. We also agree that it is appropriate for the Ticket to Work and Work Incentives Advisory Panel to receive and review a copy of the evaluation. However, we do not believe that these regulations need to address this issue as the evaluation process is outlined in detail in the PM's contract.

*Comment:* Other comments on proposed § 411.250 were directed at specific elements of the evaluation process. One commenter requested that the regulation specify that an evaluation would be performed at least annually. Another commenter wanted to know about the qualifications of the Project Officer and the Contracting Officer to review a contract for disability-related programs.

*Response:* We believe that these elements of the evaluation process should not be addressed in this regulation as they are already described in other Federal regulations including the Federal Acquisition Regulations (FAR) at 48 CFR Chapter 1. The procedures regarding the review of the PM's performance are spelled out in the FAR at 48 CFR subpart 42.15. Qualifications for project officers and contracting officers are established in the FAR at 48 CFR 1.102-4 and 1.602-1. In addition, the Project Officer is on staff at SSA's Office of Employment Support Program and is knowledgeable about programs serving persons with disabilities.

## Subpart E—Employment Networks

### Section 411.300 What is an EN?

*Comment:* Some commenters suggested that the definition of an EN should be included in its entirety in the "Definitions" section of the final rule. They indicated this definition should include a complete list of the services that the ENs are responsible for providing or arranging and noted that we should include the scope of services that may be needed to enable an individual with a disability to prepare for work. Some other commenters indicated that ENs should be required to provide a minimum range of services and that we should specify what is meant by "substantial expertise and experience" as contained in section 1148(f)(1)(C) of the Act.

*Response:* We have defined employment network, or EN, at § 411.115(e). We are not providing a more complete listing of services because such a listing would not encompass all the services or other assistance a beneficiary might need. Instead we are specifying only employment services, vocational rehabilitation services or other support services to provide flexibility to ENs and thus not specifically include or exclude some services. Section 411.245(b)(3) contains examples of the services an EN may provide. The types of services an EN will provide in a specific case will be detailed in the work plan an EN will sign with a beneficiary. SSA does not want to limit or describe what specific services should be included in this plan. The phrase "substantial expertise and experience" is found in section 1148(f)(1)(C) of the Act, which states that no EN "may serve under the Program unless it meets and maintains compliance with both general selection criteria (such as professional and educational qualifications, where

applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports)." We have not further defined that phrase in the regulations. The general and specific selection criteria for ENs are contained in § 411.315 of the final rules.

### Section 411.305 Who Is Eligible To Be an EN?

*Comment:* Many commenters recommended that family or friends who wish to serve an individual be considered eligible to be an EN. Some commenters also suggested that we permit a beneficiary to be his or her own EN.

*Response:* The law provides that any entity willing to assume responsibility for the coordination and delivery of services under the Ticket to Work program may qualify as an EN. Our regulation states that any qualified entity willing to assume responsibility for the coordination and delivery of employment services, VR services, or other support services to beneficiaries who have assigned their tickets to an EN are eligible to be ENs. This does not rule out family or friends who meet the qualifications to be an EN and are willing to assume this responsibility. We therefore do not see any need to specifically cite family or friends. However, the statute does not allow a beneficiary to serve as his or her own EN. As § 1148(b)(3) of the Social Security Act and § 411.120 explain, a ticket under the Ticket to Work program is a document which provides evidence of the Commissioner's agreement to pay an EN or State VR agency for providing services to a beneficiary.

*Comment:* Some commenters questioned why State VR and one-stop delivery systems should be automatic ENs. Another commenter requested inclusion of the Department of Veterans Affairs as an EN. Another commenter wanted to know whether an employer could become an EN.

*Response:* Section 1148(f)(1) of the Act states that an EN may be an agency or instrumentality of a State (or political subdivision thereof) or a private entity. It does not allow Federal agencies to serve as ENs. Section 1148(c) of the Act allows each State VR agency to elect to participate in the Ticket to Work program as an EN with respect to a disabled individual. While the law specifically cites one-stop delivery systems as eligible to become ENs, it does not make them ENs automatically. Section 411.305(g) lists employers as eligible to be ENs.

*Comment:* One commenter wanted to know whether American Indian Projects

may become ENs and whether such projects can become ENs if their State has not been chosen as a site.

*Response:* Section 411.305(e) lists organizations administering VR Services Projects for American Indians with Disabilities authorized under section 121 of part C of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), as one of the entities eligible to be ENs. American Indian Projects under section 121 can apply to be ENs only within the States where the Ticket to Work program has been implemented, or if they are qualified to provide services within such a State.

### Section 411.310 How Does an Entity Apply To Be an EN and Who Will Determine Whether an Entity Qualifies as an EN?

*Comment:* Some commenters wanted to know how an entity applies to be an EN, who will determine whether an entity qualifies, and requested that our final rule reflect the differences in application between State VR agencies and other entities.

*Response:* Section 411.310 explains that an entity applies to be an EN by responding to our Request for Proposal (RFP), that the PM will conduct a preliminary review of responses to the RFP, and that the Commissioner will decide which applicants will be approved to serve as ENs. Sections 411.360 and 411.365 explain that we will notify the State VR agency in writing about the payment systems available under the Ticket to Work program, and that the State agency must respond in writing. We have revised § 411.310 to clarify that this section applies to entities other than State VR agencies which are applying to be ENs.

*Comment:* One commenter suggested that since the PM is charged with the responsibility to ensure that there are a sufficient number of ENs nationally, the PM should be charged with the responsibility to evaluate the qualifications because they are more qualified. The commenter also stated that the PM, not the Commissioner, should decide which applicants to select as ENs.

*Response:* The PM will play a strong role in evaluating applicants' qualifications and in recommending applicants for selection as ENs. SSA will consider the PM's evaluations and recommendations. However, since SSA will be entering into agreements with ENs, will be making payments to ENs, and ultimately will be responsible for the success of the Ticket to Work program, SSA must remain the final authority for evaluating ENs

qualifications and determining which applicants will become ENs.

*Comment:* Several commenters suggested that we change § 411.310 to indicate that it applies to entities other than State VR agencies and that State VR agencies must comply with § 411.360 which discusses how a State VR agency becomes an EN.

*Response:* We have modified § 411.310 to indicate that it applies to entities other than State VR agencies and added a part (c) to explain that § 411.360 describes how State VR agencies participate as ENs in the Ticket to Work program.

#### *Section 411.315 What Are the Minimum Qualifications Necessary To Be an EN?*

*Comment:* One commenter suggested switching the order of some of the qualifications listed in § 411.315(a) and deleting the example in § 411.315 of using staff with a college degree in a related field.

*Response:* The order of qualifications listed in § 411.315(a) does not imply that the first one listed is of more importance than subsequent qualifications. Items (1) through (6) in this listing are of equal weight and there is no rationale for rearranging the listing. The use of staff with degrees in a related field as a qualification for ENs ensures that we do not unduly restrict qualified entities from becoming ENs and thus limit the options of our beneficiaries seeking services, because it provides another way for an entity to demonstrate that it meets one of the qualifications to serve as an EN.

*Comment:* Several commenters believed that our requirements for ENs should require all ENs to be licensed, certified, accredited or registered to provide services or to be able to arrange for other qualified entities to provide these services. Other commenters felt that our requirements were too stringent and that we should delete entirely § 411.315(c), which requires that potential ENs have applicable licenses, or certificates if required by State law.

*Response:* We have tried to strike a balance between ensuring that ENs are qualified by licensing or certification, while also providing an opportunity for non-traditional providers to qualify as ENs by demonstrating that they have obtained education or experience in providing the relevant services. Section 1148(f) of the Act provides that ENs must meet general selection criteria such as professional and educational qualifications where applicable and specific selection criteria such as substantial expertise and experience in providing relevant employment services

and supports. Section 1148(f) did not limit us to requiring that all ENs be licensed, certified, or accredited, or registered to provide services or to arrange for other qualified entities to provide these services. However, where State law requires such documentation, the requirements of State law will apply.

*Comment:* Many commenters noted that the proposed rules appeared to require that ENs have relevant certification, accreditation, or license, even when the EN is not directly involved in the provision of services. They specifically expressed concern that we were requiring ENs to be qualified to provide medical and health-related services. Commenters suggested that our final rule clarify that an EN would not need certification, accreditation, or licensing unless it was directly providing the relevant services, but that the EN must be able to arrange for an entity with the applicable certification, accreditation, or license to provide the services.

*Response:* Section 411.315 of the proposed rules did not require certification, licensing or registration per se. Section 411.315(b) of the rules requires ENs to have qualified staff. One way to meet this requirement is by using staff that are properly credentialed. Section 411.315(c) of the rules requires ENs to comply with whatever State laws may apply to them; ENs are not relieved of their obligation to comply with State law simply by virtue of participating in the Ticket to Work program. Based on the comments, we revised § 411.315(b)(2) to clarify that if any medical and related health services are provided, the EN should take reasonable steps to assure that such services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of such services. We did not intend to give the impression in the proposed rules that all ENs must be licensed to provide medical services.

*Comment:* A few commenters noted that required certificates and licenses would vary on a State-to-State basis and asked what measures would be taken to address the quality assurance of State requirements.

*Response:* SSA has no authority or interest in determining the validity of State licensing requirements or to encroach on State laws regarding these requirements. Section 411.315(c) states that potential ENs must comply with other laws that they may be subject to in order to provide employment services, vocational rehabilitation services, and other support services. Their potential participation in the

Ticket to Work program does not eliminate their duty to comply with other State laws that may govern their activities.

*Comment:* One commenter suggested that our qualifications for ENs should include alternative demonstrations of competency and allow for special circumstances under which an individual can choose as their provider an entity with no demonstrated qualifications or experience subject to individual approval and periodic review of progress by the PM. Some commenters indicated that to meet the goal of expanding the universe of service providers, we should include those family members, friends, or other persons who have the greatest personal investment in the individual's self-sufficiency including formally established circles of support or incorporated trust/guardianship boards and to allow for our experience requirement to include experience in life planning and community support.

*Response:* Section 1148(f)(1) of the Act requires that ENs meet and maintain compliance with both general selection criteria (such as professional and educational qualifications) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports). The Act thus requires some level of education, experience, or expertise in providing employment related services and does not permit us to use, as an EN, providers with no demonstrated qualifications or experience in providing or arranging for these types of services. Friends, family members, or other persons must meet these requirements to qualify as ENs.

*Comment:* Several commenters questioned whether our requirement of applicable licenses, if such licenses are required by State law, would prevent entities specializing in certain impairments, such as deafness or blindness, from qualifying as ENs. Other commenters suggested our licensing requirement is too restrictive and will prevent organizations with national licenses or certifications from qualifying as ENs. Still other commenters indicated that § 411.315(a)(3) should be modified to include nondiscrimination on the basis of disability as a requirement to be an EN.

*Response:* We do not believe the requirement in § 411.315(c) that ENs follow State law will prevent ENs from specializing in certain impairments. Section 411.315(c) merely provides that ENs must follow the State laws that are applicable to them. SSA has no authority to encroach on State laws in instances where licenses, certification,



or accreditation are required to provide specific services, including licenses to serve deaf or hard of hearing individuals. We do not believe the requirement in § 411.315(c) will prevent organizations with national licenses or certificates from qualifying as ENs. Presumably, these organizations are already complying with State laws applicable to them. We are not adopting the comment to modify § 411.315(a)(3) to require nondiscrimination on the basis of disability. The RFP for ENs requires applicants to indicate the impairment categories they serve and demonstrate that they have experience and expertise in serving people within those impairment categories. We envision that ENs will serve individuals in different impairment categories and have expertise and experience in serving specific groups.

*Comment:* Some commenters believed the proposed rule placed a higher value on education than on experience. Other commenters questioned what constitutes "substantial expertise and experience."

*Response:* The rules do not place a higher value on education than on experience. Our requirements to qualify as an EN are found at § 411.315. They include general criteria such as systems requirements, being accessible, and having adequate resources to perform the required activities, among other items. They also include specific criteria. The phrase "substantial expertise and experience" is used in section 1148(f)(1)(C) of the Act as an example of what may be used as specific selection criteria to be an EN. With respect to the specific selection criteria we use in § 411.315(b), we require ENs to have qualified staff. Potential ENs may show they have qualified staff by demonstrating that their staff are certified, licensed or meet certain standards. Potential ENs may also show they have qualified staff by demonstrating that their staff have education or experience to provide the services that the EN wants to provide to beneficiaries.

*Comment:* One commenter suggested that we require all ENs to develop an expertise in small business development and self-employment assistance services. The commenter stated that access to competent and available self-employment and small business development services are critical to successful employment outcomes.

*Response:* Expertise in small business development and self-employment assistance could be a valuable tool for ENs in providing services to beneficiaries. However, we do not believe we should require all ENs to

have this expertise. We intend these rules to encourage a variety of entities with different skills and expertise to become ENs, and do not want to limit a beneficiary's range of choices by requiring that all ENs possess a specific expertise.

*Comment:* One commenter suggested that SSA implement a vigorous review process for any entity that wishes to become an EN to assure that each approved EN is adequately staffed by educated and certified professionals who are experienced in the areas of rehabilitation and disability. Other commenters indicated that we failed in the proposed rules to require specific qualifications for EN staff that would ensure a high level of knowledge in serving many disabilities.

*Response:* The RFP for ENs requires that entities submit documentation of their qualifications to serve as ENs. SSA will not enter into agreements with entities that do not meet this requirement. Further, § 411.315 provides criteria that an entity must meet to qualify as an EN. The staffing requirements outlined in this section should ensure that ENs have staff with a high level of knowledge to serve our beneficiaries. An EN is not required to serve all disability categories but can specialize. The RFP asks applicants to indicate the impairment categories they serve and demonstrate their qualifications to serve people within those impairment categories.

*Comment:* Some commenters stated that we should specify the range of services ENs must provide.

*Response:* We want to encourage as many qualified entities as possible to serve as ENs. We do not believe we should require all ENs to provide the same set of particular services, as beneficiaries may find a wide variety of services helpful in their return to work efforts. In addition, some ENs may not necessarily provide certain services, but only coordinate the delivery of services.

*Comment:* One commenter requested we permit providers who qualified as alternate participants under our reimbursement program to be automatically eligible as ENs. The commenter also suggested that other entities which already contract with State VR agencies should readily qualify as ENs.

*Response:* With respect to alternate participants, in any State where the Ticket to Work program is implemented, each alternate participant whose service area is in that State will be asked if it wants to participate in the program as an EN. See section 1148(d)(4)(B) of the Social Security Act and § 411.705 of these final rules. With respect to entities

that have contracts with State VR agencies, section 1148(f)(1) of the Act requires that all entities must meet and maintain compliance with both general and specific selection criteria. Entities which have already contracted with State VR agencies are required to submit proposals in response to our RFP and indicate that they will comply with all requirements of the Ticket to Work program.

*Comment:* One commenter recommended that we presumptively deem one-stop delivery systems established under title I of the Workforce Investment Act of 1998 as meeting the qualifications to be an EN. Another commenter asked whether an independent living center might qualify as an EN. Another asked what policies would be put in place for people such as artists whose work does not fall into a category represented by an EN. This commenter expressed a concern that SSA did not see the arts as a valid career choice.

*Response:* Section 1148(f) of the Act does not permit us to presumptively deem any entity as qualified as an EN, although State VR agencies and alternate participants are the only entities that do not have to follow the standard application process to become an EN. All other potential ENs must respond to the RFP for ENs and indicate that they understand and meet the requirements to serve as ENs. An independent living center may qualify as an EN if it meets the requirements spelled out in these regulations and in the RFP for ENs. Our regulation does not state what is appropriate work or prohibit potential ENs from specializing in certain career fields.

*Comment:* Section 411.315(a)(2) of the proposed rules states that the general criteria for EN qualification include "being accessible, both physically and programmatically, to beneficiaries seeking or receiving services." Some commenters suggested that we need to define "programmatic accessibility."

*Response:* We agree and have revised § 411.315(a)(2) in the final rules to include some examples of what it means to be programmatically accessible.

#### *Section 411.320 What Are an EN's Responsibilities as a Participant in the Ticket to Work Program?*

*Comment:* One commenter recommended that we establish clear standards for ENs to use in providing information to ticket holders regarding the services provided and expected outcomes.

*Response:* ENs are required to provide information sufficient for beneficiaries to make an informed choice regarding

services and vocational goals and to then agree to and sign an IWP regarding these services and the vocational goal. Section 1148(f)(4) of the Act requires that ENs prepare periodic reports on at least an annual basis itemizing outcomes achieved with respect to services provided by the EN. Each EN must provide a copy of its latest report to each beneficiary that it agrees to work with under the Ticket to Work program. The PM is required to ensure that these reports are available to the public.

*Comment:* One commenter indicated that this section should specify who prescribes an EN's service area.

*Response:* When responding to the RFP for ENs, an applicant indicates the geographic area(s) in which it proposes to provide services to beneficiaries.

*Comment:* Several commenters indicated that we should reflect the State VR agency's obligation to follow the law as outlined in the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

*Response:* Section 411.375 in subpart F states that "The State VR agency must continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even when functioning as an EN." Section 411.385 indicates that the State VR agencies are required to follow the law as outlined in the Rehabilitation Act which requires the use of an individualized plan for employment (IPE).

*Comment:* Several commenters stated that we should use the term "individualized plan for employment" as well as IWP.

*Response:* Sections 411.115(f), (i), and (j) explain that *employment plan* means an individual work plan under which an EN (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. We use IWP to identify the employment plan developed and implemented by an EN and beneficiary, and IPE to describe the employment plan agreed to and signed by a State VR agency and beneficiary.

*Comment:* Several commenters stated that we should require ENs to serve any client living in the geographic area they indicate they serve. The commenters indicated that allowing ENs to choose would prevent those with the most severe disabilities from getting any services and ENs would take only the easiest clients.

*Response:* The Ticket to Work program provides for a voluntary relationship between the beneficiary

and the EN. While an EN may not discriminate in the provision of services based on a beneficiary's age, gender, race, color, creed, or national origin, an EN may select the beneficiaries to whom it will offer services based on factors such as its assessment of the needs of the beneficiary and of its ability to help the individual. Requiring the EN to serve all clients in their geographic area would eliminate the voluntary nature of this relationship and reduce the number of entities who would choose to serve beneficiaries as ENs.

Whether there are under-served populations will be assessed as part of the ongoing evaluations of the Ticket to Work program. Section 101(d)(4) of Public Law 106-170 requires the Commissioner of Social Security to provide for independent evaluations to assess the effectiveness of the Ticket to Work program, including evaluation of "the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services." The Commissioner is required to provide periodic reports to the Congress on these evaluations, setting forth the Commissioner's evaluation "of the extent to which the Program has been successful and the Commissioner's conclusions on whether or how the Program should be modified." Section 1148(h)(5)(C) of the Social Security Act also requires the Commissioner to report to Congress no later than 36 months after the date of the enactment of Public Law 106-170 with recommendations for a method or methods to adjust EN payment rates that would ensure adequate incentives for the provision of services by ENs of:

- Individuals with a need for ongoing support and services;
- Individuals with a need for high-cost accommodations;
- Individuals who earn a subminimum wage; and
- Individuals who work and receive partial cash benefits.

Based on these evaluations, the Commissioner may recommend modifications of the program to the Congress, or make other necessary changes within the Commissioner's authority under the Social Security Act.

*Comment:* One commenter expressed concern about what would happen to a beneficiary who refused to work with an EN and faced the possibility of sanctions.

*Response:* Section 101(b) of Public Law 106-170 repealed sections 222(b) and 1615(c) of the Act, which provided for the sanctions for VR refusal.

*Comment:* Some commenters stated that the requirements in the NPRM will restrict many private businesses from becoming ENs and do not offer any incentives to an employer to participate or even become an EN.

*Response:* The requirements in the NPRM are intended to strike a balance between assuring the participation of qualified ENs including non-traditional providers while protecting beneficiaries by requiring a certain level of competence by the entities that will serve them. The incentives provided in section 1148 of the Act for the ENs are the milestone and outcome payments for achieving results. While no special incentives are provided in this legislation for employers, we are confident that employers are qualified to serve as ENs, and that they will be able to assist beneficiaries to obtain and maintain employment.

#### *Section 411.321 Under What Conditions Will SSA Terminate an Agreement With an EN Due to Inadequate Performance?*

*Comment:* One commenter recommended that we delete the phrase "self-supporting employment and leaving the benefit rolls" as the goals of our performance standards for ENs.

*Response:* Enabling beneficiaries to achieve self-supporting employment and leave the benefit rolls is the goal of the Ticket to Work program. It is a critical performance standard for ENs and essential to our evaluation of ENs.

*Comment:* One commenter expressed concern about the standards SSA will use to evaluate ENs and whether we will have different standards for rehabilitation agencies and for ENs.

*Response:* We will develop appropriate standards to ensure the capability of ENs to provide the needed services and to achieve outcomes. For State VR agency performance, SSA will defer to the standards required by the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). As indicated in section 411.375, the State VR agency must continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even while functioning as an EN.

#### *Section 411.325 What Reporting Requirements Are Placed on an EN as a Participant in the Ticket to Work Program?*

*Comment:* Several commenters objected to having to provide a financial report showing the percentage of the EN's budget that was spent on serving beneficiaries with tickets including the

amount of time that was spent on beneficiaries who return to work and those who do not return to work. They indicated that this percentage reporting would be an extensive process and would require reporting on time spent working with an individual for which they would not be compensated. Other commenters felt that the reporting of ticket acceptance and of the IWP is unnecessary and represents too much reporting on process as opposed to reporting on beneficiary outcomes. Another commenter asked for a definition of outcomes to be reported. One commenter suggested that we include a requirement that the State VR agency submit an IPE to the PM in § 411.325(b) and (c).

*Response:* We agree with the commenters that the reporting requirement regarding percentage of time working with beneficiaries would place an undue burden on ENs and are eliminating this specific requirement in our final rule. However, we are required to obtain information regarding ticket acceptance and the IWP to ensure that beneficiaries are using their tickets and thus are eligible for continuing disability review protection, and to determine EN eligibility for payments under the EN payment systems. We will develop a national report model, which will define outcomes. We will use the information we receive from EN reports to identify changes we must make to the Ticket to Work program in the future. We did not require, in § 411.325 or elsewhere, the State VR agency to send a copy of the IPE to the PM, because of concerns expressed by the Rehabilitation Services Administration and other commenters about the privacy and confidentiality of client information required by the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

*Comment:* One commenter recommended that we add language to § 411.325(h) indicating that the EN will collect and record such data as we shall require by written contractual agreement.

