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**Amendments to the Ticket To Work and
Self-Sufficiency Program; Final Rule**

SOCIAL SECURITY ADMINISTRATION**20 CFR Part 411**

[Docket No. SSA-2006-0092]

RIN 0960-AF89

Amendments to the Ticket To Work and Self-Sufficiency Program

AGENCY: Social Security Administration.
ACTION: Final Rules.

SUMMARY: We are revising our regulations for the Ticket to Work and Self-Sufficiency Program (Ticket to Work program), which was authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program provides Social Security Disability Insurance and disabled Supplemental Security Income beneficiaries expanded options for access to employment services, vocational rehabilitation services, and other support services. We are revising our prior rules to improve the overall effectiveness of the program to maximize the economic self-sufficiency of beneficiaries through work opportunities. We have based these revisions on our projections of the future direction of the Ticket to Work program, our experience using the prior rules, and recommendations made by commenters on the program.

DATES: These final rules are effective July 21, 2008.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Employment Support Programs, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, e-mail to regulations@ssa.gov, or telephone (410) 597-1632 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Background

These final rules amending the Ticket to Work program are based on Notices of Proposed Rulemaking (NPRM) published in the **Federal Register** on September 30, 2005 (70 FR 57222) and August 13, 2007 (72 FR 45191).

We explain the provisions of the final rules below. In the section "Public

Comments," we summarize the public comments and explain our reasons for adopting or not adopting the recommendations made by the commenters. The text of the final rules follows the Public Comments section.

What Programs Are Affected by These Final Rules?

These final rules affect the Ticket to Work program. In the Ticket to Work and Work Incentives Improvement Act of 1999 Congress explicitly recognized that, while many people who receive disability benefits from us want to work, and may have the potential to work, they face a number of significant barriers that may prevent them from reaching their goals. According to the authorizing legislation, Congress established the Ticket to Work program to provide disability beneficiaries a real choice in obtaining the services and technology that they need to find, enter, and maintain employment by expanding the universe of service providers. We published final regulations implementing the Ticket to Work program on December 28, 2001 (66 FR 67370).

Under the Ticket to Work program, the Commissioner of Social Security (the Commissioner) may issue tickets to Social Security disability beneficiaries and to disabled or blind Supplemental Security Income (SSI) beneficiaries under the programs under title II and title XVI of the Social Security Act (Act). In this voluntary program, each beneficiary who receives a ticket has the option of using his or her ticket to obtain services from a provider known as an employment network (EN) or from a State vocational rehabilitation (VR) agency. ENs may choose to whom they provide services. When the beneficiary and an EN or State VR agency agree to work together under the program, the EN or State VR agency, without charge to the beneficiary, will provide employment services, vocational rehabilitation services, and other support services to assist the beneficiary in obtaining or regaining and ultimately maintaining self-supporting permanent employment. If the beneficiary achieves certain work outcomes, we will pay the EN or State VR agency.

The title II and title XVI programs serve a diverse population of individuals with disabilities. Our beneficiaries are people from various age groups with different impairments, levels of education, work experience, and capacities for working. While many cannot work at all on a sustained basis, others may be able to work part-time or full-time with reasonable accommodations, ongoing supports, or

both. This view is consistent with the assumptions underlying the Americans with Disabilities Act. As we develop our comprehensive work opportunity initiatives, we are also mindful that the unique needs of every beneficiary cannot be met by one program.

These projects advance the President's New Freedom Initiative and provide work incentives and opportunities earlier in the disability determination process. The Ticket to Work program is an important part of a comprehensive work opportunity initiative dedicated to helping people with disabilities who want to work do so to their fullest capabilities.

What Do We Mean by "Final Rules" and "Prior Rules"?

Even though these rules will not go into effect until July 21, 2008, for clarity we refer to the changes we are making here as the "final rules" and to the rules that will be changed by these final rules as the "prior rules."

When Will We Start To Use These Final Rules?

We will start to use these final rules on their effective date of July 21, 2008. We will continue to use our prior rules until the effective date of these final rules. When these final rules become effective, we will apply them to both new cases and pending cases. In response to public comments on the September 30, 2005 NPRM, we explain in § 411.551 how we will apply the final rules on EN payment systems to cases still pending under our prior rules. In addition, we explain in § 411.226 how we will apply the final timely progress rules to individuals whose tickets were assigned under the prior rules.

Issues Addressed in These Final Rules

The Ticket legislation directs the Commissioner to periodically review EN payment systems to ensure that they provide adequate incentives for ENs to assist beneficiaries. Based in part on more than three years experience administering the program, we proposed a number of revisions to our prior rules in our September 30, 2005 NPRM and our August 13, 2007 NPRM that we believed would significantly enhance beneficiary choice and improve the likelihood that beneficiaries would receive the most effective support.