*Response:* The requirement to collect and record such data as we shall require will be in our written agreements with ENs. There is no need to specify "by contractual agreement" in § 411.325.

#### *Section 411.330 How Will SSA Evaluate an EN's Performance?*

*Comment:* Some commenters requested information regarding the specific performance standards SSA will develop to evaluate ENs and from whom SSA will obtain input for such evaluations. Another commenter asked

whether this evaluation should be the responsibility of the PM.

*Response:* SSA will develop appropriate performance standards and will consider input from providers, beneficiaries, and other interested parties in developing these standards. The PM will assist SSA in evaluating EN performance. However, SSA is responsible for the final evaluation because SSA has entered into contractual agreements with ENs and bears the ultimate responsibility for EN performance and the Ticket to Work program's success.

#### **Subpart F—State Vocational Rehabilitation Agencies' Participation**

##### *General Comments and Responses*

*Comment:* Several commenters stated that the State VR agency and the EN are the same entity in instances in which the VR agency participates as an EN. These commenters requested that, throughout the final regulations, whenever reference is made to an EN, such reference indicate that an EN includes a State VR agency functioning as an EN.

*Response:* We did not adopt the commenters' recommendation. Some rules in these final regulations, such as most of the rules in subparts E and G, apply to entities, other than State VR agencies, which have entered into agreement with SSA (or wish to do so) to serve as ENs under the Ticket to Work program. Where necessary, various sections of the final rules include references to both an EN and a State VR agency to specify the scope of a particular rule or rules. For the rules in subpart H which describe the two EN payment systems, references to an EN generally are intended to encompass a State VR agency functioning as an EN, unless the context requires otherwise or there is a specific mention of the State VR agency.

#### *Section 411.350 Must a State VR Agency Participate in the Ticket to Work Program?*

*Comment:* Several commenters requested that we modify § 411.350, "Must a State VR agency participate in the Ticket to Work program?" They indicated that as written this section indicates that a VR agency must participate as an EN in order to receive payment for services. They indicated that sections 222(d) and 1615(d) and (e) of the Social Security Act do not require VR agencies to become ENs.

*Response:* Section 411.350 has been clarified as follows: "Each State agency 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.*), must participate in the Ticket to Work program if it wishes to receive payments from SSA for serving disabled beneficiaries who are issued a ticket." Section 411.370, Does a State VR agency ever have to function as an EN?, states that: "A State VR agency does not have to function as an EN when serving a beneficiary with a ticket if the ticket has not previously been assigned to an EN or State VR agency or if it has been previously assigned, we have not made payment under an EN payment system with respect to that ticket." (See § 411.355(a).) Conversely, a State VR agency does have to function as an EN when it elects one of the EN payment systems for a beneficiary, on a case-by-case basis. (See § 411.355(b).) However, as described in § 411.585(b), a State VR agency is precluded from being paid under the cost reimbursement payment system if an EN or a State VR agency serving a beneficiary as an EN has been paid by SSA under one of the EN payment systems with respect to the same ticket. However, even if the State VR agency is not serving as an EN, it still must tell the PM whenever a beneficiary with a ticket is accepted for services.

#### *Section 411.355 What Payment Options Does a State VR Agency Have Under the Ticket to Work Program?*

*Comment:* One commenter stated that it does not make sense to allow the State VR agencies to determine on a case-by-case basis how they will be paid for serving a beneficiary, because that could encourage VR agencies to seek out the easiest beneficiaries to serve and get them to employment. The commenter noted that this is the opposite of the State VR agencies' traditional mandate, which is to give priority to serving the most severely disabled.

*Response:* We are not adopting this comment. The Ticket to Work program does not in any way affect the State VR agency's traditional mandate to serve the most severely disabled. It merely provides the State VR agency with an additional payment option in serving beneficiaries with disabilities who are issued a ticket and who seek services from the State VR agency rather than from an EN serving under the program.

*Comment:* One commenter asked if there would be any changes to the present process for State VR agencies seeking cost reimbursement payments.

*Response:* Under § 411.585(a) of the final rule, if a State VR agency is paid by SSA under the cost reimbursement payment system with respect to a ticket,

such payment precludes any subsequent payment by SSA under one of the EN payment systems based on the same ticket. Under § 411.585(b) of the final rules, if an EN or a State VR agency serving a beneficiary as an EN is paid by SSA 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. Public Law 106-170 repealed sections 222(b) and 1615(c) of the Act, effective January 1, 2001. Therefore, sanctions for refusing VR services without good cause are eliminated. Because the sanctions are eliminated, cases in which such sanctions are imposed are eliminated and no longer one of the categories of cases for which State VR agencies can seek reimbursement. As noted in the preamble, SSA intends to publish proposed rules in the **Federal Register** at a later date to amend the affected regulations to reflect the change in the law.

*Comment:* One commenter stated that these regulations should state that the VR reimbursement system continues to operate as a program available to all beneficiaries with disabilities who are eligible for VR services. In the commenter's view, as these regulations read now, reimbursement seems to apply only to ticket holders. State VR agencies have and will continue to serve many beneficiaries who will not receive tickets.

*Response:* We are not adopting this comment. Section 411.355(c) states that: "When serving a beneficiary who was not issued a ticket, the State VR agency may seek payment only under the cost reimbursement payment system."

**Section 411.365** *How Does a State VR Agency Notify SSA About Its Choice of a Payment System for Use When Functioning as an EN?*

*Comment:* Several commenters stated that § 411.365(a) should be revised to reflect that the State Agency must respond in writing only if it intends to function as an EN to make it clear that a State VR agency does not have to function as an EN.

*Response:* We are not adopting this recommendation. Under § 411.585(b) of the final rules, 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. The only payment system available to a State VR agency under this rule would be the EN

payment system elected in response to the letter identified in § 411.365(a).

*Comment:* Some commenters stated that § 411.365(b) should be revised to allow for the appropriate administrative authority other than the Governor to sign the letter reflecting the State VR agency's preferred payment method when functioning as a EN.

*Response:* We agree, and have revised § 411.365(b) in the final rules to indicate that "[t]he director of the State agency 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.*) or the director's designee must sign the State VR agency's letter."

**Section 411.370** *Does a State VR Agency Ever Have To Function as an EN?*

*Comment:* Several commenters noted that proposed § 411.370 provides that "even if the State VR agency is not serving as an EN, it still must tell the program manager whenever a beneficiary with a ticket is accepted for services to ensure that the beneficiary's ticket is assigned to that agency." The commenters stated that this provision would appear to indicate that all a VR agency needs to do to have a ticket assigned to it is to tell the PM that they are working with the individual. They noted that § 411.370 seems to be contradicted by § 411.385, which states that the State VR agencies must have beneficiaries sign a form when they wish to assign their Ticket to Work to a VR agency.

*Response:* Proposed sections 411.370 and 411.385 are not in conflict. In the final rules, however, we have made changes to clarify § 411.370. Section 411.370 explains that State VR agencies may choose on a case-by-case basis to function as an EN when serving a beneficiary with a ticket, or they may serve beneficiaries under the cost reimbursement system, subject to the limitations described in § 411.585. In either situation, State VR agencies must tell the PM that a beneficiary has been accepted for services in order for the ticket to be assigned to that agency. If a beneficiary with a ticket decides to seek services from the State VR agency, then the beneficiary will in effect be using the ticket for those services, even if the State VR agency chooses to be reimbursed rather than being paid under one of the EN payment systems. The process that the State VR agency will use to inform the PM is provided in § 411.385(a) and (b).

**Section 411.385** *What Does a State VR Agency Do if a Beneficiary Who Is Eligible for VR Services Has a Ticket That Is Available for Assignment?*

*Comment:* Several commenters noted that, under proposed § 411.385, when a beneficiary signs an Individualized Plan for Employment (IPE) as defined under the Rehabilitation Act, the beneficiary automatically has assigned the ticket to the State VR agency, regardless of whether the VR agency elects to participate as an EN with respect to the beneficiary. These commenters believe that § 411.385 negates beneficiary choice, which, as they state, is the hallmark of the Ticket to Work program. They noted that disability beneficiaries are presumptively eligible for State VR services without the ticket. They further indicated that if the State VR agency receives payment under the cost reimbursement payment system, § 411.585 provides that we cannot make payment to an EN. They argued that this would deny beneficiaries the use of their tickets at a later time.

*Response:* The Ticket to Work program increases beneficiary choice by expanding the options available for disability beneficiaries to access employment services, vocational rehabilitation services, and other support services that are necessary for them to find and retain employment and reduce dependency on cash benefit programs. Beneficiaries can choose to receive services from either the State VR agency or other service providers approved to participate as ENs. Beneficiaries with a ticket that can be assigned who decide to work with an EN other than a State VR agency will agree to and sign an individual work plan. Similarly, beneficiaries with a ticket that can be assigned who decide to work with the State VR agency will agree to and sign an IPE required under the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). In both circumstances, the beneficiaries have decided to participate in the Ticket to Work program by working with a provider to receive services necessary to help them go to work. Further, beneficiaries who are not satisfied with the services they receive from their chosen providers are able to reassign their ticket if they meet the requirements of § 411.150. See the comment and response section of subpart H for a discussion of the conditions that must be met to allow a State VR agency and EN to both receive payment for serving a beneficiary based on the same ticket.

*Comment:* Two commenters requested that § 411.385(a) be rewritten to clarify

that the individual must be determined eligible prior to developing an IPE and that both the individual and the VR counselor must sign the IPE.

*Response:* Section 411.385(a) has been revised to indicate that once the State VR agency determines that a beneficiary is eligible for VR services, the beneficiary and a representative of the State VR agency must agree to and sign the IPE, and that the requirements of § 411.140(d) or § 411.150(a) and (b) also must be met.

*Comment:* Several commenters recommended that we delete the phrase "working with the beneficiary" from § 411.385(b) because it is overly specific and limits who can sign the information being provided to the PM by the State VR agency.

*Response:* We agree and are revising § 411.385(b) to delete "working with the beneficiary."

*Section 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?*

*Comment:* Several commenters identified a conflict between proposed §§ 411.390 and 411.510(c) regarding a State VR agency's payment election options with respect to a beneficiary already receiving VR services under an IPE before the beneficiary receives a ticket and assigns it to the State VR agency.

*Response:* We are revising § 411.390 to remove the provision that conflicted with § 411.510(c). Section 411.510(c) of the final rules provides that for each beneficiary who already is a client of the State VR agency prior to receiving a ticket, the State VR agency will notify the PM of its payment system election at the time the beneficiary decides to assign the ticket to it.

*Comment:* Some commenters stated that proposed § 411.390 should be revised to provide that the State VR agency should automatically be considered as the holder of the ticket for current clients unless and until the beneficiary opts to change providers.

*Response:* We are not adopting this comment. Beneficiaries who are receiving services from the State VR agency under an existing IPE when they receive their ticket should have the opportunity to make an informed choice regarding their participation in the Ticket to Work program. Beneficiaries will be able to decide whether or not they wish to assign their ticket to the State VR agency. This includes beneficiaries who are determined eligible for a ticket upon implementation of the Ticket to Work

program in a State and beneficiaries who are determined ineligible for a ticket when the Ticket to Work program is implemented in a State but later become eligible for a ticket.

*Section 411.395 Is a State VR Agency Required To Provide Periodic Reports?*

*Comments:* One commenter stated that § 411.395 should prescribe how periodic reports on outcomes should be transmitted, and that an electronic infrastructure should be in place and operational prior to implementation of the Ticket to Work program.

*Response:* We are not adopting this recommendation to regulate the process for transmitting reports between a State VR agency and the PM. The PM will contact each State VR agency in States where the Ticket to Work program has been implemented to address the process for collecting information.

*Comment:* Several commenters stated that SSA should accept reports submitted by State VR agencies to the Rehabilitation Services Administration rather than creating additional reporting requirements for these agencies. Their concern is that reporting will be excessive and may duplicate or conflict with existing requirements under the Rehabilitation Act of 1973, as amended and the Workforce Investment Act of 1998, as amended.

*Response:* Reports that State VR agencies provide to the Department of Education's Rehabilitation Services Administration (RSA) may be used to meet the reporting requirements in section 411.395. However, at this time, we cannot say whether these existing reports will provide us with all of the information we need to fulfill our reporting requirements. The periodic outcomes reports discussed in section 411.395(a) are required by section 1148(f)(4) of the Social Security Act. They are a new reporting requirement for State VR agencies functioning as ENs. The reports discussed in section 411.395(b) are required so beneficiaries may take advantage of the new protection in section 1148(i) of the Social Security Act which prevents us from initiating a continuing disability review when the beneficiaries are using a ticket. We will work with RSA to share information whenever possible and avoid duplication of State VR agencies' existing reporting burden.

*Comment:* One commenter indicated that § 411.395 should be written to reflect confidentiality issues as outlined in the Rehabilitation Act of 1973, as amended.

*Response:* We have not adopted this suggestion. The contract that the PM and ENs sign with SSA includes the

requirement that access to confidential information must be restricted and that such information must be protected. Section 411.375 states that State VR agencies are required to provide VR services under a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even when functioning as an EN. This includes the confidentiality requirement that a State VR agency must follow.

*Comment:* One commenter noted that § 411.395 involves the State VR agencies in conducting reviews necessary to ensure that the beneficiary is making timely progress towards self-supporting employment while the same is not true for ENs. The commenter questioned why the EN wouldn't be able to validate that beneficiaries are making timely progress.

*Response:* Section 411.190 states that the PM will be using information provided by the EN or State VR agency in making the determination that a beneficiary is actively participating in his or her employment plan. Section 411.395(b) requires the State VR agency to submit this information. We are revising § 411.325 to require the same information from an EN.

*Comment:* This commenter also stated that the wording in § 411.395(b) should be changed from: "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" to: "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 ensure a beneficiary is not using a ticket to avoid continuing disability reviews."

*Response:* We are not adopting this comment. The purpose of the PM's review is to determine whether a beneficiary's active participation qualifies for CDR suspension under section 1148(i) of the Act. As long as a beneficiary is meeting the guidelines for timely progress toward self-supporting employment, the CDR suspension applies.

*Section 411.405 When Does an Agreement Between an EN and the State VR Agency Have To Be in Place?*

*Comment:* Commenters stated that § 411.400 (Can an EN to which a beneficiary's ticket is assigned refer the beneficiary to a State VR agency for services?) and § 411.405 should state that the agreements between ENs and

State VR agencies need to conform to the requirements of the Rehabilitation Act of 1973, as amended (29 U.S.C 720 *et seq.*)

*Response:* We have not adopted this suggestion. Section 1148(c)(3) of the Act, Agreements between State Agencies and Employment Networks, does not require that the State VR agency and EN agreement must conform to the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*).

*Comment:* Several commenters stated that there is no mention of ENs being able to enter into agreements with one-stop delivery systems established under the Workforce Investment Act of 1998.

*Response:* Section 1148(c)(3) of the Act provides that State agencies and ENs shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an EN to a State agency for services. Section 411.320 regulates the responsibilities of an EN in the Ticket to Work program. Section 411.320(c) provides that an EN may enter into agreements with other entities to provide employment services, vocational rehabilitation services, or other support services to a beneficiary.

On a related point, section 1148(f)(1)(B) of the Act states that an EN serving under the Ticket to Work program may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998, as amended. This provision is reflected in § 411.305(c) of these final regulations. As indicated in § 411.320(c), discussed above, a one-stop delivery system that is serving as an EN can enter into agreements as necessary to provide services to a beneficiary. As required of all non-State VR agency ENs, a one-stop delivery system that is an EN must have an agreement in place with a State VR agency before it can refer a beneficiary to the State VR agency for services.

*Comment:* One commenter stated that the regulations or preamble should clarify that the regulations do not require a separate agreement and may be satisfied by a local Memorandum of Understanding (MOU) established under title I of the Workforce Investment Act of 1998, or a modification to such MOU that contains the specified information.

*Response:* Section 1148(c)(3) of the Act does not specify the format of the agreements required between the State VR agencies and ENs. Any agreement must adhere to the requirements of § 411.400, which specifies that the 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. If a MOU satisfies these requirements, it would constitute a valid agreement.

*Section 411.410 Does Each Referral From an EN to a State VR Agency Require Its Own Agreement?*

*Comment:* Another commenter noted that § 411.410 indicates that agreements between ENs and State VR agencies should be broad-based and apply to all beneficiaries who may be referred to the State VR agency for services. The commenter stated that broad-based agreements ignore the uniqueness of each case and may prohibit an individual from receiving specialized services that are necessary in order to return to competitive employment. The commenter also noted that there is no mention of whether the agreement between the EN and State VR agency can be terminated. The commenter recommended that, in addition to broad-based agreements, ENs and State VR agencies might also create distinct agreements based on the specific needs of the individual being served, and that both the EN and the State VR agencies should have the ability to terminate their agreement if the needs of the individual are not being served.

*Response:* We agree with the commenter's first recommendation. We are adding language to § 411.410 to indicate that the general guideline that the agreement should be broad-based and apply to all beneficiaries who may be referred by an EN to a State VR agency is not intended to preclude an EN and a State VR agency from entering into an individualized agreement to meet the needs of a single beneficiary if both the EN and the State VR agency wish to do so. What is agreed to in the agreement concerning the conditions for providing VR services to beneficiaries referred by an EN and the process for terminating the agreement must be negotiated between the State VR agency and the EN.

*Section 411.420 What Information Should Be Included in an Agreement Between an EN and a State VR Agency?*

*Comment:* Several commenters stated that SSA should not be establishing the terms of the agreement between the State VR agency and the EN in the regulations. Other commenters indicated that we should modify § 411.420 to provide minimum requirements for these agreements. One commenter stated that we should specify when the State VR agency will pay the ENs for services. Another commenter stated that the State VR agency would be in a position to

negotiate terms of the agreement wholly favorable to its own interests. The commenter recommended that the rules should stipulate that each party to the agreement share reimbursement equitably, and that the rules to be applied by the PM in cases where disputes arise should be clearly defined prior to implementation.

*Response:* We are not establishing the terms of any agreement entered into between a State VR agency and an EN. Section 1148(c)(3) of the Act states that: "State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the time frame within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements." The Act does not provide SSA with the authority to set minimum standards or to regulate payment or fee schedules for these agreements. The introductory text of § 411.420 paraphrases the language in the Act regarding the basic nature of the agreements and paragraphs (a) through (d) of that section provide examples only of the types of information that could be included in any agreement. These regulations place no requirements on what should be included in an agreement.

*Comment:* Several commenters stated that, regardless of whether there is an agreement in place when a beneficiary is referred to a State VR agency, recently published Department of Education regulations, 34 CFR part 361, require State VR agencies to process all applications for services. The commenters noted that the State VR agencies will not be expected to expend program funds on services that are comparable to the services the individual is already receiving from the EN to which the individual's ticket is assigned. The commenters noted that further clarification is needed concerning a State VR agency's responsibility to provide additional needed services without a signed agreement with the EN.

*Response:* The Department of Education's, Rehabilitation Services Administration is the entity responsible for administering the State VR program. State VR agencies should contact the Rehabilitation Services Administration for guidance on expending State VR program funds on beneficiaries where no agreement exist with an EN.

*Comment:* Several commenters stated that §§ 411.405 to 411.430 do not address instances where individuals might have assigned their ticket to an EN, yet decide on their own to come to the State VR agency for additional services. In these instances, the EN is not making the referral, and an agreement may not be in place between the EN and the State VR agency. This may create a situation where a beneficiary is being served by both an EN and the State VR agency outside of the governance of an agreement. The commenters suggested expanding the rules in these sections to require that agreements will be in place between all ENs and State VR agencies, to ensure that all ticket holders are covered by an agreement.

*Response:* We are not adopting the commenters' suggestion. Section 1148(c)(3) of the Act requires agreements between State VR agencies and ENs regarding the conditions under which services will be provided when an individual is referred by an EN to a State VR agency for services. SSA does not have the authority to require an EN to enter into an agreement with a State VR agency unless the EN is going to make a referral of beneficiaries to a State VR agency for services.

#### *Section 411.435 How Will Disputes Arising Under the Agreements Between ENs and State VR Agencies Be Resolved?*

*Comment:* One commenter recommended a change to § 411.435(c)(2), to provide a time frame within which SSA must decide the matter in dispute between an EN and a State VR agency in a case where either party makes a timely request for SSA review following receipt of the PM's recommended resolution to the dispute. The commenter recommended adding a provision to provide that SSA will have 20 days to determine a resolution to the dispute.

*Response:* We do not agree that these regulations should establish a time frame for us to resolve disputes. We agree that we must resolve disputes as quickly as possible. However, a rigid time frame would be inadvisable due to the potential complexity of disputes involved.

*Comment:* One commenter noted that the rules do not mention the State VR agency's legal obligation to serve eligible individuals whether an agreement with an EN is in place. The commenter said it is essential that State VR agencies retain the ability to be paid under the cost reimbursement system.

*Response:* Under the Ticket to Work program, we will pay a State VR agency

for providing services to a beneficiary who is issued a ticket and assigns or reassigns the ticket to the State VR agency if certain conditions are met. Section 411.355(a) of the final regulation states that State VR agencies may choose to participate either as an EN or under the cost reimbursement payment system, subject to the limitations in § 411.585. The section further states that the State VR agency makes this choice on a case-by-case basis. Section 411.370 states that a State VR agency generally is not restricted in making its choice of participating either as an EN or under the cost reimbursement payment system, with the exception of the rule under § 411.585.

*Comment:* One commenter questioned how a beneficiary who chooses an EN other than a State VR agency would access the State VR agency for assistance with assistive technology for employment purposes. The commenter observed that a person with a disability who needs assistive technology in order to work can request assistance from the State VR Agency. The commenter asks if this can be done under the Ticket to Work program without the beneficiary reassigning his or her ticket to the State VR Agency.

*Response:* If the EN to whom the beneficiary has assigned his or her ticket has a signed agreement with the State VR agency, the EN could refer the beneficiary to the State VR agency to secure the services needed. If the beneficiary's EN has not entered into an agreement with the State VR agency, the beneficiary's EN would be required to enter into an agreement with the State VR agency before the EN could refer the beneficiary to the State VR agency for services.

*Comment:* One commenter stated that the regulations suggest that there is only one State VR agency per State. The commenter noted that this is not true for all States. In some States, there is a separate blind services unit. The commenter asked whether two separate agreements have to be in place between the EN and the two VR entities in the State in such an instance.

*Response:* The configuration of the State VR agencies within the State government's organizational structure would determine if an EN would need to enter into an agreement with one or two State VR agencies in a particular State. We are clarifying the definition of State vocational rehabilitation agency in final § 411.115(m) to reflect that some States have more than one agency that provides VR services.

## **Subpart G—Requirements for Individual Work Plans**

### *Section 411.450 What Is an IWP?*

*Comment:* One commenter was of the opinion that State VR agencies would have to complete an IWP and an IPE based on this regulation.

*Response:* In accordance with 1148(c)(2) of the Act, the State VR agency will continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) when providing services as an EN. The State VR agencies continue to prepare an Individualized Plan for Employment (IPE) for all clients served. We are clarifying § 411.450 so that it does not give the impression that a State VR agency is required to complete an IWP. In the first sentence of § 411.450 we added in parenthesis "(other than a State VR agency)" to clarify that State VR agencies are not required to complete an IWP.

*Comment:* A few commenters suggested that we add the definition of IWP in its entirety in the definition section of the rules.

*Response:* This suggestion was adopted. The IWP and many other new terms now are included in final § 411.115.

*Comment:* A few commenters wrote that whenever possible the regulations should encourage that the IWP and similar life/work planning instruments such as the IPE or individualized service delivery plan be used interchangeably.

*Response:* Other employment plans that are developed based on specific guidelines and laws may not be used as a substitute for the IWP unless they satisfy the requirements of the IWP in § 411.465.

### *Section 411.455 What Is the Purpose of an IWP?*

*Comment:* One commenter suggested alternate language to describe the purpose of an IWP. The commenter suggested that the wording be changed to read "Both parties should develop and implement the IWP in partnership in a manner that gives the beneficiary the opportunity to exercise informed choice in selecting an employment goal." The commenter also suggested using the term "define" in place of the term "outline" when naming services that will be provided under an IWP.

*Response:* The wording that was used in describing the purpose of the IWP was taken from the law. Section 1148(g)(1)(B) of the Act requires that "[e]ach employment network shall \* \* \* develop and implement each



such individual work plan, in partnership with each beneficiary.” The intent of the IWP is to outline, not define, the services that have been mutually agreed to by the EN and the beneficiary.

**Section 411.460 Who Is Responsible for Determining What Information Is Contained in the IWP?**

*Comment:* One commenter stated that a beneficiary could not exercise informed choice if the EN was not required to provide the beneficiary with a comprehensive list of the services available to support and facilitate an IWP.

*Response:* Section 1148(g)(1)(B) of the Act requires the IWP to be developed in partnership with the beneficiary and the EN. ENs will offer services themselves, or coordinate the delivery of services by others, or both. The services that any individual beneficiary may require will present different opportunities for an EN to meet. Given the varied nature of the beneficiaries that an EN may serve and the services that an EN may provide or coordinate, we do not believe that a requirement to provide a comprehensive list of such services would be meaningful.

*Comment:* We received several comments noting that our proposed § 411.465 stated that an EN may not request or receive compensation from the beneficiary for the services they provide, even though the Rehabilitation Act and other programs allow and sometimes require beneficiaries to financially participate in the cost of their plan.

*Response:* Section 1148(b)(4) of the Act states that “An employment network may not request or receive compensation for such services from the beneficiary.” However, the Act does not prohibit an EN from requesting a beneficiary who has assigned his or her ticket to it to participate in the cost of achieving the employment outcomes agreed to in the IWP. Section 1148(c)(2) of the Act states that State VR agencies are to provide services under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*) when providing services as an EN. Therefore, section 1148 of the Act does not relieve a beneficiary from financially participating in the cost of an individualized plan for employment, if this is required by the Rehabilitation Act.

*Comment:* We received one comment noting that our proposed § 411.465 provided that an EN shall provide a statement of remedies available to the individual, including information about the availability of the advocacy services

through the State P&A system. The commenter went on to discuss other regulations outside of the Ticket to Work program such as the Client Assistance Program (CAP) for resolving disputes. The commenter recommended that § 411.465 be revised to reflect services available to individuals who use the public VR system, such as the CAP.

*Response:* State VR agencies continue to provide services based on the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). Therefore, the CAP would continue to be used by State VR agencies in resolving disputes between the State VR agency and the beneficiary. Section § 411.465 covers a beneficiary who signs an IWP with an EN other than a State VR agency.

*Comment:* One commenter suggested that the minimum requirements of the IWP specifically state that an EN use comparable benefits whenever available.

*Response:* We are not adopting this comment. The definition of “comparable” benefits is found in 34 CFR 361.53 and applies to State VR agencies. Section 1148 of the Act does not require ENs to determine whether comparable benefits are available when providing services to a beneficiary.

*Comment:* One individual expressed concerns that a beneficiary who assigns his or her ticket would lose the ticket if the beneficiary did not do what the EN requested.

*Response:* Participation in the Ticket to Work program is voluntary. An EN cannot take the beneficiary’s ticket away for failure to comply with an EN’s request. The beneficiary remains free to reassign his or her ticket to another EN.

*Comment:* A commenter suggested that the minimum requirement for an IWP include a statement about the beneficiary’s responsibility to not reassign his or her ticket without good cause.

*Response:* We are not adopting this comment. Section 1148 of the Act does not require that the beneficiary have good cause for reassigning his or her ticket to another EN.

*Comment:* Several commenters suggested that time frames be identified for providing specific services.

*Response:* We are not adopting this comment. The IWP developed for an individual with a disability will vary based on the needs of the individual, their ability to progress based on the disability, and the employment goal that is established. Regulating time frames for providing services at such an early stage may be intimidating for some individuals or ENs. If the beneficiary and the EN feel comfortable with establishing time frames, they have the

flexibility to do so under these regulations.

*Comment:* One commenter stated that within the requirements of an IWP there is a provision that the individual has a right of privacy without any further definition or clarification of the term privacy. The commenter expressed concern that an individual’s decision not to share relevant information with an EN could be critical to the success of the individual’s rehabilitation. The commenter recommended that the term “privacy” be removed or adequately defined. Another commenter asked what the requirements were for an EN to obtain medical information for the IWP and what the requirements were before the EN could share that information.

*Response:* Section 411.465(a)(8) requires that an IWP must include “A statement of the beneficiary’s rights to privacy and confidentiality regarding personal information, including information about the beneficiary’s disability.” The EN’s contract with SSA will include the requirement that the EN protect an individual’s privacy and confidentiality. Personal and medical information must be obtained through the beneficiary. Once the information is obtained from the beneficiary, the EN’s contract requires the EN to preserve the privacy and confidentiality of these records.

**Section 411.470 When Does an IWP Become Effective?**

*Comment:* One commenter said that our description in the proposed rule of when an IWP becomes effective was unclear.

*Response:* We have revised § 411.470 to clarify when an IWP becomes effective.

**Subpart H—Employment Network Payment Systems**

**General**

*Comment:* Many commenters recommended that we redesign the proposed outcome-milestone payment system so that it would be more supportive of small-to-mid-sized providers. They said that smaller providers, unlike State VR agencies and other large service providers, do not have the reserves to absorb the risk of providing services over an extended period of time or when they are expensive. The commenters said that, if the outcome-milestone payment system fails to provide enough up-front financial incentives and it takes a substantial amount of time before ENs can claim reimbursement, the Ticket to Work program would restrict the pool of

providers and undermine consumer choice. Some said that the proposed rules offered little improvement over the alternative participant program for payment for VR services that was intended to expand beneficiary access under the traditional VR cost reimbursement program. The commenters were concerned that the rules, as proposed, would not enhance beneficiary access to services and would not be flexible enough to help ENs serve the diverse needs of the disabled beneficiary population. Also, they predicted that the proposed payment system would encourage providers to "cream" the easier-to-serve clients, place many in "any" job, as opposed to developing the sort of career opportunities that are likely to result in permanent gains for both consumers and SSA, and that providers would not serve those with more severe disabilities.

*Response:* In response to these comments, we made four changes to the outcome-milestone payment system we proposed. First, we added two milestones. Second, we doubled the total value of the potential milestone payments. Third, we spread, over 60 months as opposed to 12, the outcome payment reductions made on account of milestone payments received. Fourth, we substituted a flat outcome payment rate of 34 percent for the graduated monthly outcome payments we proposed. We did not narrow the gap between the two payment systems, as recommended by many commenters.

These changes are discussed further below, in response to specific comments.

#### *Section 411.500 Definitions of Terms Used in This Subpart*

*Comment:* A few commenters said that the sample payment calculation bases we provided in the preamble to the proposed rule (65 FR 82853) seemed low. They suggested that, when we compute the actual payment calculation bases, we include only the average cash benefits of beneficiaries eligible for tickets. These commenters and another commenter also suggested that we consider increasing the payment calculation bases, and therefore the potential payments to ENs, by taking into account the additional program revenues (e.g., FICA taxes) and other savings (e.g., reduced Medicare/Medicaid costs resulting from employer-provided health insurance plans) that are generated by having a beneficiary go to work.

Two other commenters said that using the average Federal payment amount for title XVI only beneficiaries as a payment

calculation base was inflexible because it did not include State supplementation payments. The commenters said that the proposed calculations would not adequately compensate ENs that provide services in States where there are higher service costs or serve those who are the most disabled.

*Response:* We did not and can not modify these final rules with regard to the calculation of the payment calculation bases as the commenters suggested because section 1148(h)(4) of the Act provides specific requirements on how to calculate them. When we calculate the payment calculation bases, the law does not allow us to exclude the average benefit payable to non-ticket holders or to account for any FICA taxes or other benefit savings. In addition, section 1148(h)(4)(A)(ii) of the Act specifically directs us to exclude the State supplementation payment from the title XVI payment calculation base computation.

*Comment:* One commenter suggested that we expand proposed § 411.500(b) and (c) to explain that outcome payments can be affected by a beneficiary's impairment related work expenses (IRWEs) or the application of the provisions in section 1619(a) of the Act. Another commenter asked that we explain the effect of a beneficiary's trial work period (TWP) on the 60-month outcome payment period.

*Response:* We did not expand the final rules as the commenters suggested. The effect that employment support provisions can have on the disability benefits of those who work can vary depending on the individual case facts. To the extent that employment support provisions allow a beneficiary to receive a Federal cash benefit, they will prohibit us from making outcome payments with respect to the beneficiary. For example, the trial work period allows beneficiaries who receive title II disability benefits to test their ability to work for at least nine months. During this period they can receive full benefits regardless of how high their earnings might be so long as they have a disabling impairment. As long as the beneficiaries are in their TWP and receiving Federal cash disability benefits, their ENs would not qualify for outcome payments. We have a publication, A Summary Guide to Employment Support Available to People with Disabilities under the Social Security Disability Insurance and Supplemental Security Income Programs, SSA Pub. No. 64-030, that provides a general description of the employment supports available to beneficiaries with disabilities. This publication is available on our website

at [http://www.ssa.gov/work/ResourcesToolkit/redbook\\_page.html](http://www.ssa.gov/work/ResourcesToolkit/redbook_page.html).

#### *Section 411.515 Can the EN Change Its Elected Payment System?*

*Comment:* Two commenters expressed concern that the 18-month time frame in proposed § 411.515(c) for offering ENs the opportunity to change their elected payment system was too long. According to one commenter, this long a period would hinder recruitment of potential ENs because providers will be looking for flexibility to help ease their apprehension over the risks associated with their participation. The other commenter suggested that we allow ENs to change their elections at least quarterly.

*Response:* We did not adopt these comments because we believe that the language in final § 411.515(b) and (c) is flexible enough to address these commenters concerns. Section 411.515(b) offers ENs the opportunity to change their elected payment system at any time during the 12 months following the later of the month they first elect an EN payment system or the month we implement the Ticket to Work program in their State. In addition, § 411.515(c) states that we will offer an open election period to ENs "at least every 18 months." This language allows us to offer an open election period more frequently, if we believe it is warranted.

#### *Section 411.525 How Are the EN Payments Calculated Under Each of the Two EN Payment Systems?*

*Comment:* A few commenters urged us to relate the EN payment systems more to the cost of services, especially for those with more extensive service needs. Along these lines, one commenter suggested that we consider making the VR cost reimbursement payment system available to ENs. This commenter also suggested that we make payments whenever ENs establish that they provided significant efforts and services to assist beneficiaries because this commenter believes that improving the vocational skills of beneficiaries will ultimately lead to the reduction or elimination of benefits. We also received a recommendation for paying a stipend to vocational trainers and beneficiaries in lieu of 60 months of outcome payments.

*Response:* We did not adopt these suggestions because the Ticket to Work program is an outcome-based program and the law does not provide authority for the types of payments identified by the commenters. We therefore cannot design a payment system around the cost of services, even for those with

more extensive service needs, or to make stipend payments in lieu of outcome payments. We do not have the authority to extend the VR cost reimbursement program to ENs that are not State VR agencies.

*Comment:* One commenter believed that the outcome payments we proposed were too low. Based on experiences in welfare reform, this commenter did not believe that the proposed payment system would attract a wide variety of service providers. The commenter expressed the belief that the Ticket to Work program would be viewed as risky for providers because they lack the experiential data with which to estimate beneficiary work efforts. The commenter also believed that the proposed payment system would not attract smaller service providers because of the cash-flow concerns that such providers would have. Agreeing that an outcome based payment system was fiscally responsible, this commenter suggested we "front-load" the outcome payments in the first year, paying as much as 100% of the saved benefits. Then, in subsequent years, we could reduce payments some, but leave enough to encourage the ENs to provide for follow-up support services.

*Response:* We did not adopt this comment. Section 1148(h)(2)(C) of the Act limits payments under the outcome payment system to 40 percent of the payment calculation base.

*Comment:* We received several comments about the two substantial gainful activity (SGA) dollar thresholds in proposed §§ 411.525(a)(1)(ii)(A) and 411.535(a). The commenters were concerned that ENs might be discouraged from serving beneficiaries who are statutorily blind because the SGA threshold amount for them (currently \$1,240) is higher than it is for those who are not statutorily blind (currently \$740). Thus, the commenters recommended that we use the lower SGA threshold amount when we determine whether to pay an EN, regardless of the beneficiary's disability.

*Response:* We did not adopt this suggestion because we do not believe it appropriate to have a threshold amount for outcome or milestone purposes for beneficiaries who are blind that is not equal to the blind SGA threshold amount for benefit determination purposes. Individuals who are blind have several protections, including a higher earnings threshold. Thus, we believe that payments due an EN should reflect this higher limit.

*Comment:* Many commenters had two concerns about the proposed differences in the payments for title II and title XVI beneficiaries. The first is that the

proposed payment levels for title XVI only beneficiaries would be substantially lower than for title II (including concurrent) beneficiaries. The second is that since section 1619(a) of the Act allows for a gradual reduction of title XVI benefits, it may take longer for title XVI recipients to achieve outcome payments than it would for title II beneficiaries. For example, a title XVI recipient who receives the maximum SSI benefit would need to earn \$1,145 in order to reduce benefits to zero and generate an outcome payment, while a title II beneficiary who is not blind would need to earn just over \$740 in a month to reduce benefits to zero and generate an outcome payment. The commenters contended that SSI recipients are likely to have more severe disabilities, less education and work history, and require more intensive and extensive supports. The commenters said that the lack of a uniform income level to trigger outcome payments made the Ticket to Work program confusing. They predicted that the differences will discourage ENs from serving title XVI recipients. Also, they said that our proposed formula overlooked the additional cost savings from reduced reliance on title XVI benefits and increased employment taxes paid by working beneficiaries. The commenters recommended that we increase the payment levels to ENs for serving title XVI only beneficiaries, with some suggesting we pay ENs the same amount regardless of whether they serve a title XVI only or a title II beneficiary. The commenters also recommended that we establish a uniform income level as a trigger for outcome payments and allow for outcome payments based on a partial reduction of title XVI Federal cash benefits.

*Response:* We cannot adopt the commenters' recommendations to make outcome payments for title XVI only beneficiaries richer or to let an alternative event, such as the partial reduction in benefits, trigger outcome payments. The law is very specific about how we are to calculate payment levels and what events trigger outcome payments. However, the law also provides for us to study and report to Congress on the extent to which the Ticket to Work program has been successful and what further modifications should be made. Specifically, section 1148(h)(5)(C) of the Act requires us to evaluate and report on the adequacy of the incentives for ENs to serve four specific groups of individuals. They are individuals with a need for ongoing support and services, individuals with a need for high-cost

accommodations, individuals who earn a sub-minimum wage and individuals who work and receive partial cash benefits. Also, section 101(d)(4) of Public Law 106-170 requires a broader evaluation and report on the success of the Ticket to Work program. Therefore, we will be studying how effective the program is in serving title XVI beneficiaries.

We based our proposal for the payment levels on section 1148(h)(2)(C) and 1148(h)(4)(A) of the Act. Under section 1148(h)(2)(C) of the Act, we have to base outcome payments on a fixed percentage of the payment calculation base for the calendar year in which the month occurs. With respect to the payment calculation base, section 1148(h)(4)(A) of the Act provides for two payment calculation bases. The first is based on the average monthly title II disability insurance benefit payable for months during the preceding calendar year. We must use it in connection with a title II beneficiary. The second payment calculation base is based on the average monthly payment of title XVI benefits based on disability (excluding State supplementation) payable for months during the preceding calendar year to beneficiaries aged 18 through 64. We must use this second payment calculation base in connection with a title XVI beneficiary who is not concurrently a title II beneficiary.

We based our proposal to limit outcome payments to situations in which monthly Federal SSI cash benefits to a title XVI disability beneficiary stop due to work or earnings on sections 1148(h)(2)(B), (k)(4), and (k)(5) of the Act. Under section 1148(h)(2)(B) of the Act, an outcome payment month is a month, during an individual's outcome payment period, "for which benefits (described in paragraphs (3) and (4) of subsection (k)) are not payable to such individual because of work or earnings." With respect to a title XVI disability beneficiary, the benefits described in section 1148(k)(4) of the Act are "supplemental security income benefits under title XVI" based on blindness or disability. The term "supplemental security income benefit under title XVI" is defined in section 1148(k)(5) of the Act to mean "a cash benefit under section 1611 or 1619(a)," excluding any State supplementary payment. Thus, in formulating the proposed rules on outcome payments for a title XVI beneficiary, we considered an outcome payment month to be one "for which [a cash benefit under section 1611 and a cash benefit under section 1619(a)]

\* \* \* are not payable to the individual because of work or earnings.”

*Comment:* Many commenters were concerned that proposed § 411.525(b) set the payment rate for the outcome-milestone payment system at about 85 percent of what would be payable under the outcome payment system for the same beneficiary. They said that this difference was too great to attract small or specialized providers that do not have the financial resources to pay for all of the up-front cost of services. The commenters predicted that the difference would discourage the use of the outcome-milestone payment system, impede the delivery of services to those with more severe disabilities, and undermine the Ticket to Work program's goal of increasing consumer choice.

The commenters recommended that we close the gap between the two payment systems to create an incentive for as many providers as possible to participate in the Ticket to Work program. Many suggested that we narrow the gap to the bare minimum possible under the law; with two commenters saying that a one dollar difference would meet the letter of the law. Others suggested specific rate differentials ranging from 95 to 99 percent.

*Response:* We did not adopt these commenters' suggestions to close the gap between the two payment systems. We believe that if we close the gap too much, there would be no incentive for ENs to choose the outcome payment system and, by default, we would have one rather than two EN payment systems, and that one system would be the outcome-milestone payment system. Under the law, we are to offer providers two EN payment systems and we are to make the outcome-milestone payment system the less financially rewarding of the two. In return for the opportunity to receive up-front milestone payments, providers choosing the outcome-milestone payment system receive a smaller total potential payment amount than under the outcome payment system. If there is not a meaningful difference to the total payments available under the two systems, all providers would choose the outcome-milestone payment system because it offers payments earlier. Such a result could jeopardize the success of the program as a whole because the outcome-milestone payment system, by offering payments to providers before SSA has achieved any program savings, increases the risk that government outlays in the form of milestone payments will not be subsequently offset with savings from the

nonpayment of benefits. As we begin to implement the Ticket to Work program, we will collect data and use it to determine if we should continue to apply the same rate differential between the two systems.

*Comment:* One commenter asked if an EN would be entitled to the remainder of the 60 months of outcome payments if an individual dies or turns age 65 first.

*Response:* No. In final §§ 411.155(a) and 411.525(c) we state that we will not pay an EN for milestone or outcomes achieved in or after the month in which a beneficiary's ticket terminates. The events that cause a ticket to terminate are listed in § 411.155.

In all cases, death is an event that would cause a ticket to terminate. It is a terminating event for benefit entitlement/eligibility purposes, and thus is covered by the provisions in § 411.155(a)(1). Also, we refer to death in § 411.155(c)(4) of the final rules as a ticket-terminating event for those whose entitlement/eligibility to disability benefits have ended/terminated because of work or earnings.

In most cases, a beneficiary's ticket will also terminate when the individual attains age 65 or, where appropriate, full retirement age. Attaining full retirement age is a terminating event for workers who are entitled to Social Security disability benefits, and thus is covered by the provisions in § 411.155(a)(1). We also refer to full retirement age, or to age 65, in § 411.155(a)(2), (a)(3), and (c)(3) of the final rules as a ticket-terminating event.

The only instance in which attainment of age 65 or retirement age, would not cause disability benefits, and hence the ticket, to terminate is if the individual is still entitled to childhood disability benefits. However, we will not pay an EN for any of the remainder of the 60 months of the outcome payment period in such a case unless the rules in § 411.525(a)(1)(i) are met. They provide that an EN may receive a monthly outcome payment only for months in which no benefits are payable because of work or earnings.

#### *Section 411.530 How Will the Outcome Payments Be Reduced When Paid Under the Outcome-Milestone Payment System?*

*Comment:* Many commenters were critical of our proposal in § 411.530 to reduce the first 12 outcome payments under the outcome-milestone payment system by the total amount that we had already paid for milestone payments. They said that such a short reduction period would discourage smaller, less well-capitalized ENs from participating

in the Ticket to Work program. Referring to this proposal as “back loading,” they noted that it would mean that the fifth year of monthly outcome payments would be three times higher than the payments in the first year. They were concerned that an EN might lose the bulk of the payments available should a beneficiary leave them shortly after beginning to work. The commenters recommended that we reduce all 60 outcome payments equally, rather than just the first 12 outcome payments, to account for milestone payments already made.