State Participation and Beneficiary Choice

Our rules for the Ticket to Work program provide that a State VR agency may participate in the program in one of two ways. On a case-by-case basis, with respect to beneficiaries who have

a ticket, the State VR agency may participate either as an EN or through the cost reimbursement payment system applicable under sections 222(d) and 1615(d) and (e) of the Act. Under our prior rules, if the State VR agency elects to be paid under the cost reimbursement payment system, the beneficiary's ticket must be assigned to the State VR agency in order for that agency to be paid through that system. The prior rules preclude further payment on the ticket if a State VR agency has been paid under the cost reimbursement payment system.

Before we published the September 30, 2005 NPRM, we received many comments that these policies under our prior rules do not allow beneficiaries to take advantage of the full potential of the Ticket to Work program. We agree with these comments and similar comments made in response to the September 30, 2005 NPRM. As a result, we are making changes in subparts B and F of our regulations to provide that a beneficiary's ticket will not be assigned to a State VR agency if that agency elects to be paid under the cost reimbursement payment system (the VR cost reimbursement option). We provide in §§ 411.135 and 411.140 of the final rules that, in this situation, the beneficiary may assign the ticket to a different provider of services after the State VR agency has closed his or her case.

We are making related changes in subpart C of our regulations to provide that, when a beneficiary is receiving services from a State VR agency that elects the VR cost reimbursement option, and has a ticket which would otherwise be available for assignment, the beneficiary will be considered to be "using a ticket" as described in that subpart if certain other requirements are met. This change will afford these beneficiaries protection from the initiation of a continuing disability review, irrespective of ticket assignment, provided all of the related provisions regarding timely progress are met. We explain in § 411.170(b) of the final rules when the period of "using a ticket" will begin for a beneficiary who has a ticket that would otherwise be available for assignment and who is receiving VR services pursuant to an individualized plan for employment (IPE) where the State VR agency has elected the VR cost reimbursement option. We explain that the period of "using a ticket" will begin on the effective date of the IPE or, if later, the first day the ticket would otherwise have been assignable if the beneficiary had not been receiving services from the State VR agency under the VR cost

reimbursement option. We explain in final § 411.171 that, for a beneficiary for whom the State VR agency has elected the VR cost reimbursement option, whose ticket has not terminated and who continues to meet the timely progress requirements, the period of "using a ticket" will end with the close of the 90-day period following the date the State VR agency closes the beneficiary's VR case, unless the beneficiary assigns the ticket during this 90-day period.

In a change from the NPRMs, we are incorporating two new terms, "VR cost reimbursement option" and "VR cost reimbursement status," in Subpart C of the final rules to better explain the rules on "using a ticket" that apply to a beneficiary with a ticket who receives VR services under an IPE from a State VR agency that has chosen the cost reimbursement payment system. We define these terms in final § 411.166, which contains a glossary of terms used in subpart C of our regulations. We explain that "VR cost reimbursement option" means an arrangement under which a beneficiary's ticket is not assigned to the State VR agency, but the beneficiary receives services under an IPE where the State VR agency has chosen to receive payment under the cost reimbursement payment system. We explain that the term "VR cost reimbursement status" means the status of the beneficiary's ticket under this arrangement. We also explain that this status begins when the period of using a ticket begins as described in final § 411.170(b) and this status ends when the State VR agency closes the beneficiary's case. We are defining these terms in the final rules to help simplify and clarify the provisions on using a ticket that relate to beneficiaries in these cases. Since we use the term "VR cost reimbursement option" in other subparts that we are amending in these final rules, we are also adding the definition of that term to § 411.115, which provides definitions of terms used in part 411.

We are also making changes in subpart F (State Vocational Rehabilitation Agencies' Participation). We removed the provisions of the prior rules which indicate that payment may not be made under both the cost reimbursement payment system and an EN payment system based on the same ticket. We have clarified in § 411.355(c) that a State VR agency can receive payment only under the cost reimbursement payment system when it serves a beneficiary who does not have a ticket that can be assigned pursuant to § 411.140. In other changes, we removed prior § 411.360 because it dealt with the

phased implementation of the Ticket to Work program, which has been completed. We also are removing prior § 411.370, rather than revising it, as we proposed in our September 30, 2005 NPRM, because it would duplicate information included in final §§ 411.350 and 411.355. We have revised § 411.385(a)(1) to remove the reference to the beneficiary's decision to assign or reassign the ticket to the State VR agency. In a change from the September 30, 2005 NPRM, we are retaining in these final rules that part of prior § 411.385(a)(1) which requires that the information submitted to the program manager (PM) include a statement that an IPE has been agreed to and signed. In final § 411.390 and final § 411.510, we explain that for beneficiaries already receiving services from the State VR agency when they become eligible for a ticket, the State VR agency can receive payment only under the cost reimbursement payment system, unless both the beneficiary and the State VR agency agree to have the ticket assigned to the State VR agency.