*Response:* We agree with these comments and revised § 411.530. In the outcome-milestone payment system, we will reduce each outcome payment that an EN receives by an amount equal to 1/60th of the milestone payments already made to that EN based on a ticket.

With regard to the commenters' concerns about the loss of payments when a beneficiary leaves an EN shortly after beginning to work, an EN may make a claim for payment for any future milestones or outcomes the beneficiary achieves. Final § 411.560 provides that payments can be split among ENs which have had a beneficiary's ticket assigned to them.

*Comment:* Many commenters said that having milestones based on the SGA threshold amount was an inappropriate standard for title II beneficiaries who previously used up most or all of their trial work period before getting their tickets. Their concern was that ENs might not receive milestone payments if the beneficiaries reached the outcome payment period before achieving any milestones.

*Response:* In response to this comment we are modifying final § 411.530 to make clear that under the outcome-milestone payment system we will reduce only outcome payments based on the amount of milestone payments an EN receives. If we do not make milestone payments to an EN with respect to a particular ticket, we will not reduce the EN's outcome payments.

This had been our intent when we proposed this rule, but we were not clear on two points. First, we did not identify whose outcome payments we would reduce when more than one EN receives outcome payments based on the same ticket and one receives milestone payments and the other does not. Our intent is to reduce the outcome payments of the EN that actually receives the milestone payments. Second, the proposed rules indicated that we would reduce outcome payments by milestone payments already made. In the final rules we deleted the word “already” because

there may be situations in which we make a retroactive payment for a milestone that a beneficiary achieved before the outcome payment period began. In such a case, we will have to make an adjustment for any outcome reductions we did not take before we made the retroactive milestone payment, and we will reduce any future outcome payments by an amount equal to 1/60th of all milestone payments we made to that EN.

*Section 411.535 What Are the Milestones for Which an EN Can Be Paid?*

*Comment:* Many commenters suggested that we add one or more pre-employment milestones to the outcome-milestone payment system we proposed to ensure that ENs can provide adequate pre-employment services to disability beneficiaries. Some suggested milestones at specific times, for example, when ENs make vocational assessments, when beneficiaries and ENs sign IWP, when ENs purchase assistive devices for beneficiaries, or when ENs place beneficiaries in jobs. Others suggested that we make the milestones more flexible, for example, tie them to a measurable goal in the IWP, such as the completion of an educational goal or the acquisition of specified job skills.

These commenters were concerned about the two milestones we proposed, the first of which would not occur until after beneficiaries work for at least three months at the SGA threshold amount. They believed these milestones would not occur early enough in the service period and would not allow payment for the substantial early costs incurred in providing individuals with significant disabilities the necessary services that are directly related to achieving the goal of permanent employment. While the commenters acknowledged that paying for an employment outcome is a worthy goal, they said that we should have balanced that goal against the ability to recruit and retain ENs. Most small-to-mid sized ENs, they explained, simply do not have the capital to wait, potentially, six months to a year or more to receive their first payments from SSA, especially when one considers the staff time and cost of pre-employment services required to serve individuals with significant disabilities. They believe that the lack of a more flexible and front-loaded outcome-milestone payment system may discourage providers from participating and thereby significantly limit beneficiary choice.

The commenters also said that the milestones were supposed to be a

method of risk sharing between SSA and providers, but that the two we proposed would delay and otherwise limit cash flow and force ENs to assume all of the risk. One community-based agency said it was unfair of SSA to ask currently under-funded, community-based organizations to accept yet another burden of providing services without compensation. In a similar vein, a State agency expressed concern that since their State funds many programs involving providers that could become ENs, the milestones, as proposed, would have the effect of shifting up-front funding costs to the State, unless and until the providers receive Federal payments.

*Response:* We did not adopt any of the commenters' suggestions for establishing pre-employment milestones. Our major concern with offering them is that of projected costs. The events associated with pre-employment milestones occur so early in the process of moving a beneficiary to independence that we project a significant number of beneficiaries who would achieve them would not eventually leave the disability rolls because of work or earnings. Accordingly, there would not be sufficient savings from the eventual nonpayment of benefits to offset the initial cost outlays associated with having pre-employment milestones. For this reason, we tied the milestones in these final rules to beneficiary work activity, when there is an increased likelihood of permanent employment and of achieving outcomes.

*Comment:* Many commenters urged us to add to and modify the post-employment milestones we proposed. Among the suggestions we received were those to link the milestones to length of job retention only (e.g., three, six, and nine months), without regard to the amount earned. Also, there were suggestions to have a milestone system that steps up to the SGA threshold amount for the final payment because many beneficiaries ease into their work and gradually increase their earnings. Others suggested that we substitute the recently raised trial work period amount (i.e. \$530) for the higher SGA threshold amount (i.e. \$740 for those who are not statutorily blind and \$1,240 for those who are statutorily blind). In addition, we received suggestions to have specific title XVI milestones based on a percentage of reduction in cash benefits and to add a milestone for 12 months of employment at the SGA dollar amount.

*Response:* In response to these comments we amended final § 411.535 to add two milestones to the two that we originally proposed. The first additional

milestone is met when the beneficiary works for one calendar month and has gross earnings from employment (or net earnings from self-employment) for that month that are more than the SGA threshold amount. The other additional milestone, which is actually the fourth milestone, is met when the beneficiary works for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self-employment) for each of the 12 months that are more than the SGA threshold amount. In making these changes, we renumbered the two milestones we originally proposed as the second and third milestones. Also, we provide that any of the work months used to meet the first, second, or third milestones may be used to meet a subsequent milestone.

We do not anticipate that the changes we are making to the milestones in these final rules will be the only ones that we will make. Section 1148(h)(5)(B) of the Act directs us to periodically review the number and amount of the milestone payments, and authorizes us to make alterations, if necessary, to ensure that they allow for adequate incentives for ENs to serve beneficiaries with disabilities. Thus, as we begin to implement the Ticket to Work program in the 13 initial States, we will continue to consider the various suggestions that we received with regard to milestone payments.

At this time, however, we do not support the recommendations for a milestone system based solely on length of job retention or on lower levels of earnings so that beneficiaries can ease into their work. While length of job retention can be an important factor in determining whether benefits continue, so is the level of earnings, and we believe that that level ought to at least exceed the SGA threshold amount. This amount is a gross dollar amount, not the net earnings that remain after we deduct the various employment supports an individual may receive. Also, we do not favor the recommendations to structure SSI milestones on a percentage of reduction in cash benefits. Many factors (e.g., unearned income and impairment-related work expenses, to name a few) go into making SSI payment decisions. Thus, it would be difficult to know whether a given percentage reduction in cash benefits is due to work or to other factors, such as unearned income, without carefully examining each SSI payment calculation.

*Comment:* A few commenters urged us to build incentives into the EN payment systems to reward ENs for each additional client they move into the workforce and for each client they help

to get better jobs, i.e. jobs that include benefits and provide a livable wage. Along these lines, many commenters urged us to adopt milestones provisions that would encourage ENs to serve those who need more costly or more extensive services to become work ready. Some suggested that we have individualized milestone criteria for those who need ongoing support services or high-cost accommodations when working, earn subminimum wages, or work but still receive partial cash benefits (e.g., section 1619(a) recipients). Other commenters suggested that we adopt a two-tiered milestone system like the ones used by some States that administer supported employment programs. Under such a system those in the second tier would get customized milestones when, due to the nature of their disabilities, the pre-defined milestones in tier one are unworkable. In addition, many suggested that we consult with providers who have experience in milestone payment systems and redesign our system.

*Response:* We did not adopt these recommendations because it is impracticable for us to implement them at this time, given the size of the ticket population and its diversity. Like these commenters, we want the design of our EN payment systems to increase the number of ENs serving our beneficiaries. However, we have a responsibility to see that our expenditures under the program do not exceed program savings. As we gather experiential data, we will carefully look at who is being served and what design changes we can propose to broaden the number of beneficiaries being served and increase the number of those finding employment that will firmly establish their self-sufficiency. We will consult with experts in the field, as needed, and consider the effects of these suggestions in terms of beneficiary needs, program operations, and costs. Further, section 1148(h)(5)(C) of the Act requires us to submit a report to Congress on the adequacy of the incentives in the Ticket to Work program for four groups of individuals. They are those with a need for ongoing support and services, those with a need for high-cost accommodations, those who earn a subminimum wage, and those who work and receive partial cash benefits.

#### *Section 411.540 What Are the Payment Amounts for Each of the Milestones?*

*Comment:* Many commenters told us that the payments we proposed to offer as milestones (i.e. approximately 10 percent of potential payments under the outcome-milestone payment system) are

inadequate and urged us to increase the amounts so as to encourage more small-to-mid-sized providers to participate in the Ticket to Work program. Some of these commenters suggested that we use a graduated fee system and pay based on the level of earnings a beneficiary receives. Others suggested that we base the milestone payments on a percentage of the true cost of services an EN provides. Still others suggested that we allow the PM to negotiate a fixed fee with each EN. We also received many recommendations for specific fees as well as many recommendations for a total package of milestone payments that ranged from \$3,500 to \$7,500.

*Response:* We agree with the commenters that some increase in the total milestone package would help to encourage more providers to serve as ENs. Therefore, in these final rules, we doubled the total value of the milestones that ENs may receive to approximately 20 percent of the potential payments possible under the outcome-milestone payment system. In terms of the 2001 payment amounts this equates to milestone payments totaling \$3,096 for title II (including concurrent) beneficiaries and \$1,874 for title XVI only beneficiaries.

To accomplish this increase in the milestone payments, we modified final § 411.540. We provided that the two milestones we added—the first and fourth milestones—would equal 34 percent and 170 percent of the payment calculation base for the calendar year in which each occurs. This represents approximately 10 percent of the potential payments possible under the outcome-milestone payment system. In addition, in final paragraphs (e) and (h) we explain the term “month of attainment” for the new milestones.

We do not believe that it is administratively practicable to adopt a graduated fee system, to set individual fees, or to have the PM negotiate fees with each EN. Also, we believe a \$7,500 milestone package is excessive when there is no guarantee that individuals who achieve milestones will also achieve outcomes that result in program savings.

#### *Section 411.545 What Are the Payment Amounts for Outcome Payment Months Under the Outcome-Milestone Payment System?*

*Comment:* Several commenters suggested that we offer a flat payment rate for outcome months under the outcome-milestone payment system. They found the graduated monthly outcome payments we proposed in § 411.545 to be unnecessarily complex

and predicted they would be more difficult to manage.

*Response:* We have adopted this suggested change and have modified the rules. Final § 411.545 provides that the payment for an outcome payment month under the outcome-milestone payment system is equal to 34 percent of the payment calculation base for the calendar year in which the month occurs, rounded to the nearest whole dollar, and reduced for milestone payments made, as required by the rules in § 411.530.

#### *Section 411.555 Can the EN Keep the Milestone and Outcome Payments Even if the Beneficiary Does Not Achieve All 60 Outcome Months?*

*Comment:* One commenter asked whether an EN would be responsible for paying back any payments it receives if a beneficiary stops working and goes back on the benefit rolls.

*Response:* An EN may keep each milestone or outcome payment for which the EN is eligible, even if the beneficiary subsequently stops working and returns to the benefit rolls. In some instances, however, we may find it necessary to adjust a milestone or outcome payment that the EN receives.

In proposed § 411.555, by reference to proposed § 411.560, we provided for such adjustment when another EN, to which the beneficiary assigned the ticket, requests payment for the same milestone or outcome. As we drafted these final rules, we realized that there may be other instances in which an adjustment may be necessary, and thus we expanded final § 411.555, to explain these other instances.

Paragraph (a) of final § 411.555 provides a general statement that ENs may keep those milestone and outcome payments for which they are eligible. Paragraph (b) of final § 411.555 discusses the EN payment adjustments we may make if we determine that we paid more or less than the correct amount due. This paragraph also provides two examples of situations requiring such an adjustment. One example refers to the aforementioned adjustments for payment allocations required by § 411.560. The other is an example of an adjustment described in § 411.590(d) that results from a corresponding determination or decision that we make about a beneficiary's right to benefits. Finally, paragraph (c) of final § 411.555 explains that we will notify ENs of any revised payment decisions. It also references our payment dispute rules in § 411.590(a) and (b).

*Section 411.560 Is It Possible To Pay a Milestone or Outcome Payment to More Than One EN?*

*Comment:* We received two comments about the consequences of a beneficiary reassigning the ticket to another EN.

One commenter said that the proposed rules were not clear with regard to whether we would pay the first EN. The other commenter was concerned with the repercussions of expecting ENs to absorb the cost of the resources expended on those who reassign their tickets. This commenter predicted that concern over beneficiaries reassigning a ticket would cause some providers to decline to participate in the Ticket to Work program, and others who decide to be ENs would serve only those beneficiaries with the greatest potential for success in the timeliest fashion.

*Response:* We can pay an EN after a beneficiary reassigns the ticket to another EN. Final § 411.560 states we can pay more than one EN and the PM will determine how much to allocate to each EN based upon the services provided. Additionally, final § 411.565 provides that if two or more ENs qualify for payment on the same ticket, we will pay each according to its elected EN payment system.

If we receive a claim from one EN that we determine is payable, we will make a reasonable attempt to notify any other EN that has held the beneficiary's ticket and still has an agreement with us to serve under the program of its opportunity to claim a share of the payment. Similarly, if we receive a claim from the beneficiary's current EN that we determine is payable, we also will make a reasonable attempt to notify any State VR agency that previously held the beneficiary's ticket and had chosen to be paid as an EN based on that ticket, of the opportunity to claim a share of the payment.

*Comment:* A few commenters suggested that we provide additional rules to further define the provisions of proposed § 411.560 regarding how the PM will determine payment allocation to more than one EN. These commenters were concerned that the Ticket to Work program is intended to pay ENs based on employment outcomes and the last sentence in this proposed section said that the PM would make payment allocations based "upon the services provided by each EN."

*Response:* We agree that the proposed wording was unclear. The fourth sentence of final § 411.560 now says that the PM will base the payment allocation determination upon the contribution of the services provided by each EN toward the achievement of the

outcomes or milestones. In addition, we added a fifth sentence to the final rules to clarify that outcome and milestone payments will not be increased because the payments are shared between two or more ENs.

*Section 411.570 Can an EN Request Payment From the Beneficiary Who Assigned a Ticket to the EN?*

*Comment:* One commenter questioned the use of the term "compensation" in proposed § 411.570. This section prohibits an EN from requesting or receiving compensation from the beneficiary for the services it provides. The commenter hoped that this section would not prevent a beneficiary from purchasing items at any retail establishment the EN may operate just because the EN holds the beneficiary's ticket.

*Response:* We believe that in the context of these regulations it is clear that the EN may not charge a beneficiary for the employment, vocational rehabilitation, or support services it provides. This regulation does not prohibit a beneficiary from purchasing items unrelated to the services the EN is providing to the beneficiary in any retail establishment the EN may have.

*Comment:* One commenter asked whether an EN could receive funding from another agency, other than a State VR agency, while serving a beneficiary with a ticket.

*Response:* ENs may receive funding elsewhere. Other than payments we will make to ENs, the Ticket to Work program does not address how ENs are funded.

*Section 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?*

*Comment:* Many commenters objected to the rules in proposed § 411.575(b)(2) that would require ENs to submit evidence of beneficiary earnings when they request outcome payments because the commenters believe that the task of tracking such earnings is the Social Security Administration's responsibility. Some commenters simply recommended that we not involve ENs in the process. Others recommended that we partner with the Internal Revenue Service (IRS) to develop a reliable means of receiving earnings information. Still others recommended that we assign the PM the responsibility of acquiring and validating earnings documentation from IRS or another source. There were also suggestions to use the earnings data posted to our own earnings records and

the earnings information which working beneficiaries are required to report to us.

*Response:* We did not adopt these suggestions. Our goal in proposing that ENs submit evidence of monthly beneficiary earnings in order to receive outcome payments was to facilitate the EN payment process. Under the Ticket to Work program, we cannot make outcome payments for any month for which a beneficiary receives a Federal cash disability payment from us. Accurately and expeditiously tracking earnings and adjusting monthly benefits is a difficult task. Beneficiaries are responsible for telling us when work occurs. For various reasons, this does not always happen, or does not happen on a timely basis. We currently use earnings reports that we receive from the IRS and other sources to alert us to unreported earnings situations. However, the reports we get can be a year old, are in annual or quarterly formats, and are not always primary sources of earnings. As a result, we must undertake extensive development to verify monthly earnings and employment supports before adjusting benefits. Thus, we continue to believe that ENs, which will be working with and helping beneficiaries get and retain employment, will be able to supply documentation of earnings and this will speed up the benefit adjustment, and hence, the EN payment process.

*Comment:* Some commenters suggested that rather than requiring ENs to submit evidence of earnings, we develop a system or mechanism to notify ENs when a beneficiary's disability benefits stop. Then, ENs will know when to file requests for outcome payments.

*Response:* We did not adopt this suggestion. We do not presently have the systems interface capability to automatically notify ENs when a beneficiary's benefits stop on account of work or earnings. Further, based on the rules in §§ 411.525(a)(1)(ii)(A) and 411.575(b)(1)(i)(B), once an individual's entitlement to Social Security disability benefits ends or eligibility for SSI benefits based on disability or blindness terminates because of work or earnings, we still need evidence that the individual had gross earnings in a month that are more than the SGA threshold amount in order to make an outcome payment.

*Comment:* Many commenters, representing both large and small service providers, objected to the provisions in proposed § 411.575(b)(2), (b)(4), and (b)(5) that would require ENs to submit evidence of beneficiary earnings on a monthly or bimonthly basis. They said that the proposed rules



were complex, expensive, and excessively burdensome on both ENs and employers. Also, many predicted that the rules would deter providers from participating in the Ticket to Work program.

The commenters expressed concern with the costs and feasibility of establishing a tracking system that could monitor the monthly earnings of multiple beneficiaries over an extended period of time, especially when beneficiaries switch employers, are not continuously employed, or move to areas the EN does not serve. Some commenters also said that ENs would not be able to obtain monthly earnings information on an ongoing basis from those who assign their tickets to other ENs, achieve independent employment, or leave the disability rolls and no longer have an incentive to cooperate with their EN. Even commenters who said that they presently have access to State records of employment wages pointed out that such records would not be a good source of evidence under our proposed rules. That is because these are quarterly, not monthly, wage reports, and they can be over a year old. Another commenter said that the proposed requirement to report earnings at least every two months would be difficult for State VR agencies, especially once they close a beneficiary's case.

Many commenters suggested that we allow ENs to submit evidence of quarterly, rather than monthly, earnings and to do so on a quarterly or semi-annual basis, as opposed to a monthly or bimonthly basis. There were also suggestions to pay ENs in the event that ticket holders do not provide the needed earnings information and to assist ENs in documenting earnings when beneficiaries reassign their tickets to other ENs.

*Response:* In response to these comments, we consolidated the earnings documentation requirements for outcome payments into one paragraph and made two changes. First, final § 411.575(b)(2) now requires ENs to submit their payment requests, along with evidence of beneficiary work or earnings, on at least a quarterly basis. Second, this paragraph includes an exception to this general rule to provide for those situations in which the ticket is no longer assigned to the EN that files the request for payment. In such cases, the EN is not required to submit evidence of beneficiary work or earnings, although of course any evidence submitted in these cases will help to expedite our processing of the payment request.

*Comment:* One commenter said that we should not place a mandatory earnings-reporting requirement on ENs. Instead, this commenter suggested that we require ENs to request a time-limited release for earnings information from each beneficiary. Then, if the beneficiary signs the release, we should require the EN to report earnings information to us, to the extent that the beneficiary continues to cooperate with the EN.

*Response:* We did not adopt this suggestion. We believe that the method ENs use to collect earnings information from beneficiaries does not need to be regulated by us. Rather, it is something that both parties should discuss and reach an agreement on before the ticket is assigned. For example, they may decide to reference the agreed-to collection method in the IWP.

*Comment:* Commenters were concerned that the second sentence of proposed § 411.575(b)(2) was burdensome. It would require ENs to submit "sufficient" proof of work or earnings for us to determine whether we can stop the beneficiary's monthly Federal cash benefits due to work or earnings. One of these commenters pointed out that this sentence was inconsistent with how we actually evaluate a beneficiary's work or earnings because there was no mention of our work incentive provisions. For example, payroll records may show "sufficient" earnings to stop benefits, but we may decide to continue benefits because a beneficiary is in a trial work period, has an impairment related work expense or a plan for achieving self-support, or receives a subsidy.

*Response:* We agree with the commenters and removed this sentence from final § 411.575(b)(2).

*Comment:* Many commenters were concerned with the last sentence in proposed § 411.575(b)(2). It stated that wage evidence for employees is "best obtained from the employer or the employer's designated payroll preparer." Some commenters said that this sentence poses significant confidentiality issues, especially for beneficiaries who have not disclosed their disability to their employers. Two commenters noted that an EN could just as easily obtain this same information from the beneficiary's pay stubs and one of these commenters suggested that we permit ENs to submit photocopied, as opposed to original, pay stubs. Another commenter said the information could be retrieved from State wage records, and one commenter suggested we allow for the use of Unemployment Insurance wage records. In addition to these comments, many said that having ENs

collect earnings information from any source might violate the right of beneficiaries to keep such information confidential and private from ENs, if they so choose.

Some of these commenters recommended that we specify what other types of earnings documentation we would consider acceptable and indicate where ENs could obtain them. One commenter suggested that we allow for the use of payroll records retrieved from State taxation departments.

*Response:* In response to these comments, we included two additional examples of the types of evidence that ENs may submit with their payment requests in the second sentence of final § 411.575(b)(2). They are an unaltered copy of the beneficiary's pay stub and an unaltered copy of the beneficiary's estimated tax return if self-employed. These are not the only sources of evidence we will accept, and the PM, in its EN training material, will discuss what other types of evidence that ENs may submit.

We retained the example of a statement from the employer or the employer's designated payroll preparer because we consider this evidence to be of high probative value. However, we would not expect an EN to request this information or, for that matter, an employer to provide it without a beneficiary's signed consent.

*Comment:* With respect to proposed § 411.575, one commenter asked how an EN's ability to collect payments would be affected by a delay in our stopping disability benefits to a working beneficiary.

*Response:* In most situations, an EN's eligibility for a payment will depend on SSA's determination about a beneficiary's right to payment. Briefly, there are three different payment scenarios, two of which are related to outcome payments, and the other concerns milestone payments.

- The first scenario relates to when we are asked to make an outcome payment under either the outcome payment system or the outcome-milestone payment system while the beneficiary is still entitled under title II or eligible under title XVI. (It is possible for a beneficiary to be entitled or eligible, but to not receive cash benefits.) Before we can make an outcome payment to the EN, we must determine whether the payment of Social Security disability benefits and Federal SSI cash benefits to an otherwise entitled or eligible beneficiary is precluded because of work or earnings.

- The second payment scenario relates to when we are asked to make

payment to an EN in connection with an individual whose entitlement or eligibility for disability benefits has terminated due to work or earnings. In such a situation, payment to an EN will depend on whether the individual has earnings for a month that meet the earnings requirements in § 411.525(a)(1)(ii)(A), and whether the requirement in § 411.525(a)(1)(ii)(B) is satisfied.

- The third payment scenario involves an EN's request for a milestone payment. Our determination regarding a milestone payment will depend on whether the requirements concerning duration of work and level of earnings for attainment of a particular milestone are met and whether attainment of the milestone occurs before the start of the individual's outcome payment period. As noted in § 411.500(b), the outcome payment period begins with the first month, ending after the date on which the ticket was first assigned, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual due to work or earnings. If the start of the outcome payment period is an issue with regard to a request for a milestone payment, then we may have to make a determination about a beneficiary's right to payment.

*Comment:* We received suggestions not to recover any overpayments to ENs or beneficiaries that result from the earnings reporting system we use and a suggestion to provide for a specific payment time frame to ensure ENs of prompt payment following the submission of accurately documented payment claims. Along similar lines, many commenters suggested that SSA institute a 90-day payment processing rule. Under such a rule, the PM would have 30 days to submit EN reported earnings to us and then SSA would have 60 days to stop or adjust a beneficiary's check. Should we fail to stop or adjust benefits within this time frame, these commenters recommended that we pay the EN's claim immediately, as though benefits had stopped, and not hold the beneficiary liable for any overpayment.

*Response:* We did not adopt the suggestions to not recover or not hold beneficiaries liable for overpayments because, except in the case of milestone payments, the statute does not allow us to pay an EN and the beneficiary for the same month. Therefore, in order for us to pay one party, we must recover any overpayments we may have made to the other party.

Also, we did not incorporate any payment time frames into these final rules. The earnings documentation that ENs submit will help us to make more

timely decisions. However, we must still develop all relevant issues and adhere to strict due process guidelines before we adjust or stop a beneficiary's benefits. Additionally, in SSI cases, we must offer to continue benefits should a beneficiary appeal our determination to stop benefits.

*Comment:* Two commenters discussed the outcome payment system and how a beneficiary's use of work incentive provisions such as plan for achieving self-support (PASS) and impairment-related work expenses (IRWE) could prevent some ENs from getting paid. Their concern was that those beneficiaries with more intensive service needs would not be served. One of these commenters said that ENs might not fully disclose or explain to beneficiaries that beneficiaries have these other work incentives available, and that ENs may rush beneficiaries to benefit suspension, in order to generate outcome payments for the EN.

*Response:* We hope that all beneficiaries who want to work will receive services, and that, when they begin to work, they will avail themselves fully of all of the various work incentive provisions of the Act. We will monitor any complaints about ENs discouraging beneficiaries from using the work incentive provisions. In addition, to eliminate any possibility of a conflict of interest, in these final rules we deleted the provision in proposed § 411.575(b)(3) that encouraged ENs to submit beneficiary-completed Work Activity Reports (Form SSA-821s) with their requests for outcome payments. Usually, Social Security field personnel request beneficiaries to complete and return this form when work activity is reported and assist beneficiaries when needed. We originally thought it would speed our determinations about work or earnings if ENs obtained this form and submitted it to us with their payment requests. However, the form contains questions about special working conditions and payments and impairment-related work expenses. In light of these comments, we believe the beneficiaries should obtain the form from Social Security field personnel, and should complete it with their assistance, not the EN's.

Beneficiaries have many sources of information about our other work incentives such as PASS and IRWE. Section 1149 of the Act, as added by section 121 of Public Law 106-170, requires that SSA establish a corps of work incentives specialists within SSA who will specialize in disability work incentives and who will disseminate accurate information on work incentives to disability beneficiaries and to benefit

applicants. We have created a new position called the employment support representative to fulfill this requirement to create a corps of work incentives specialists. These specialists will also assist organizations awarded funds by SSA to provide information about work incentives.

Section 1149 of the Act requires us to establish a program of grants, cooperative agreements, or contracts for State or private agencies or organizations to provide benefits planning and assistance to beneficiaries with disabilities. Under this program, we have awarded funds to organizations in every State and U.S. territory in order to disseminate accurate information about the various work incentives provisions available to title II and title XVI disability beneficiaries. The organizations receiving funds from SSA will provide information, guidance, and planning to beneficiaries with disabilities on the availability and interrelation of Federal and State work incentives programs, on health coverage, and on the availability of protection and advocacy services and how to access such services.

Under a program authorized by section 1150 of the Act, we are awarding grants to State protection and advocacy systems in every State, in the District of Columbia, in five U.S. territories, and to the protection and advocacy system for Native Americans. These grants will allow the protection and advocacy systems to assist beneficiaries with disabilities in obtaining information and advice about receiving vocational rehabilitation and employment services, as well as advocacy and other services that a disabled beneficiary may need to secure or regain gainful employment.

We believe that these programs and our efforts will ensure that disability beneficiaries are more fully informed about all of the work incentives provisions available to them.

*Comment:* One commenter asked about the consequences for an EN if we deny an EN's claim for payment due to inaccurate wage information or other reasons.

*Response:* Generally, the only consequence is that the claim will be denied and the EN will not receive payment. However, if we believe that the issue of inaccurate wage reporting involves the possibility of fraud, we will investigate the issue fully and take appropriate action.

Of course, if an EN disagrees with our decision on a payment request, we will follow the rules in § 411.590(a) to resolve the dispute. Similarly, if a State VR agency, serving a beneficiary as an EN, disagrees with our decision on a

payment request under an EN payment system, we will follow the rules in § 411.590(b) to resolve the dispute.

*Section 411.585 Can a State VR Agency and an EN Both Receive Payment for Serving the Same Beneficiary?*

*Comment:* One commenter, referring to the introductory text of proposed § 411.585, suggested that the final rules provide guidance on how a shared payment to an EN and a State VR agency that decides to serve a beneficiary as an EN would be calculated.

*Response:* We amended the introductory text of final § 411.585 to provide a cross-reference to final § 411.560, which explains how a PM will make a shared payment EN determination.

*Comment:* We received a number of comments, from both inside and outside of the State VR system, about the proposal in § 411.585 (a) and (b) to preclude payment under one of the EN payment systems if a State VR agency first receives payment under the cost reimbursement payment system, and vice-versa. Several of these commenters questioned the legal basis for this provision. They said that they found nothing in the legislative history or statute that would prohibit payments under both systems. Further, they argued that our proposal would negate beneficiary choice and ultimately harm those with significant disabilities who could benefit from services under both the VR cost reimbursement and EN payment systems.

Some of the commenters also said that our proposal seems to assume that the EN payment systems and the cost reimbursement payment system pay for identical services. Their interpretation of the EN payment systems is that they provide for long-term supports that help beneficiaries maintain productive employment over 60 months. These commenters view the cost reimbursement payment system as one that allows State VR agencies to close cases after 90 days of employment and collect payment when beneficiaries achieve a continuous 9-month period of SGA.

Those who commented on § 411.585 recommended that we revise it. They believe that the Ticket to Work program should accommodate both the EN and the cost reimbursement payments systems for serving the same beneficiary.

*Response:* We did not revise final § 411.585 to allow for payment with respect to a ticket under both the traditional cost reimbursement system and an EN payment system because we

believe to do so would be contrary to how we believe Congress intended for the two programs to operate together, and to do so could undermine the Ticket to Work program's goal of realizing program savings while moving beneficiaries to independence. The first two sentences of section 1148(c)(1) of the Act provide State VR agencies with the option of electing to participate in the Ticket to Work program as an EN with respect to a beneficiary. The third sentence of section 1148(c)(1) of the Act allows State VR agencies the additional option of choosing, on a case-by-case basis, to be paid under the cost reimbursement payment system when serving a beneficiary with a ticket. Had Congress intended to allow for payments under both the cost reimbursement payment system and the EN payment systems with respect to the same individual with a ticket, there would have been no need for the third sentence of 1148(c)(1). The authority to reimburse State VR agencies under the cost reimbursement payment system already existed under sections 222(d) and 1615(d) and (e) of the Act. We believe that Congress included the third sentence in section 1148(c)(1) of the Act to make the securing of services by a beneficiary with a ticket from a State VR agency electing cost reimbursement a mutually exclusive alternative to a beneficiary's obtaining services from an EN. This view of section 1148(c)(1) of the Act is shared by the Congressional Budget Office (CBO) in the cost estimates it submitted to the Senate Committee on Finance (Senate Report No. 106-37, March 26, 1999, page 41) and the House Committee on Commerce (House Report No. 106-220, July 1, 1999, page 19). In their reports the CBO stated that the Ticket to Work program would "partially displace the current" cost reimbursement program.

Another provision of the enabling legislation that supports our regulatory limitation on payments in § 411.585 is section 1148(e)(3) of the Act. It provides that a beneficiary may change ENs without being deemed to have rejected services under the Ticket to Work program; that, when such a change occurs, the PM shall reassign the ticket based on the choice of the beneficiary; and that, "[u]pon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network." These provisions do not contemplate a beneficiary switching providers or having SSA or the PM allocate

payments among providers in a case where one of the providers is a State VR agency that has chosen to be paid under the cost reimbursement payment system.

Section 1148(h) of the Act also supports the regulatory limitation on payments in § 411.585. This section limits the total number of outcome payments that we can make on a ticket under either EN payment system to 60 payments. Once this limit is reached, the ticket ceases to have any further value for purposes of making payments under either EN payment system. Since the third sentence of section 1148(c)(1) of the Act gives State VR agencies the option of being paid under the cost reimbursement payment system instead of being paid under one of the EN payment systems (not in addition to being paid under the EN payment systems), we believe that once we pay a State VR agency under this system for having served a beneficiary, the ticket ceases to have value for purposes of making payments thereafter under either EN payment system.

*Comment:* One commenter expressed concern that the rules in § 411.585 did not address how State VR agencies would be paid for the cost of the services they provide to beneficiaries whose tickets are held by an EN. On one hand the State VR agencies cannot limit the services they provide to eligible individuals. On the other hand, an EN that holds the ticket of a beneficiary who requires expensive technological services to work could not be expected to reimburse a State VR agency for the cost of such services from the monies the EN would receive under the Ticket to Work program.

*Response:* The authorizing legislation of the Ticket to Work program does not give us the authority to decide how or whether State VR agencies will be reimbursed by ENs for the services they provide to beneficiaries whose tickets are held by ENs. Section 1148(c)(3) of the Act provides that State VR agencies shall enter into 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. Our rules in § 411.400 through 411.435 address the agreements between State VR agencies and EN and how disputes will be resolved.

*Comment:* Some commenters expressed concern that the provisions in § 411.585 could lead to abuses should ENs actively recruit beneficiaries who are near the end of their employment plans after State VR agencies have put substantial resources into serving them.

*Response:* We understand these concerns, however, we believe that State

VR agencies and ENs will use the provisions in the Ticket to Work program to work together to serve our beneficiaries in ways that give the beneficiaries expanded access to employment, vocational rehabilitation, and support services. We will make every effort to ensure that beneficiaries can make informed choices about the providers available to them, the nature of the services they offer, and how a provider's payment system election may affect the beneficiary's future use of the ticket.

*Comment:* One commenter suggested that we make provision for State VR agencies to share their cost reimbursement payments with ENs, with the PM resolving any disputes.

*Response:* We do not have the statutory authority to adopt this suggestion. Section 1148(e)(3) of the Act provides for the PM to make determinations about allocating outcome and milestone payments. However, there is no similar provision for allocating cost reimbursement payments between a State VR agency and an EN that serve the same beneficiary.

*Section 411.587 Which Provider Will SSA Pay if, With Respect to the Same Ticket, SSA Receives a Request for Payment From an EN or a State VR Agency That Elected Payment Under an EN Payment System and a Request for Payment From a State VR Agency That Elected Payment Under the Cost Reimbursement Payment System?*

*Comment:* One commenter suggested that, if we did not revise § 411.585 to allow for payment under both the cost reimbursement and the EN payment systems with respect to the same ticket, we specify the criteria we would use when deciding which provider to pay.

*Response:* In response to this comment, we added § 411.587 to these final rules. This section clarifies which provider we will pay if, with respect to the same ticket, we receive a request for payment from a provider that elected an EN payment system and one from a State VR agency that elected the cost reimbursement payment system. Paragraph (a) of § 411.587 explains that we will pay the claim of the provider that first meets the requirements for payment under its elected payment system applicable to the beneficiary who assigned the ticket. Paragraph (b) of this section explains which provider we will pay should both meet the payment requirements in the same month. In such a case, we will pay the claim of the provider to which the beneficiary's ticket is currently assigned. If the ticket is not currently assigned to either

provider, we will pay the claim of the provider to which the ticket was most recently assigned.

*Section 411.590 What Can an EN Do if the EN Disagrees With Our Decision on a Payment Request?*

*Comment:* Many commenters found two issues troubling in proposed § 411.590(d) concerning what an EN can do if it disagrees with a revised determination which we make about a beneficiary's right to benefits following a beneficiary's appeal of a determination which is unfavorable to the beneficiary and which affects the beneficiary's entitlement, eligibility, or right to a benefit payment. First, commenters believed that the proposed section highlights the possibility of an EN having to return payments following a beneficiary's successful appeal, which the commenters said would act as a disincentive for providers to serve as ENs. Second, they disliked the provision which permits an EN to furnish any evidence it has which may be relevant to the beneficiary's appeal. The commenters said this rule would create an adversarial situation and harm the relationship between beneficiaries and ENs.

*Response:* We understand the concerns that these commenters have about the disability determination and payment process and resulting effect it can have on the EN payment process. That is why we decided to refer to this process, which we call the administrative review process, in proposed § 411.590(d). Also, we do not want the process to create an adversarial relationship between beneficiaries and ENs. That is why we clearly state in § 411.590(c) and (d) that an EN cannot appeal a determination we make about a beneficiary's right to benefits, but they may furnish evidence in support of their claims for payment.

Sections 404.900 *et seq.* and 416.1400 *et seq.* explain the administrative review process we have under title II and title XVI of the Act. Determinations we make about a beneficiary's right to disability cash benefits are administrative actions that are subject to review. Generally, if beneficiaries are dissatisfied with a determination we make, they have a 60-day period in which to request further administrative review, and ultimately court review. Additionally, if they do not request a review within these time frames, they may request that we reopen and revise a determination we previously made about a beneficiary's right to cash benefits, or we may decide to this on our own initiative. Since the EN payment systems are inherently linked to the determinations we make

about a beneficiary's right to cash benefits, there will be situations in which we make, amend, or otherwise revise a determination relating to a beneficiary's right to cash benefits, and that determination will result in an EN having to return a payment we previously made to them. However, we are hopeful that our efforts to educate beneficiaries and ENs about the various employment support provisions in the Act and to remind them of their reporting responsibilities will increase understanding of how work may affect a beneficiary's right to cash benefits, which in turn will help us to minimize the number of instances in which we must revise EN payment decisions.

As we reviewed the provisions we proposed to respond to these comments, we realized that the rules we proposed in § 411.590(d) did not cover all of the possible administrative actions that we might make about a beneficiary's right to disability cash benefits. Therefore, we reorganized and broadened the language in the final rules so that they refer to all determinations we may make about a beneficiary's right to benefits, not just those determinations that a beneficiary may appeal. In addition, we referenced our rules in § 411.555 concerning the adjustment of EN payments when we determine we paid more or less than the correct amount.

*Section 411.597 Will SSA Periodically Review the Outcome Payment System and the Outcome-Milestone Payment System for Possible Modifications?*

*Comment:* Many commenters suggested that we initiate, as soon as possible, the research needed for the Report on the Adequacy of the Incentives provided in the Ticket to Work program, as required by section 1148(h)(5)(C) of the Act. They said that they had identified the report as a key initiative to assure that those with severe disabilities are able to participate fully in the Ticket to Work program. Thus, they urged us to begin collecting the information as soon as possible and suggested that we collect data on matters such as the reasons ENs decline to offer services to one or more groups of the four groups specifically identified in the law.

*Response:* We agree with the commenters that the information gathered for this report will play a key role in the development of future policies and proposals for possible legislative changes to assist beneficiaries participate more fully in the Ticket to Work program. As soon as the Ticket to Work program is operational, we will begin collecting data on all four groups mentioned in the statute, including data

on the reasons ENs may decline to serve them.

*Comment:* Many commenters suggested that we use our demonstration authority to test various payment options and funding schemes in the initial rollout States. Some recommended that we test three or four varying milestone and payment amounts to determine which would best attract appropriate ENs for hard to serve populations. One specific recommendation was that we test offering outcome payments for reduced cash benefits when, due to the nature of a beneficiary's condition, the beneficiary can achieve only lower levels of employment. Another recommendation was that we test making outcome and milestone payments richer for cases involving SSI beneficiaries and encourage States to contribute a portion of the saved SSI State supplementation payment. In addition, there was a suggestion to test up-front capitalization funding via matching Federal and State dollars.

*Response:* We will consider all of these interesting demonstration ideas as we continue to explore the best ways to serve beneficiaries with disabilities and reduce their barriers to work and self-sufficiency.

#### **Subpart I—Ticket to Work Program Dispute Resolution**

Public comments on subpart I of the proposed rules raised a number of issues relating to the dispute resolution processes. An overall theme in the comments was that review and appeal mechanisms should be more elaborate than required by the legislation. The Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), provides a process for resolution of disputes between beneficiaries and ENs that are State VR agencies. The Commissioner has developed a different 3-step process for resolving disputes between beneficiaries and ENs that are not State VR agencies.

The rules for this 3-step dispute resolution process provide common sense guidelines that give both parties to the dispute several opportunities to be heard. The rules permit disputants to resolve quickly, easily, and fairly issues that arise between them. The 3-step dispute resolution process for resolving disputes between beneficiaries and ENs that are not State VR agencies affords a full and fair review of issues in dispute. A discussion of specific issues raised in the public comments and our responses follow.

*Comment:* Some commenters stated that we should provide beneficiaries

and ENs that are not State VR agencies an opportunity for a face-to-face hearing. Several recommended that the administrative and judicial review process for appeal of initial determinations (§§ 404.900 through 404.999 and 416.1400 through 416.1499) be used for the dispute resolution process. One commenter suggested that beneficiaries should be entitled to the rights customary to evidentiary hearings, including the right to be provided notice, the right to request discovery, the right to present evidence, the right to defend oneself, the right to cross-examine witnesses, the right to a written decision, and the opportunity to appeal. Another commenter stated that the time frame for appeal of a decision should be 60 days to be consistent with time frames in our administrative review process.

*Response:* Section 1148(d)(7) of the Act requires, among other things, that the Commissioner provide a mechanism for resolving disputes between beneficiaries and ENs. The Commissioner is required to afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute. The Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), provides a process for resolution of disputes between beneficiaries and ENs that are State VR agencies. The Commissioner has developed a different process for resolving disputes between beneficiaries and ENs that are not State VR agencies.

We believe that the dispute resolution process we have created provides the parties with a reasonable opportunity to have a full and fair review of the matter in dispute. Section 1148(d)(7) does not require the Commissioner to afford a face-to-face hearing. The legislation did not allocate funding to support this type of process. Disputes between beneficiaries and ENs relate to aspects of the rehabilitation process, such as proposed changes in the vocational goal and the Individual Work Plan, the nature and duration of education and training, and the type and availability of equipment provided. Multiple disputes may arise between a beneficiary and the EN at different points in the rehabilitation process, and each dispute will require quick resolution to maintain ongoing rehabilitation efforts. Submission of these types of disputes to the administrative and judicial review process reserved for critical payment issues would impose unacceptable administrative and financial burdens on the Agency. This would also disrupt the rehabilitation process while relatively minor issues could remain unresolved during a lengthy appeal process.

We are retaining the 3-step process set forth in the proposed rules, because this process meets the statutory mandate for a full and fair review of disputes between beneficiaries and ENs that are not State VR agencies. It provides the parties several opportunities to be heard, allows both parties to the dispute to present their case before an impartial third party, the PM, and expedites dispute resolution.

*Comment:* Many commenters questioned whether the 3-step process for resolving disputes between beneficiaries and ENs that are not State VR agencies provides a full and fair review. Several commenters proposed that we establish a single, standard grievance model at step one for use by all ENs that are not State VR agencies. Other commenters said that we should provide beneficiaries clear information about the dispute resolution process, including defined "next steps," impose reasonable time frames, and inform disputants of the right to be represented and the right to provide evidence at each step of the dispute resolution process. In addition, one commenter said that the PM should be required to provide all the evidence, not just relevant evidence, when a dispute is referred to us at step 3.

*Response:* The 3-step process in subpart I provides for expedient resolution of disputes between beneficiaries and ENs, and a full and fair review of the disputed issues. Requiring ENs that are not State VR agencies to implement a standard grievance model of our design at the first step of the 3-step dispute resolution process would impose unfair burdens on them. ENs are voluntary participants in the Ticket to Work program, and some ENs might choose to withdraw from this program if required to implement a new process distinct from internal grievance procedures already in place.

In subpart I, we require that:

At step one, the EN that is not a State VR agency is required: to have grievance procedures that a beneficiary can use to seek a resolution to a dispute under the Ticket to Work program; to give each beneficiary seeking services a copy of its internal grievance procedures; to inform each beneficiary seeking services of the right of either party to refer a dispute first to the PM for a review, and then to us for a final decision; and to inform each beneficiary of the availability of assistance from the State P&A system.

At step two, if the beneficiary or the EN that is not a State VR agency asks the PM to review a disputed issue, the PM is to contact the EN to submit all relevant information and evidence

within 10 days, including a description of the disputed issue, a summary of the beneficiary's and the EN's positions related to each disputed issue, and a description of any solutions proposed by the EN, including the reasons the beneficiary rejected each proposed solution. The PM has 20 days to provide a written recommendation resolving the dispute, and explaining the reasoning for the proposed resolution.

At step three, if the beneficiary or the EN requests SSA to review the PM's recommended resolution of the dispute, this request must be made within 15 working days of the receipt of the PM's recommendation. The PM has 10 working days to refer the request to us for a review, including with the request a copy of the beneficiary's IWP, information and evidence related to the disputed issues, and the PM's conclusions and recommendations. Our decision on the resolution of the dispute will be final.

*Comment:* Some commenters suggested that the process for resolving disputes between beneficiaries and ENs that are not State VR agencies should provide for optional mediation or an external appeals process to ensure the beneficiary an unbiased resolution of the dispute. Several commenters said that the Dispute Resolution Board mentioned in the preamble to the proposed rules for this process should have non-SSA employees. Another commenter stated that the third step should be eliminated and the final decision delegated to the PM at step two.

*Response:* In developing these rules, we considered making outside mediation part of the dispute resolution process, but we rejected this option, in part, because we believe using an outside mediator would not achieve expedient dispute resolution. We also believe that it is not necessary to establish any external appeals process for dispute resolution, because we believe the three-step process provides for a full and fair review. We have deleted any reference to a dispute resolution board, as the proposed rules did not provide for it, but it was only mentioned in the preamble to the proposed rules. At step three, disputes will be referred to SSA rather than to a formal board. We do not agree that step three should be eliminated from the dispute resolution process and that the PM should make the final dispute decision. An appeal to SSA affords the beneficiary an additional opportunity to be heard and to receive the Commissioner's opinion on the issue.

*Comment:* Some commenters stated that the dispute resolution process for

disputes between beneficiaries and ENs that are not State VR agencies should be the same as the process that is used for those disputes between beneficiaries and ENs that are State VR agencies.

*Response:* State VR agencies that are serving as ENs have dispute resolution procedures in place already. The dispute resolution process used by State VR agencies provides an opportunity for beneficiaries and State agencies to resolve disputes by formal mediation, an impartial hearing, or civil action. The dispute resolution process that the State VR agencies are required to follow fulfills and exceeds the requirement of section 1148(d)(7) of the Social Security Act for a full and fair review of the matter in dispute.

We recognize that beneficiaries who choose to work with State VR agencies will have a different dispute resolution process than those who choose to work with non-State agency ENs. However, the 3-step process described in the regulations provides these beneficiaries with a full and fair review, in an expeditious and cost-efficient manner.

*Comment:* Several commenters pointed out that our proposed rules were not clear with respect to whether they addressed both ENs that are not State VR agencies and those that are. Several others stated that the regulations should indicate when the provisions of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), relating to opportunities for mediation, an impartial hearing, and court action apply.

*Response:* We are revising the rules in subpart I to clarify whether they referred to ENs that are not State VR agencies, or those that are State VR agencies.

*Comment:* One commenter stated that services and supports provided to a beneficiary should not be suspended or reduced while the beneficiary is involved in the dispute resolution process. Another asked if the timely progress guidelines would be suspended immediately when a dispute is not solved.

*Response:* Participation of ENs in the Ticket to Work program is voluntary. We believe that requiring ENs to continue providing supports or services until disputes are resolved would not be consistent with these aspects of the program. The timely progress guidelines will not be suspended when a dispute remains unsolved.

*Comment:* Several commenters stated that we should provide beneficiaries the names and addresses of P&A services and representatives. One commenter suggested we should notify P&A services of all disputes and the names of disputants, unless the beneficiaries

specifically objected. Another commenter stated that we should ensure all representatives are expert in all aspects of benefits. And, several commenters suggested that legal services for beneficiaries involved in disputes be paid for.

*Response:* Section 411.605(d) requires ENs that are not State VR agencies to inform beneficiaries of the availability of P&A services to assist them in the dispute resolution process. We will not release any information to a P&A service about the beneficiary unless we are authorized to do so, in accord with our regulations governing disclosure of official records and information (20 CFR 401.100 ff.). We will require ENs to inform beneficiaries of the right to be represented at each step of the dispute resolution process. We do not have the authority to pay such representatives. We are not establishing standards of expertise for representatives, because this would impair the beneficiary's ability to choose non-attorneys to help them with their disputes (e.g., family members, clergy, members of the rehabilitation community). The ability to use non-attorneys to represent beneficiaries in minor disputes is especially important because many beneficiaries may not be able to pay for representation.

*Comment:* Several commenters suggest we require disputants to adhere to our final recommendations for resolving issues between them.

*Response:* Because the Ticket to Work program is voluntary in nature, the good will and commitment of both parties to the rehabilitation effort is critical to its successful outcome. The three-step dispute resolution process should promote positive and productive communication between these parties. We do not believe that mandating participants to adhere to our recommendations for dispute resolution would further the rehabilitation partnership.

#### *Youth in Transition to Adulthood*

Section 411.125 of these final regulations states 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, provided the individual has qualified for title II benefits based on disability or qualified for title XVI benefits based on disability under the adult standard or based on blindness.

When we published the proposed rules on December 28, 2000, we included the following: "As we gain experience with the Ticket to Work program, we plan, at a later time, to explore the possibility of expanding the

age criteria for receiving a ticket to include those SSI beneficiaries age 16 and older who are eligible for disability benefit payments based on the childhood disability standard.”

In these final rules, we have decided not to issue a ticket to those recipients under age 18 and those who have attained age 18, but for whom we have not yet conducted a redetermination of their eligibility under the disability standard for adults. However, we are interested in exploring various approaches to assist youth beneficiaries to transition to independence, further education, and careers in the workforce. Therefore, we are publishing a Notice elsewhere in today's **Federal Register** in which we are seeking suggestions from the public to assist us in designing for these beneficiaries an approach that could complement the Ticket to Work program.

#### *Electronic Version*

The electronic version of this document is available on the Internet at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](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 final rules meet the criteria for a significant regulatory activity under Executive Order (E.O.) 12866. Thus, OMB has reviewed these final rules. For the five-year period from fiscal year 2002 through 2006, the effects on the Old Age, Survivors and Disability Insurance benefit payments range from minimal in fiscal year 2002 to costs of \$27 million in fiscal year 2006. For the same period, the effects on Federal Supplemental Security Income payments range from savings of \$1 million in fiscal year 2002 to savings of \$6 million in fiscal year 2006. We expect that the effects on expenditures of the Medicare and Medicaid programs during that time period would be negligible. As the costs and savings from fiscal year 2002 through 2006 are not expected to exceed \$100 million in any one year, these final rules are neither economically significant under E.O. 12866, nor “major” under the provisions of 5 U.S.C. 801 *et seq.*

However, we believe there may be additional “benefits” to society that will result from these rules. While these benefits are difficult to quantify, we can present some general elements of these benefits.

We believe the Ticket to Work program offers potential benefits to society on several levels. For example, the Ticket to Work program may increase opportunities for individuals who receive disability benefits to access training, employment and placement services, including opportunities to create their own businesses and widen their exposure to the employment market. The program may provide new funding streams for existing providers of vocational services and give them access to new clients, as well as allow them to forge relationships with employers interested in job placement of these clients. It may also encourage the establishment of new providers of vocational services. For employers, the program may provide access to a new base of potential employees as individuals who receive disability benefits attempt to enter the employment market under the terms of the Ticket to Work program.

As required by the Ticket to Work and Work Incentives Improvement Act of 1999, we must evaluate the Ticket to Work program after it is implemented. As part of that evaluation, we plan to use various qualitative measures to determine the effects on society.

#### *Regulatory Flexibility Act*

We certify that these final rules will 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. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Although a regulatory flexibility analysis is not required, we have made every effort to consider the effects these rules might have on small entities that might choose to participate in the Ticket to Work program. As we mentioned earlier in this preamble, we sponsored and participated in many public forums, presentations, and discussions leading up to the development of these final rules. At these forums, we discussed with service providers their concerns about participating in the Ticket to Work program. These final rules reflect our efforts to make these rules as inclusive as possible; that is, to allow for the participation in the program of many different types of vocational service providers, including small entities, that can provide a wide range of services. For example, we increased the number and total amount of milestone payments, from what we had earlier proposed, to help smaller or lesser-capitalized entities to participate

in the program. We also considered the effects on small entities in determining the level of credentials a service provider must have to participate in the program. At the same time, we must also consider our stewardship responsibilities in protecting the public funds and in assuring that individuals receiving disability benefits who choose to participate in the Ticket to Work program also receive quality services from the providers to whom they assign their tickets. We believe these final rules reflect our efforts to achieve a balance between providing opportunities for small entities, and protecting public funds and assuring that individuals receiving disability benefits receive quality services.

#### *Federalism*

We have reviewed these final rules under the threshold criteria of E.O. 13132, “Federalism,” and determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The Ticket to Work and Work Incentives Improvement Act of 1999 established the Ticket to Work program that will complement the existing State vocational rehabilitation program.

Although we have determined that these final rules do not trigger the requirements of E.O. 13132, we have consulted with State vocational rehabilitation agencies and their national organization throughout our development of these rules. As mentioned earlier in the preamble to these rules, we sponsored and participated in numerous educational forums throughout the country in order to stimulate discussion about the Ticket to Work program. We employed our long-standing relationship with the State vocational rehabilitation agencies through a variety of meetings, forums and other conversations to gain insight as to how to develop these rules. Furthermore, we have consulted on a regular basis with those States selected for the first round of the Ticket to Work rollout, and the Department of Education's Rehabilitation Services Administration in preparing these rules. These final rules reflect, to the extent practicable, our efforts to respond to the issues raised by the States during these consultations.

In addition, we note that the Old-Age, Survivors and Disability Insurance program is exempt from the Unfunded Mandates Reform Act of 1995.



*Paperwork Reduction Act*

This final rule contains new reporting (Rpt), recordkeeping (Rec) and

disclosure (Dis) requirements in the sections listed below. These burden requirements have been cleared under

OMB Number 0960-0644. The clearance expires on December 31, 2004.

## TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM ANNUAL BURDEN CALCULATION CHART

Section No. and requirements	Number of respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden hrs.
411.140(c) Rpt—X-refer sections 411.145, 411.150, 411.325 (a), (b), (c), (d) & 411.320 (f).	31,450	One time .....	270	141,525
411.325(e) Rpt—X-refer section 411.395 (b) .....	10,328	Quarterly .....	120	20,656
411.325(f) Dis—X-refer section 411.395(a) .....	45,000	Occasional ..	5	3,750
411.190(a) Rpt—X-refer section 411.195 .....	1,000	One time .....	30	500
411.220(b)(1) Rpt— .....	1,000	One time .....	30	500
411.220(c)(1) Rpt— .....	500	One time .....	5	42
441.245(b)(1) Rec— .....	12,000	One time .....	1	200
411.325(d) Rpt— .....	1,800	One time .....	480	14,400
411.365 Rpt— .....	82	One time .....	240	328
411.575 Rpt—X-refer section 411.500 .....	13,000	Daily .....	30	6,500
411.605(b) Dis—X-refer section 411.610 .....	45,000	Occasional ..	5	3,750
411.435(c) Rpt— .....	2,582	One time .....	60	2,582
411.615 Rpt— .....	3,000	One time .....	60	3,000
411.625 Rpt— .....	1,500	One time .....	60	1,500
411.210(b) Rpt— .....	3,145	One time .....	30	1,573
411.590(b) Rpt— .....	813	One time .....	60	813
411.655 Rpt— .....	1	30-per year ..	120	60
411.200 Rpt— .....	1	.....	1	1
Total Annual Respondents .....	.....	.....	.....	172,202
Total Annual Burden Hours .....	.....	.....	.....	201,680

X-Refer—Burden for these sections has been accounted for under title section cited.

411.200—Reflects a one hour places holder pending implementation and program experience.

The below chart represents burden associated with forms SSA-1365, State Agency Ticket Assignment Form; SSA-

1366, State Vocational Rehabilitation Ticket to Work Information Sheet, and SSA-1367, Individual Work Plans (IWP)

Information Work Sheet, that have been cleared under OMB-0641. The clearance expires on April 30, 2002.

Forms	Respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
SSA-1365 .....	21	4,048	3	4,250
SSA-1366 .....	21	132	2	92
SSA-1367 .....	31,450	1	3	1,573
Total burden .....	.....	.....	.....	5,915

(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: December 18, 2001.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we are adding 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?

411.155 When does my ticket terminate?

### 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?  
 411.166 Glossary of terms used in this subpart.

#### 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.  
 411.195 How will the PM conduct my 24-month progress review?  
 411.200 How will the PM conduct my 12-month progress reviews?  
 411.205 What if I disagree with the PM's decision about whether I am making timely progress toward self-supporting employment?

#### Failure To Make Timely Progress

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

#### The Extension Period

- 411.220 What if my ticket is no longer assigned to an EN or State VR agency?  
 411.225 What if I reassign my ticket after the end of the extension period?

### 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 other than a State VR agency 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 (29 U.S.C. 720 *et seq.*), when functioning as an EN?

#### Ticket Status

- 411.380 What does a State VR agency do if the State VR agency wants to determine whether a person seeking services has a ticket?  
 411.385 What does a State VR agency do if a beneficiary who is eligible for VR services has a ticket that is available for assignment or reassignment?  
 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 Individual Work Plan?  
 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 subpart.  
 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 tickets are assigned to an EN affected by a change in that EN's 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 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 different EN payment systems?  
 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 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?  
 411.587 Which provider will SSA pay if, with respect to the same ticket, SSA receives a request for payment from an EN or a State VR agency that elected

payment under an EN payment system and a request for payment from a State VR agency that elected payment under the cost reimbursement payment system?

- 411.590 What can an EN do if the EN disagrees with our decision on a payment request?
- 411.595 What oversight procedures are planned for the EN payment systems?
- 411.597 Will SSA periodically review the outcome payment system and the outcome-milestone payment system for possible modifications?

#### **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 that are not State VR agencies?
- 411.605 What are the responsibilities of the EN that is not a State VR agency 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 that is not a State VR agency 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 (29 U.S.C. 720 *et seq.*), apply to beneficiaries seeking services from the State VR agency?

##### **Disputes Between Employment Networks and Program Managers**

- 411.650 Is there a process for resolving disputes between ENs that are not State VR agencies and PMs, other than disputes on a payment request?
- 411.655 How will the PM refer the dispute to us?
- 411.660 Is SSA's decision final?

#### **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?
- 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 payment provisions?
- 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 the 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) “*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.

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

(e) “*Employment network*” or “*EN*” means a qualified public or private entity that has entered into an agreement with us to serve under the Ticket to Work program and that assumes responsibility for the coordination and delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries assigning tickets to it. The rules on employment networks are described in subpart E of this part (§§ 411.300–411.330). A State vocational rehabilitation agency may choose, on a case-by-case basis, to function as an employment network with respect to a beneficiary under the Ticket to Work program. The rules on State vocational rehabilitation agencies' participation in the Ticket to Work program are described in subpart F of this part (§§ 411.350–411.435).

(f) “*Employment plan*” means an individual work plan described in paragraph (i) of this section, or an individualized plan for employment described in paragraph (j) of this section. 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.

(g) “*Federal SSI cash benefits*” means a “Supplemental Security Income benefit under title XVI” based on blindness or disability as described in paragraphs (n) and (r) of this section.

(h) “*I*”, “*my*”, “*you*”, or “*your*” means the disabled beneficiary.

(i) “*Individual work plan*” or “*IWP*” means an employment plan under which an employment network (other than a State vocational rehabilitation agency) provides services to a disabled beneficiary under the Ticket to Work program. An individual work plan must be developed under, and meet the requirements of, the rules in subpart G of this part (§§ 411.450–411.470).

(j) “*Individualized plan for employment*” or “*IPE*” means an employment plan under which a State vocational rehabilitation agency provides services to individuals with disabilities (including beneficiaries assigning tickets to it under the Ticket to Work program) under a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*). An individualized plan for employment must be developed under, and meet the requirements of, 34 CFR 361.45 and 361.46.

(k) “*Program manager*” or “*PM*” means an organization in the private or public sector that has entered into a contract with us to assist us in administering the Ticket to Work program. The rules on the use of one or more program managers to assist us in administering the program are described in subpart D of this part (§§ 411.230–411.250).

(l) “*Social Security disability benefits*” means the benefits described in paragraph (q) of this section.

(m) “*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 (29 U.S.C. 720 *et seq.*). In those States that have one agency that provides VR

services to non-blind individuals and another agency that provides services to blind individuals, this term refers to either State agency.

(n) “*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.

(o) “*Ticket*” means a document described in § 411.120 which the Commissioner may issue to disabled beneficiaries for participation in the Ticket to Work program.

(p) “*Ticket to Work program*” or “*program*” means the Ticket to Work and Self-Sufficiency Program under section 1148 of the Act.

(q) “*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.

(r) “*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.

(s) “*We*” or “*us*” means the Social Security Administration.

## Subpart B—Tickets Under the Ticket to Work Program

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

(a) 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.

(b) The ticket is a red, white and blue document approximately 6” by 9” in size. The left side of the document includes the beneficiary’s name, ticket number, claim account number and the date we issued the ticket. The ticket

number is 12 characters and comprises the beneficiary’s own social security number, the letters “TW” and a number 1, 2, etc. A number 1 in the last position would signify that this is the first ticket the beneficiary has received, consistent with § 411.125(b).

(c) The right side of the ticket includes the signature of the Commissioner of Social Security, and the following language:

This ticket is issued to you by the Social Security Administration under the Ticket to Work and Self-Sufficiency Program. If you want help in returning to work or going to work for the first time, you may offer this ticket to an Employment Network of your choosing or take it to your State vocational rehabilitation agency for services. If you choose an Employment Network and it agrees to take your ticket, or if you choose your State agency and you qualify for services, these providers can offer you the services you may need to go to work.

An Employment Network provides the services at no cost to you. The Social Security Administration will pay the Employment Network if you assign your ticket to it, and the Employment Network helps you to go to work and complies with other requirements of the Program. An Employment Network serving under the Program has agreed to abide by the rules and regulations of the Program under the terms of its agreement with the Social Security Administration for providing services under the Program. Your State agency can tell you about its rules for getting services.

### § 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);

(B) If you are an individual described in § 416.987(a)(1) of this chapter, you are eligible for benefits under title XVI based on disability under the standard for evaluating disability for adults following a redetermination of your eligibility under § 416.987 of this chapter; and

(C) 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) Your case is not designated as a medical improvement expected diary review case (see §§ 404.1590 and 416.990 of this chapter for what we mean by a medical improvement expected diary review); or

(ii) Your case is designated as a medical improvement expected diary review case, 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).

(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) If your entitlement to title II benefits based on disability ends and/or your eligibility for title XVI benefits based on disability or blindness terminates as described in § 411.155(b)(1) or (2), you will be eligible to receive a new ticket in a month in which—

(1) Your entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or your eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act; and

(2) You meet the requirements of paragraphs (a)(1) and (2) of this section.

#### **§ 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, 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 if you are eligible to receive VR services according to 34 CFR 361.42. 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. Once you have assigned your ticket to an EN or State VR agency, you may take your ticket out of assignment for any reason under the rules in § 411.145(a). 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. (See § 411.115(k) for a definition of the PM.)

(c) If you choose to work with an EN serving under the program, both you and the EN of your choice need to agree upon an individual work plan (IWP) (see § 411.115(i) for a definition of an IWP). If you choose to work with a State VR agency, you must develop an individualized plan for employment (IPE) and your State VR counselor must agree to the terms of the IPE, according to the requirements established in 34 CFR 361.45 and 361.46. (See § 411.115(j) for a definition of an IPE.) The IWP or IPE outlines the services necessary to assist you in achieving your chosen employment goal.

(d) In order for you to assign your ticket to an EN or State VR agency, all of the following requirements must be met:

(1)(i) If you decide to work with an EN, you and a representative of the EN must agree to and sign an IWP; or

(ii) If you decide to work with a State VR agency, you and a representative of the State VR agency must agree to and sign both an IPE and a form that

provides the information described in § 411.385(a)(1), (2) and (3).

(2) You must be eligible to assign your ticket under the rules in paragraph (a) of this section.

(3) A representative of the EN must submit a copy of the signed IWP to the PM or a representative of the State VR agency must submit the completed and signed form (as described in § 411.385(a) and (b)) to the PM.

(4) The PM must receive the copy of the IWP or receive the required form, as appropriate.

(e) If all of the requirements in paragraph (d) of this section are met, we will consider your ticket assigned to the EN or State VR agency. The effective date of the assignment of your ticket will be the first day on which the requirements of paragraphs (d)(1) and (2) of this section are met. See §§ 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.

#### **§ 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, you may take your ticket out of assignment for any reason. You must notify the PM in writing that you wish to take your ticket out of assignment. 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 in writing that you wish to take your ticket out of assignment. 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. In addition, if your EN is no longer willing or able to provide you with services, or if your State VR agency stops providing services to you because you have been determined to be ineligible for VR services under 34 CFR 361.42, 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. You may reassign your ticket under the rules in § 411.150.

(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(c) and 411.220.

**§ 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, unless you are receiving benefit payments under § 404.316(c), § 404.337(c), § 404.352(d) or § 404.1597a of this chapter, or you are receiving disability or blindness benefit payments under § 416.996 or § 416.1338 of this chapter (the provisions of paragraph (b)(3) of this section notwithstanding). 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 are eligible to receive VR services according to 34 CFR 361.42. 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 or to another State VR agency if you are eligible to receive services according to 34 CFR 361.42.

(b) In order for you to reassign your ticket to an EN or State VR agency, all of the following requirements must be met:

(1) Your ticket must be unassigned. If your ticket is assigned to an EN or a State VR agency, you must first tell the PM in writing that you want to take your ticket out of assignment (see § 411.145).

(2)(i) You and a representative of the new EN must agree to and sign a new IWP; or

(ii) If you wish to reassign your ticket to a State VR agency, you and a representative of the State VR agency must agree to and sign both an IPE and a form that provides the information described in § 411.385(a)(1), (2) and (3).

(3) You must meet the requirements of § 411.125(a)(1) and (2) on or after the day you and a representative of the new EN sign your IWP or you and a representative of the State VR agency sign your IPE and the required form, except if—

(i) Your ticket is not in use (see § 411.170 *et seq.*) and the requirements of paragraph (b)(2) of this section are met within 30 days of the effective date your ticket no longer was assigned to the previous EN or State VR agency (see § 411.145); or

(ii) Your ticket is in use (see § 411.170 *et seq.*) and the requirements of paragraph (b)(2) of this section are met before the end of the 3-month extension period described in § 411.220.

(4) A representative of the EN must submit a copy of the signed IWP to the PM or a representative of the State VR agency must submit the completed and signed form (as described in § 411.385(a) and (b)) to the PM.

(5) The PM must receive the copy of the IWP or received the required form, as appropriate.

(c) If all of the requirements in paragraphs (a) and (b) of this section are met, we will consider your ticket reassigned to the new EN or State VR agency. The effective date of the reassignment of your ticket will be the first day on which the requirements of paragraphs (a) and (b)(1), (2) and (3) of this section are met. See §§ 411.160 through 411.225 for an explanation of how reassigning your ticket may affect medical reviews that we conduct to determine if you are still disabled under our rules.

**§ 411.155 When does my ticket terminate?**

(a) Your ticket will terminate if and when you are no longer eligible to participate in the Ticket to Work program. If your ticket terminates, you may not assign or reassign it to an EN or State VR agency. We will not pay an EN (including a State VR agency) for milestones or outcomes achieved in or after the month in which your ticket terminates (see § 411.525(c)). Your eligibility to participate in the Ticket to Work program will end, and your ticket will terminate, in the earliest of the following months:

(1) The month in which your entitlement to title II benefits based on disability ends for reasons other than your work activity or earnings, or the month in which your eligibility for benefits under title XVI based on disability or blindness terminates for reasons other than your work activity or earnings, whichever is later;

(2) If you are entitled to widow's or widower's insurance benefits based on disability (see §§ 404.335 and 404.336 of this chapter), the month in which you attain age 65; or

(3) If you are eligible for benefits under title XVI based on disability or blindness, the month following the month in which you attain age 65.

(b) The rules in paragraph (c) of this section apply in determining when your eligibility to participate in the Ticket to Work program will end and your ticket will terminate if—

(1) You were not a concurrent title II/title XVI disability beneficiary, and your entitlement to title II benefits based on disability ends or your eligibility for title XVI benefits based on disability or blindness terminates because of your work activity or earnings; or

(2) You were a concurrent title II/title XVI disability beneficiary and—

(i) Your entitlement to title II benefits based on disability ends because of work activity or earnings and your eligibility for title XVI benefits based on disability or blindness terminates for any reason; or

(ii) Your eligibility for title XVI benefits based on disability or blindness terminates because of your work activity or earnings and your entitlement to title II benefits based on disability ends for any reason.

(c) For purposes of paragraph (b) of this section, the ticket which you received in connection with the previous period during which you were either entitled to title II benefits based on disability or eligible for title XVI benefits based on disability or blindness (as described in § 411.125(b)) will terminate, and your eligibility to participate in the Ticket to Work program based on that ticket will end, in the earliest of the following months:

(1) If we make a final determination or decision that you are not entitled to have title II benefits based on disability reinstated under section 223(i) of the Act or eligible to have title XVI benefits based on disability or blindness reinstated under section 1631(p) of the Act, the month in which we make that determination or decision;

(2) If we make a final determination or decision that you are not entitled to title II benefits based on disability or eligible for title XVI benefits based on disability or blindness after you file an application for benefits, the month in which we make that determination or decision;

(3) The month you attain retirement age (as defined in section 216(l) of the Act);

(4) The month in which you die;

(5) The month in which you become entitled to a title II benefit that is not based on disability or eligible for a title XVI benefit that is not based on disability or blindness;

(6) The month in which you again become entitled to title II benefits based on disability, or eligible for title XVI benefits based on disability or

blindness, based on the filing of an application for such benefits; or

(7) If your entitlement to title II benefits based on disability is reinstated under section 223(i) of the Act, or your eligibility for title XVI benefits based on disability or blindness is reinstated under section 1631(p) of the Act, the month in which you are eligible to receive a new ticket under § 411.125(c).

### 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 §§ 404.1589, 416.989 and 416.989a of this chapter for the rules on when we may conduct continuing disability reviews). For the purposes of this subpart, continuing disability reviews include the medical reviews we conduct to determine if your medical condition has improved (see §§ 404.1594 and 416.994 of this chapter), but not any review to determine if your disability has ended under § 404.1594(d)(5) of this chapter because you have demonstrated your ability to engage in substantial gainful activity (SGA), as defined in §§ 404.1571–404.1576 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. 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. Sections 411.170 and 411.171 describe when the period of using a ticket begins and ends. You must meet certain requirements for us to consider you to be using a ticket.

#### § 411.166 Glossary of terms used in this subpart.

(a) *Active participation in your employment plan* means 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.

(b) *Extension period* is a period of up to three months during which you may reassign a ticket without being subject to continuing disability reviews. You may be eligible for an extension period if the

ticket is in use and no longer assigned to an Employment Network (EN) or State VR agency (see § 411.220).

(c) *Inactive status* is a status in which you may place your ticket if you are temporarily unable to participate or not actively participating in your employment plan. You may place a ticket in inactive status only during the initial 24-month period. Months during which your ticket is in inactive status do not count toward the time limitations for making timely progress toward self-supporting employment. You may keep your ticket in inactive status as long as you choose. However, because the ticket is not in use during months in which it is in inactive status, you will be subject to continuing disability reviews during these months.

(d) *Initial 24-month period* means the 24-month period that begins with the month following the month in which you first assigned your ticket. We do not count any month in which the ticket is not assigned to an EN or State VR agency, as described in § 411.145, or any month during which the ticket is not in use because it is in inactive status (see § 411.190(a)(2)) or because you were determined to be no longer making timely progress toward self-supporting employment under § 411.190(a)(3) or § 411.205.

(e) *Progress review* means the reviews the program manager (PM) conducts to determine if you are meeting the timely progress guidelines described in these regulations. (See § 411.115(k) for a definition of the PM.) The method for conducting the 24-month progress review is explained in § 411.195 and the method for conducting 12-month progress reviews is explained in § 411.200.

(f) *Timely progress guidelines* means the guidelines we use to determine if you are making timely progress toward self-supporting employment. In general, we determine if you are making timely progress toward self-supporting employment using two distinct criteria with defined time frames. These criteria are active participation in your employment plan during the initial 24-month period and increased work and earnings during subsequent 12-month progress review periods (see § 411.180 to § 411.190, § 411.195 and § 411.200).

(g) *12-month progress 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 progress review period. We do not count any month during which your ticket is not assigned to an EN or State VR agency, as described in § 411.145.

(h) *Using a ticket* means that you have assigned a ticket to an EN or State VR agency and are making timely progress toward self-supporting employment. (See § 411.171 for a discussion of when the period of using a ticket ends.)

#### 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.

**Note:** If your period of using a ticket ends because you have previously failed to meet the timely progress guidelines under §§ 411.180 through 411.190, the period of using a ticket will resume if you satisfy the requirements for re-entering 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 month before the month in which the ticket terminates as a result of one of the events listed in § 411.155;

(b) The day before the effective date of a decision under § 411.190; § 411.195, § 411.200, or § 411.205 that you are no longer making timely progress toward self-supporting employment;

(c) The close of the three-month extension 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 the three-month extension period (see § 411.220 for an explanation of the three-month extension period);

(d) The 60th month for which an outcome payment is made to your EN (including a State VR agency) under subpart H of this part; or

(e) 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 serve you as an EN.

#### § 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 benefit payments. However, if you assigned your ticket before we determined that you are no longer



disabled, in certain circumstances you may continue to receive benefit payments (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/or 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) *Definitions.* As used in this subpart—

(1) *Initial 24-month period* means the 24-month period that begins with the month following the month in which you first assigned your ticket. (See §§ 411.220(e) and 411.225(c) for when a new initial 24-month period may be established for you.) We do not count any month during which the ticket is not assigned to an EN or State VR agency, as described in § 411.145, or any month during which the ticket is not in use because it is in inactive status (see § 411.190(a)(2)) or because you were determined to be no longer making timely progress toward self-supporting employment under § 411.190(a)(3) or § 411.205.

(2) *12-month progress 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 progress review period. We do not count any month during which your ticket is not assigned to an EN or State VR agency, as described in § 411.145.

(c) *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. These activities may include employment, if agreed to in the employment plan. At the end of the initial 24-month period, you must successfully complete the 24-month progress review, as described in § 411.195. If you worked in one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work referred to in § 411.195(a)(2) and § 411.195(a)(3) for purposes of meeting the requirements of those sections regarding a goal of three months of work during the first 12-month progress review period.

(2) During your first 12-month progress review period, you must work (as defined in § 411.185) for at least three of these 12 months. The three months do not need to be consecutive. If you worked one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work required for the first 12-month progress review period.

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

#### **§ 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 progress 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 more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) 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 more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter.

**Note to paragraph (a)(1):** If you worked in one or more months during the initial 24-month period at the level of work described in paragraph (a)(1) of this section, those months of work may be used to meet certain requirements of the 24-month progress review as explained in § 411.180(c)(1) and the work requirements for the first 12-month progress review period as explained in § 411.180(c)(2).

(2) During your third 12-month progress review period, and during later 12-month progress 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 progress 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 more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) 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 more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter.

**Example to paragraph (b)(1):** 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.

**Note to paragraph (b)(1):** If you worked in one or more months during the initial 24-month period at the level of work described in paragraph (b)(1) of this section, those months of work may be used to meet certain requirements of the 24-month progress review as explained in § 411.180(c)(1) and the work requirements for the first 12-month progress review period as explained in § 411.180(c)(2).

(2) During your third 12-month progress review period, and during any later 12-month progress 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 progress 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 more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) 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 more than the SGA threshold amount for non-blind beneficiaries in § 404.1574(b)(2) of this chapter.

**Note to paragraph (c)(1):** If you worked in one or more months during the initial 24-month period at the level of work described in paragraph (c)(1) of this section, those months of work may be used to meet certain requirements of the 24-month progress review as explained in § 411.180(c)(1) and the work requirements for the first 12-month progress review period as explained in § 411.180(c)(2).

(2) During your third 12-month progress review period, and during later 12-month progress 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.*

(1) *General.* During the initial 24-month period after you assign your ticket, you must be actively participating in your employment plan, as defined in § 411.180(c)(1). Active participation in your employment plan will be presumed unless you or your EN or State VR agency tell the program manager (PM) that you are not actively participating. (See § 411.115(k) for a definition of the PM.) If you or your EN or State VR agency report to the PM that you are temporarily unable to participate or are not actively participating in your employment plan during the initial 24-month period after you assign your ticket, the PM will give you the choice of placing your ticket in inactive status or resuming active participation in your employment plan.

(2) *Inactive status.* 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. Therefore, you will be subject to continuing disability reviews during those months. The months in which your ticket is in inactive status do not count toward the time limitations for making timely progress toward self-supporting employment. You may not place your ticket in inactive status after the initial 24-month period.

(i) 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.

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

(3) *Resuming active participation.* If you choose to resume active participation in your employment plan,

you will be allowed three 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, and these months will count toward your initial 24-month period. The PM will contact your EN or State VR agency after the three months to determine whether you have been actively participating in your employment plan during these three months. If the EN or State VR agency reports that you have been actively participating in your employment plan during these three months, you will continue to be considered to be making timely progress toward self-supporting employment. If the EN or State VR agency reports that you have not been actively participating in your employment plan during these three 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.

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

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

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

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

You may use the following table as a general guide to determine what you need to do to meet the guidelines for timely progress toward self-supporting employment. For more detail, refer to §§ 411.180–411.190, and §§ 411.195 and 411.200.

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:
(a) First assigned your ticket less than 24 months ago (not counting any months during which your ticket was unassigned or was not in use).	Initial 24-month period	No work requirement. Must be actively participating in employment plan.	Not applicable .....	24-month progress review.
(b) First assigned your ticket 25 to 36 months ago, not counting certain months <sup>1</sup> .	First 12-month progress review period.	3 months out of 12 <sup>2</sup> ..	Earnings at the SGA level for non-blind beneficiaries; <sup>3</sup> or If you are an SSI-only beneficiary, gross earnings from employment or net earnings from self-employment which, before SSI income exclusions, are more than the SGA threshold amount for non-blind beneficiaries.	First 12-month progress review.
(c) First assigned your ticket 37 to 48 months ago, not counting certain months <sup>1</sup> .	Second 12-month progress review period.	6 months out of 12 ....	Earnings at the SGA level for non-blind beneficiaries; <sup>2</sup> or If you are an SSI-only beneficiary, gross earnings from employment or net earnings from self-employment which, before SSI income exclusions, are more than the SGA threshold amount for non-blind beneficiaries.	Second 12-month progress review.
(d) First assigned your ticket 49 to 60 months ago, not counting certain months <sup>3</sup> .	Third 12-month progress review period.	6 months out of 12 ....	Earnings sufficient to preclude Social Security disability and Federal SSI cash benefits for a month.	Third 12-month progress review.

Note to table: In later 12-month progress review periods, the work and earnings requirements are the same as in the third 12-month progress review period.

<sup>1</sup> In counting the 24 months which make up the initial 24-month period that begins after you assign your ticket, we do not count any months during which your ticket was unassigned or was not in use (see § 411.180(b)(1)). In counting the 12 months which make up any subsequent 12-month progress review period, we do not count any months during which your ticket was unassigned (see § 411.180(b)(2)).

<sup>2</sup> If you worked in one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work required for the first 12-month progress review period (see § 411.180(c)(2)).

<sup>3</sup> For an explanation of how we determine if you meet this requirement if you are in a trial work period or if you are blind, see § 411.185(a)(1) or (c)(1).

#### § 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. These activities may include employment, if agreed to in the employment plan.

(2) Does your employment plan have a goal of at least three months of work (as defined in § 411.185) by the time of your first 12-month progress review?

(3) Given your current progress in your employment plan, can you

reasonably be expected to reach this goal of at least three months of work (as defined in § 411.185) at the time of your first 12-month progress review?

**Note to paragraph (a):** If you worked in one or more months during the initial 24-month period at the level of work applicable to the work requirement for the first 12-month progress review period, each such month of work may be used to reduce by one month the number of months of work referred to in paragraphs (a)(2) and (3) of this section and the number of months of work required for the first 12-month progress review period (see § 411.180(c)(1) and (2)).

(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 12-month progress 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 12-month progress reviews?**

(a) The 12-month progress 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 just completed 12-month progress 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 progress 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 12-month progress 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.

**Failure To Make Timely Progress****§ 411.21 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 (including a State VR agency which is serving you as an EN) also may receive any milestone or outcome payments for which it is eligible under § 411.500 *et seq.* If you are working with a State VR agency which elected payment under the cost reimbursement payment system, your State VR agency may receive payment for which it is eligible under the cost reimbursement payment system (see subparts F and H of this part).

(b) *Re-entering in-use status.* If you failed to meet the timely progress guidelines for continuing to use a ticket, you may re-enter in-use status. If you believe that you meet the requirements for re-entering in-use status described in paragraph (b)(1), (b)(2), (b)(3), (b)(4) or (b)(5) of this section, you may request that you be reinstated to in-use status. You must submit a written request to the PM asking that you be reinstated to in-use status. The PM will decide whether you have satisfied the applicable requirements for re-entering in-use status. The requirements for re-entering 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.*

(i) If you failed to meet the timely progress guidelines during the initial 24-month period, you may re-enter in-use status by demonstrating three consecutive months of active participation in your employment plan (see § 411.166(a)).

(ii) When you have satisfied this requirement, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, your next review will be the 24-month progress review described in § 411.195.

(2) *If you failed to meet the timely progress guidelines in your 24-month progress review.*

(i) If you failed to meet the timely progress guidelines in your 24-month

progress review, you may re-enter in-use status by completing three months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) 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. You also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of your work during the 12-month progress review period that may begin under paragraph (b)(2)(iii) of this section. The work requirements for this 12-month progress review period will be the work requirements applicable during the second 12-month progress review period.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, the second 12-month progress review period will begin. During this 12-month progress review period, you will be required to work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) at least six months. The PM will conduct a 12-month progress review at the end of this 12-month progress review period to determine if you have met this requirement. After this, the PM will conduct 12-month progress reviews in the usual manner.

(3) *If you failed to meet the timely progress guidelines in your first 12-month progress review.*

(i) If you failed to meet the timely progress guidelines in your first 12-month progress review, you may re-enter in-use status by completing three months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) 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. You also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of your work during the next 12-month progress review period that may begin under paragraph (b)(3)(iii) of this section.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

(iii) After you are reinstated to in-use status, your next 12-month progress review period will begin. During this 12-month progress review period, you will be required to work (as defined in

§ 411.185(a)(1), (b)(1) or (c)(1)) at least six months. The PM will conduct a 12-month progress review at the end of this 12-month progress review period to determine if you have met this requirement. After this, the PM will conduct 12-month progress reviews in the usual manner.

(4) *If you failed to meet the timely progress guidelines in your second 12-month progress review.*

(i) If you failed to meet the timely progress guidelines in your second 12-month progress review, you may re-enter in-use status by completing six months of work (as defined in § 411.185(a)(1), (b)(1) or (c)(1)) 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. You also must satisfy the test of § 411.200(a)(2) regarding the anticipated level of your work during the next 12-month progress review period that may begin under paragraph (b)(4)(iii) of this section.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

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

(5) *If you failed to meet the timely progress guidelines in any progress review after your second 12-month progress review.*

(i) If you failed to meet the timely progress guidelines in any progress review after your second 12-month progress review, you may re-enter in-use status by completing six months of work within a rolling 12-month period with earnings in each of the six months at the level specified in § 411.185(a)(2), (b)(2) or (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. You also must satisfy the test in § 411.200(a)(2) regarding the anticipated level of your work during the next 12-month progress review period that may begin under paragraph (b)(5)(iii) of this section.

(ii) When you have satisfied these requirements, you will be reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency. See paragraph (c) of this section for when your reinstatement to in-use status will be effective.

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

(c) *Decisions on whether you have satisfied the requirements for re-entering in-use status.*

(1) After you have submitted a written request to the PM asking that you be reinstated to in-use status, the PM will decide whether you have satisfied the applicable requirements in this section for re-entering in-use status. 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. If the PM decides that you have satisfied the requirements for re-entering in-use status (including the requirement that your ticket be assigned to an EN or State VR agency), you will be reinstated to in-use status effective with the date on which the PM sends the notice of the decision to you. If the PM decides that you have not satisfied the requirements for re-entering in-use status, you may request that we review the decision under paragraph (c)(2) of this section.

(2) 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 send you a written notice of our decision at your last known address. If we decide that you have satisfied the requirements for re-entering in-use status (including the requirement that your ticket be assigned to an EN or State VR agency), you will be reinstated to in-use status effective with the date on which we send the notice of the decision to you.

#### **The Extension Period**

#### **§ 411.220 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 three months to reassign your ticket. You are eligible for an extension period if your ticket is in use and no longer assigned because—

(1) You retrieved your ticket because you were dissatisfied with the services being provided (see § 411.145(a)) or because you relocated to an area not served by your previous EN or State VR agency; or

(2) Your EN went out of business, is no longer approved to participate as an EN in the Ticket to Work program, or is no longer willing or able to provide you with services as described in § 411.145(b), or your State VR agency stopped providing services to you as described in § 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 three months after it begins or when you assign your ticket to a new EN or State VR agency, whichever is sooner.

(e) If your extension period began during the initial 24-month period, and you reassign your ticket to an EN or State VR agency (other than the EN or State VR agency to which the ticket was previously assigned), you will have a new initial 24-month period when you reassign your ticket. This initial 24-month period will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

(f) 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.

#### **§ 411.225 What if I reassign my ticket after the end of the extension period?**

(a) *General.* You may reassign your ticket after the end of the extension period under the conditions described in § 411.150. If you reassign your ticket after the end of the extension period, you will be reinstated to in-use status beginning on the day on which the reassignment of your ticket is effective under § 411.150(c).

(b) *Time limitations for the timely progress guidelines.* Any month during which your ticket is not assigned, either during or after the extension period,

will not count toward the time limitations for the timely progress guidelines. See § 411.180(b)(1) and (2).

(c) *If your extension period began during the initial 24-month period.* If your extension period began during the initial 24-month period, and you reassign your ticket to an EN or State VR agency (other than the EN or State VR agency to which the ticket was previously assigned), you will have a new initial 24-month period when you reassign your ticket. This initial 24-month period will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

(d) *If your extension period began during any 12-month progress review period.* If your extension period began during a 12-month progress review period and you reassign your ticket after the end of the extension period, the period comprising the remaining months in that 12-month progress review period (see § 411.180(b)(2)) will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

#### **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 a contract 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 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 milestone payments due to an EN based on the services provided by the EN when a beneficiary has been served by more than one 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 (IWP) submitted by ENs for ticket assignment. These reviews will be conducted to ensure that the IWPs meet the requirements of § 411.465. (The PM will not review individualized plans for employment developed by State VR agencies and beneficiaries.)

(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 include, but not be limited to, an assessment examining the following areas:

- (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 determine the PM's final rating.

(c) These performance evaluations will be made part of our database on contractor past performance to which any Federal agency may have access.

(d) Failure to comply with the standards used in the evaluation may result in early termination of our agreement with the PM.

**Subpart E—Employment Networks****§ 411.300 What is an EN?**

An employment network (EN) is any qualified entity that has entered into an agreement with us to function as an EN under the Ticket to Work program and assume responsibility for the coordination and delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries who have assigned their tickets to that EN.

**§ 411.305 Who is eligible to be an EN?**

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 and religious 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. The rules in this subpart E apply to entities other than State VR agencies.

(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 Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).

(f) Public or private schools that provide VR or employment services, conduct job training programs, or make services or programs available that can assist students with disabilities in acquiring specific job skills that lead to employment. This includes transition programs that can help students acquire work skills.

(g) Employers that offer job training or other support services or assistance to help individuals with disabilities obtain and retain employment or arrange for individuals with disabilities to receive relevant services or assistance.

**§ 411.310 How does an entity other than a State VR agency apply to be an EN and who will determine whether an entity qualifies as an EN?**

(a) An entity other than a State VR agency applies by responding to our Request for Proposal (RFP), which we published in the Commerce Business Daily and which is available online through the Federal government's electronic posting system (<http://www.eps.gov>). This RFP also is available through SSA's website, <http://www.ssa.gov/work>. Since recruitment of ENs will be an ongoing process, the RFP is open and continuous. The entity must respond in a format prescribed in the RFP announcement. In its response, the entity must assure SSA that it is qualified to provide employment services, vocational rehabilitation services, or other support services to disabled beneficiaries, either directly or through arrangements with other entities.

(b) The PM will solicit service providers and other qualified entities to respond to the RFP on an ongoing basis. (See § 411.115(k) for a definition of the PM.) The PM will conduct a preliminary review of responses to the RFP from applicants located in the PM's service delivery area and make recommendations to the Commissioner regarding selection. The Commissioner will decide which applicants will be approved to serve as ENs under the program.

(c) State VR agencies must comply with the requirements in subpart F of this part to participate as an EN in the Ticket to Work program. (See §§ 411.360ff).

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

To serve as an EN under the Ticket to Work program, an entity must meet and maintain compliance with both general selection criteria and specific selection criteria.

(a) The general criteria include:

(1) having systems in place to protect the confidentiality of personal

information about beneficiaries seeking or receiving services;

(2) being accessible, both physically and programmatically, to beneficiaries seeking or receiving services (examples of being programmatically accessible include the capability of making documents and literature available in alternate media including Braille, recorded formats, enlarged print, and electronic media; and insuring that data systems available to clients are fully accessible for independent use by persons with disabilities);

(3) not discriminating in the provision of services based on a beneficiary's age, gender, race, color, creed, or national origin;

(4) having adequate resources to perform the activities required under the agreement with us or the ability to obtain them;

(5) complying with the terms and conditions in the agreement with us, including delivering or coordinating the delivery of employment services, vocational rehabilitation services, and other support services; and

(6) implementing accounting procedures and control operations necessary to carry out the Ticket to Work program.

(b) The specific criteria that an entity must meet to qualify as an EN include:

(1)(i) Using staff who are qualified under applicable certification, licensing, or registration standards that apply to their profession including certification or accreditation by national accrediting or certifying organizations; or

(ii) Using staff that are otherwise qualified based on education or experience, such as by using staff with experience or a college degree in a field related to the services the EN wants to provide, such as vocational counseling, human relations, teaching, or psychology; and

(2) Taking reasonable steps to assure that if any medical and related health services are provided, such medical and health related services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State in which the services are performed.

(c) Any entity must have applicable certificates, licenses or other credentials if such documentation is required by State law to provide vocational rehabilitation services, employment services or other support services.

(d) We will not use the following as an EN:

(1) any entity that has had its license, accreditation, certification, or registration suspended or revoked for reasons concerning professional



competence or conduct or financial integrity;

(2) any entity that has surrendered a license, accreditation, certification, or registration with a disciplinary proceeding pending; or

(3) any entity that is precluded from Federal procurement or non-procurement programs.

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

An EN must—

(a) Enter into an agreement with us.

(b) Serve a prescribed service area. The EN must designate the geographic area in which it will provide services. This will be designated in the EN's agreement with us.

(c) Provide services directly, or enter into agreements with other entities to provide employment services, vocational rehabilitation services, or other support services to beneficiaries with tickets.

(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).

(e) Elect a payment system at the time of signing an agreement with us (see § 411.505).

(f) Develop and implement each IWP 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.

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

We will terminate our agreement with an EN if it does not comply with the requirements under §§ 411.320, § 411.325, or the conditions in the agreement between SSA and the EN, including minimum performance standards relating to beneficiaries achieving self-supporting employment and leaving the benefit rolls.

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

An EN must:

(a) Report to the PM each time it accepts a ticket for assignment;

(b) Submit a copy of each signed IWP to the PM;

(c) Submit to the PM copies of amendments to a beneficiary's IWP;

(d) Submit to the PM a copy of any agreement the EN has established with

a State VR agency regarding the conditions under which the State VR agency will provide services to beneficiaries who are referred by the EN under the Ticket to Work program;

(e) 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 subpart C of this part);

(f) Report to the PM the specific outcomes achieved with respect to specific services the EN provided or secured on behalf of beneficiaries whose tickets it accepted for assignment. Such reports shall conform to a national model prescribed by us and shall be submitted to the PM at least annually;

(g) Provide a copy of its most recent annual report on outcomes to each beneficiary considering assigning a ticket to it and assure that a copy of its most recent report is available to the public while ensuring that personal information on beneficiaries is kept confidential;

(h) Meet our financial reporting requirements. These requirements will be described in the agreements between ENs and the Commissioner, and will include submitting a financial report to the program manager on an annual basis;

(i) Collect and record such data as we shall require, in a form prescribed by us; and

(j) Adhere to all requirements specified in the agreement with the Commissioner and all regulatory requirements in this part 411.

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

(a) We will periodically review the results of the work of each EN to ensure effective quality assurance in the provision of services by ENs.

(b) In conducting such a review, we will solicit and consider the views of the individuals the EN serves and the PM which monitors the EN.

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

**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?**

Yes. Each State agency 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.*), must participate in the Ticket to Work program if it wishes to receive payments from SSA for serving disabled beneficiaries who are issued a ticket.

**§ 411.355 What payment options does a State VR agency have under the Ticket to Work program?**

(a) The Ticket to Work program provides different payment options that are available to a State VR agency for providing services to disabled beneficiaries who have a ticket. A State VR agency participates in the program in one of two ways when providing services to a particular disabled beneficiary under the program. On a case-by-case basis, subject to the limitations in § 411.585, the State VR agency may participate either—

(1) As an employment network (EN); or

(2) Under the cost reimbursement payment system (see subpart V of part 404 and subpart V of part 416 of this chapter).

(b) When the State VR agency serves a beneficiary with a ticket as an EN, the State VR agency will use the EN payment system it has elected for this purpose, either the outcome payment system or the outcome-milestone payment system (described in subpart H of this part). The State VR agency will have periodic opportunities to change the payment system it uses when serving as an EN.

(c) The State VR agency may seek payment only under its elected EN payment system whenever it serves as an EN. When serving a beneficiary who was not issued a ticket, the State VR agency may seek payment only under the cost reimbursement payment system.

(d) A State VR agency can choose to function as an EN or to receive payment under the cost reimbursement payment system each time that a ticket is assigned or reassigned to it if payment has not previously been made with respect to that ticket. If payment has previously been made with respect to that ticket, the State VR agency can receive payment only under the payment system under which the earlier payment was made.

**§ 411.360 How does a State VR agency become an EN?**

(a) As the Ticket to Work program is implemented in States, we will notify the State VR agency by letter about payment systems available under the program. The letter will ask the State VR agency to choose a payment system to use when it functions as an EN.

(b) When serving a beneficiary holding a ticket, the State VR agency may choose, on a case-by-case basis, to seek payment under its elected EN payment system or under the cost reimbursement payment system, subject to the limitations in § 411.585.

**§ 411.365 How does a State VR agency notify SSA about its choice of a payment system for use when functioning as an EN?**

(a) When the State VR agency receives our letter described in § 411.360(a) regarding implementation of the Ticket to Work program, the State VR agency must respond by sending us a letter telling us which EN payment system it will use when it functions as an EN with respect to a beneficiary who has a ticket.

(b) The director of the State agency 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.*), or the director's designee must sign the State VR agency's letter described in paragraph (a) of this section.

**§ 411.370 Does a State VR agency ever have to function as an EN?**

A State VR agency does not have to function as an EN when serving a beneficiary with a ticket if the ticket has not previously been assigned to an EN or State VR agency or, if it has been previously assigned, we have not made payment under an EN payment system with respect to that ticket. However, as described in § 411.585(b), a State VR agency is precluded from being paid under the cost reimbursement payment system if an EN or a State VR agency serving a beneficiary as an EN has been paid by us under one of the EN payment systems with respect to the same ticket.

**§ 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 (29 U.S.C. 720 *et seq.*), when functioning as an EN?**

Yes. The State VR agency must continue to provide services under the requirements of the State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 *et seq.*), even when functioning as an EN.

**Ticket Status**

**§ 411.380 What does a State VR agency do if the State VR agency wants to determine whether a person seeking services has a ticket?**

A State VR agency can contact the Program Manager (PM) to determine if a person seeking VR services has a ticket and, if so, whether the ticket may be

assigned to the State VR agency (see § 411.140) or reassigned to the State VR agency (see § 411.150). (See § 411.115(k) for a definition of the PM.)

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

(a) Once the State VR agency determines that a beneficiary is eligible for VR services, the beneficiary and a representative of the State VR agency must agree to and sign the individualized plan for employment (IPE) required under section 102(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 722(b)). This requirement must be met in order for a beneficiary to assign or reassign his or her ticket to the State VR agency. Section 411.140(d) describes the other requirements which must be met in order for a beneficiary to assign a ticket. Section 411.150(a) and (b) describe the other requirements which must be met in order for a beneficiary to reassign a ticket. Under § 411.140(d)(3) and § 411.150(b)(4), the State VR agency must submit the following information to the PM in order for the beneficiary's ticket to be assigned or reassigned to the State VR AGENCY:

(1) A statement that the beneficiary has decided to assign or reassign the 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; and

(3) A statement of the State VR agency's selection of the payment system (either the cost reimbursement payment system 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 a representative of the State VR agency.

**§ 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 a beneficiary who is receiving services from the State VR agency under an existing IPE becomes eligible for a ticket that is 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(a)(1)–(3) and (b) to the PM. This requirement must be met in order for the beneficiary to assign his or her

ticket to the State VR agency. Section 411.140(d) describes the other requirements which must be met in order for a beneficiary to assign a ticket.

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

(a) For cases where a State VR agency provided services functioning as an EN, the 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) Regardless of the payment method selected, a State VR agency must submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress toward self-supporting employment to determine if a beneficiary is using a ticket for purposes of suspending continuing disability reviews (see §§ 411.190, 411.195 and 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, although an EN and a State VR agency may want to

enter into an individualized agreement to meet the needs of a single beneficiary.

**§ 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

must 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 must 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 must 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 Individual Work Plan?**

An individual work plan (IWP) is a required written document signed by an employment network (EN) (other than a State VR agency) 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 shall 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 Protection and Advocacy (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 requirements are met—

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

(2)(i) The beneficiary is eligible to assign his or her ticket under § 411.140(a); or

(ii) The beneficiary is eligible to reassign his or her ticket under § 411.150(a) and (b); and

(3) A representative of the EN submits a copy of the signed IWP to the PM and the PM receives the copy of the IWP.

(b) If all of the requirements in paragraph (a) of this section are met, the IWP will be effective on the first day on which the requirements of paragraphs (a)(1) and (a)(2) of this section are met.

**Subpart H—Employment Network Payment Systems**

**§ 411.500 Definitions of terms used in this subpart.**

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

(1) In connection with a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary), the average monthly disability insurance benefit payable under section 223 of the Act for months during the preceding calendar year to all beneficiaries who are in current pay status for the month for which the benefit is payable; and

(2) In connection with a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary), the average monthly payment of Supplemental Security Income (SSI) benefits based on disability payable under title XVI (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who—

(i) Have attained age 18 but have not attained age 65;

(ii) Are not concurrent title II/title XVI beneficiaries; and

(iii) Are in current pay status for the month for which the payment is made.

(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 the performance

of substantial gainful activity (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 employment network (EN) for each month, during an individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings.

(d) *Outcome Payment* means the payment for an outcome payment month.

(e) *Outcome Payment Month* means a month, during the individual's outcome payment period, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings. The maximum number of outcome payment months for each ticket is 60.

(f) *Outcome-Milestone Payment System* is a system providing a schedule of payments to an EN that includes, in addition to any outcome payments which may be made during the individual's outcome payment period, payment for completion by a beneficiary of up to four milestones directed toward the goal of permanent employment. The milestones for which payment may be made must occur prior to the beginning of the individual's outcome payment period.

**§ 411.505 How is an EN paid by SSA?**

An EN can elect to be paid under either the outcome payment system or 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 program manager (PM). (See § 411.115(k) for a definition of 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 beneficiary decides to assign the ticket to the State VR agency.

**§ 411.515 Can the EN change its elected payment system?**

(a) Yes. Any change by an EN in its 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 first day of 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. These rules also apply to a change by a State VR agency in its elected EN payment system for cases in which the State VR agency serves a beneficiary as an EN.

(b) After an EN (or a State VR agency) first elects an EN payment system, the EN (or State VR agency) can choose to make one change in its elected payment system at any time prior to the close of which of the following is later:

(1) The 12th month following the month in which the EN (or State VR agency) first elects an EN payment system; or

(2) The 12th month following the month in which we implement the Ticket to Work program in the State in which the EN (or State VR agency) operates.

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

**§ 411.520 How are beneficiaries whose tickets are assigned to an EN affected by a change in that EN's elected payment system?**

A change in an EN's (or State VR agency's) elected payment system has no effect upon the beneficiaries who have assigned their ticket to the EN (or State VR agency).

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

(a) For payments for outcome payment months, both EN payment systems use the payment calculation base as defined in § 411.500(a)(1) or (a)(2), as appropriate.

(1)(i) 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 40 percent of the payment calculation base for the calendar year in which such month occurs, rounded to the nearest whole dollar. (See § 411.550.)

(ii) If a disabled beneficiary's entitlement to Social Security disability benefits ends (see §§ 404.316(b), 404.337(b) and 404.352(b) of this chapter) or eligibility for SSI benefits based on disability or blindness terminates (see § 416.1335 of this chapter) because of the performance of SGA or by reason of earnings from work activity, we will consider any month after the month with which such entitlement ends or eligibility terminates to be a month for which Social Security disability benefits and Federal SSI cash benefits are not payable to the individual because of work or earnings if—

(A) The individual has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) in that month that are more than the SGA threshold amount in § 404.1574(b)(2) of this chapter (or in § 404.1584(d) of this chapter for an individual who is statutorily blind); and

(B) The individual is not entitled to any monthly benefits under title II or eligible for any benefits under title XVI for that month.

(2) Under the outcome-milestone payment system, we can pay the EN for up to four milestones achieved by a beneficiary who has assigned his or her ticket to the EN. The milestones for which payment may be made must occur prior to the beginning of the beneficiary's outcome period and meet the requirements of § 411.535. In addition to the milestone payments, monthly outcome payments can be paid to the EN during the outcome payment period.

(b) The outcome-milestone payment system is designed so that the total payments to the EN for a beneficiary are less than the total amount to which

payments would be limited 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.

(c) We will pay an EN to whom the individual has assigned a ticket only for milestones or outcomes achieved in months prior to the month in which the ticket terminates (see § 411.155). We will not pay a milestone or outcome payment to an EN based on an individual's work activity or earnings in or after the month in which the ticket terminates.

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

Under the outcome-milestone payment system, each outcome payment made to an EN with respect to an individual will be reduced by an amount equal to  $\frac{1}{60}$ th of the milestone payments made to the EN with respect to the same individual.

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

(a) Under the outcome-milestone payment system, there are four milestones for which the EN can be paid. The milestones occur after the date on which the ticket was first assigned and after the beneficiary starts to work. The milestones are based on the earnings levels that we use when we consider if work activity is SGA. We will use the SGA threshold amount in § 404.1574(b)(2) of this chapter for beneficiaries who are not statutorily blind, and we will use the SGA threshold amount in § 404.1584(d) of this chapter for beneficiaries who are statutorily blind. We will use these SGA threshold amounts in order to measure if the beneficiary's earnings level meets the milestone objective.

(1) The first milestone is met when the beneficiary has worked for one calendar month and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for that month that are more than the SGA threshold amount.

(2) The second milestone is met when the beneficiary has worked for three calendar months within a 12-month period and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for each of the three months that are more than the SGA threshold amount. The month used to meet the first milestone can be included

in the three months used to meet the second milestone.

(3) The third milestone is met when the beneficiary has worked for seven calendar months within a 12-month period and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for each of the seven months that are more than the SGA threshold amount. Any of the months used to meet the first two milestones can be included in the seven months used to meet the third milestone.

(4) The fourth milestone is met when the beneficiary has worked for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self-employment as defined in § 416.1110(b) of this chapter) for each of the 12 months that are more than the SGA threshold amount. Any of the months used to meet the first three milestones can be included in the 12 months used to meet the fourth milestone.

(b) An EN can be paid for a milestone only if the milestone is attained after a beneficiary has assigned his or her ticket to the EN. See § 411.575 for other milestone payment criteria.

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

(a) The payment for the first milestone is equal to 34 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(b) The payment for the second 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, rounded to the nearest whole dollar.

(c) The payment for the third 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, rounded to the nearest whole dollar.

(d) The payment for the fourth milestone is equal to 170 percent of the payment calculation base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(e) The month of attainment of the first milestone is the first month in which the individual has the required earnings as described in § 411.535.

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

(g) The month of attainment of the third milestone is the 7th month, within

a 12-month period, in which the individual has the required earnings as described in § 411.535.

(h) The month of attainment of the fourth milestone is the 12th month, within a 15-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 equal to 34 percent of the payment calculation base for the calendar year in which the month occurs, rounded to the nearest whole dollar, and reduced, if necessary, as described in § 411.530.

**§ 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, rounded to the nearest whole dollar.

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

(a) Yes. The EN can keep each milestone and outcome payment for which the EN is eligible, even though the beneficiary does not achieve all 60 outcome months.

(b) Payments which we make or deny to an EN or State VR agency serving a beneficiary as an EN may be subject to adjustment (including recovery, as appropriate) if we determine that more or less than the correct amount was paid. This may happen, for example, because we determine that the payment determination was in error or because of—

(1) An allocation of a payment under § 411.560; or

(2) A determination or decision we make about an individual's right to benefits which causes the payment or denial of a payment to be incorrect (see § 411.590(d)).

(c) If we determine that an overpayment or underpayment has occurred, we will notify the EN or State VR agency serving a beneficiary as an EN of the adjustment. Any dispute which the EN or State VR agency has regarding the adjustment may be resolved under the rules in § 411.590(a) and (b).

**§ 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 at different times, 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 contribution of the services provided by each EN toward the achievement of the outcomes or milestones. Outcome and milestone payments will not be increased because the payments are shared between two or more ENs.

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

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—

(i) The outcome-milestone payment system was the EN's elected payment system in effect at the time the beneficiary assigned a ticket to the EN;

(ii) The milestones occur prior to the outcome payment period (see § 411.500(b));

(iii) The requirements in § 411.535 are met; and

(iv) The ticket has not terminated for any of the reasons listed in § 411.155.

(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 an outcome payment for a month if—

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

(B) The requirements of § 411.525(a)(1)(ii) are met in a case where the beneficiary's entitlement to Social Security disability benefits has ended or eligibility for SSI benefits based on disability or blindness has terminated because of work activity or earnings; and

(ii) We have not already paid for 60 outcome payment months on the same ticket; and

(iii) The ticket has not terminated for any of the other reasons listed in § 411.155.

(2) The EN must request payment for outcome payment months on at least a quarterly basis. Along with the request, the EN must submit evidence of the beneficiary's work or earnings (e.g. a statement of monthly earnings from the employer or the employer's designated payroll preparer, an unaltered copy of the beneficiary's pay stub). *Exception:* If the EN does not currently hold the ticket because it is unassigned or assigned to another EN, the EN must request payment, but is not required to submit evidence of the beneficiary's work or earnings.

**§ 411.580 Can an EN receive payments for milestones or outcome payment 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 State VR agency serving as an EN and the other EN may be eligible for payment based on the same ticket (see § 411.560).

(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 outcome 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.

**§ 411.587 Which provider will SSA pay if, with respect to the same ticket, SSA receives a request for payment from an EN or a State VR agency that elected payment under an EN payment system and a request for payment from a State VR agency that elected payment under the cost reimbursement payment system?**

(a) We will pay the provider that first meets the requirements for payment under its elected payment system applicable to the beneficiary who assigned the ticket.

(b) In the event that both providers first meet the requirements for payment under their respective payment systems in the same month, we will pay the claim of the provider to which the beneficiary's ticket is currently assigned or, if the ticket is not currently assigned to either provider, the claim of the provider to which the ticket was most recently assigned.

**§ 411.590 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 must send the request for reconsideration to the PM. The PM will forward to us the request for reconsideration and a recommendation. We will notify the State VR agency of our reconsidered decision in writing.

(c) An EN (including a State VR agency) cannot appeal determinations we make about an individual's right to benefits (e.g. determinations that disability benefits should be suspended, terminated, continued, denied, or stopped or started on a different date than alleged). Only the beneficiary or applicant or his or her representative can appeal these determinations. See § 404.900 *et seq.* and 416.1400 *et seq.* of this chapter.

(d) Determinations or decisions which we make about an individual's right to benefits may affect an EN's eligibility for payment, and may cause payments which we have already made to an EN (or a denial of a payment to an EN) to be incorrect, resulting in an overpayment or underpayment to the EN. If this happens, we will make any necessary adjustments to the payments

(see § 411.555). While an EN cannot appeal our determination about an individual's right to benefits, the EN may furnish any evidence the EN has which relates to the issue(s) to be decided on appeal if the individual appeals our determination.

**§ 411.595 What 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.

**§ 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 noted above.

## **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 that are not State VR agencies?**

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. (See § 411.115(k) for a definition of 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 us.

**§ 411.605 What are the responsibilities of the EN that is not a State VR agency 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 that is not a State VR agency 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 that is not a State VR agency 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 that is not a State VR agency 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 and evidence related to the disputed issue(s); and
- (3) 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 that is not a State VR agency 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 that is not a State VR agency 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 (29 U.S.C. 720 et seq.), apply to beneficiaries seeking services from the State VR agency?**

Yes. The procedures in the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 et seq.) apply to any beneficiary who has assigned a ticket to a State VR agency. ENs that are State VR agencies are subject to the provisions of the Rehabilitation Act. 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 (29 U.S.C. 732). 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 (29 U.S.C. 722(c)). ENs that are not State VR agencies are not subject to the provisions of Title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720 et seq.).

**Disputes Between Employment Networks and Program Managers**

**§ 411.650 Is there a process for resolving disputes between ENs that are not State VR agencies and PMs, other than disputes on a payment request?**

Yes. Under the agreement to assist us in administering the Ticket to Work program, a PM is required to have procedures to resolve disputes with ENs that do not involve an EN's payment request. (See § 411.590 for the process for resolving disputes on EN payment requests.) This process must ensure that:

- (a) The EN can seek a solution through the PM's internal grievance procedures; and
- (b) If the PM's internal grievance procedures do not result in a mutually agreeable solution, the PM shall refer the dispute to us for a decision.

**§ 411.655 How will the PM refer the dispute to us?**

The PM has 20 working days from the failure to come to a mutually agreeable solution with an EN to refer the dispute to us with all relevant information. The information should include:

- (a) A description of the disputed issue(s);
- (b) A summary of the EN's and PM's position related to each disputed issue; and
- (c) A description of any solutions proposed by the EN and PM when the EN sought resolution through the PM's

grievance procedures, including the reasons each party rejected each proposed solution.

**§ 411.660 Is SSA's decision final?**

Yes. Our decision is final.

**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 nine-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 nine-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.

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