We also are making related changes to § 411.585 that will allow for payment to an EN under an EN payment system and payment to a State VR agency under the VR cost reimbursement option with respect to the same beneficiary in certain circumstances. Section 411.585 of our prior rules provides that if we make payment to a State VR agency under the cost reimbursement payment system with respect to a ticket, that payment precludes payment under an EN payment system with respect to the same ticket. The prior rules also provide that if we make payment under an EN payment system, that payment precludes payment under the cost reimbursement payment system with respect to the same ticket. Final § 411.585(b) states that if a State VR agency is paid by us under the VR cost reimbursement option, such payment does not preclude payment by us to an EN or to another State VR agency acting as an EN under its elected EN payment system, and that a subsequent State VR agency also has the choice of being paid under the VR cost reimbursement option. In response to comments, new § 411.585(c) clarifies that if an EN or a State VR agency acting as an EN is paid by us under one of the EN payment systems, that does not preclude payment by us to a different State VR agency under the VR cost reimbursement option. It also clarifies that the subsequent State VR agency also has the choice of being paid under its elected EN payment system.

We believe that these changes will greatly expand beneficiary choice of

ENs and enable beneficiaries to take advantage of a more effective combination of services from both a State VR agency and an EN. For example, the State VR agency could provide the initial, intensive rehabilitation services, and an EN could follow up by providing the ongoing support many individuals need to maintain their work efforts. We will provide procedures regarding these issues in the Vocational Rehabilitation Providers Handbook (chapter 12, also known as Transmittal 17). This transmittal includes background information and procedures for State VR agencies to follow regarding the Ticket to Work program.

Employment Network Payment Systems

The rules for EN payment systems are set out in subpart H (Employment Network Payment Systems) (§§ 411.500 through 411.597). Section 411.597(a) of our prior rules states, “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.”

We studied extensively the question of whether the prior Ticket to Work program regulations provided an adequate incentive for ENs to assist beneficiaries. As we discussed in the proposed rules (70 FR at 57224), an evaluation of the Ticket to Work program by Mathematica Policy Research (MPR) in February 2004 found that despite aggressive marketing of the Ticket to Work program to over 50,000 organizations, only about 1,000 non-State providers had signed up as ENs and only a few hundred were actively participating in the Ticket to Work program. (<http://www.mathematica-mpr.com/publications/PDFs/TTWinitialrpt.pdf>). Over time, fewer organizations have joined the Ticket to Work program as service providers. The overall number of service providers in the program remains low, with retention a major challenge. The financial viability of some ENs remains uncertain as ENs report losing money on Ticket to Work operations. These problems reduce the number of organizations willing and able to serve as ENs and accept ticket assignments.

Accordingly, we made changes to subpart H in order to create a greater financial incentive for EN participation. We anticipate that these changes will increase the number of ENs actively accepting tickets. In response to public comments, we also added definitions of a “transition case” and a “reconciliation

payment” as paragraphs (g) and (h) of § 411.500. Final § 411.525 provides that the total potential payment under the outcome-milestone payment system has been increased from 85% under the prior rules to 90% of the total potential payment under the outcome payment system under these final rules. By increasing the total potential payment, we believe that we will increase the incentive for small or undercapitalized providers to participate as ENs in the program. In addition, § 411.525 clarifies that milestone payments must occur before the beginning of the outcome period, and that once we begin making payments for a title XVI beneficiary we will continue using the title XVI payment rates even if the beneficiary later becomes eligible for disability insurance benefits under title II.

As we also discussed in the proposed rules (70 FR 57225), the Adequacy of Incentives (AOI) Advisory Group recommended a payment approach which recognizes that the steps leading to maximizing self-sufficiency are incremental and may be interrupted periodically. The link to the AOI report is: <http://www.dri.uiuc.edu/research/p03-08h/AOIFinal.pdf>. Final §§ 411.525 and 411.535 now provide a two-phased milestone payment system and outcome payments that parallel the steps beneficiaries take toward self-sufficiency.

Phase 1 is modeled on the nine-month trial work period (TWP) provided for title II beneficiaries. Four milestones at different points of employment retention will be paid when the beneficiary works for a period of time with gross earnings at or above the trial work earnings level. Phase 1 milestones are the only payments that will be the same for both title XVI and title II beneficiaries, and these payments will be based on the higher title II payment calculation base. This change addresses the concerns that the initial phase is the most expensive for the EN to provide services and that without equal payments title XVI beneficiaries would have difficulty accessing Phase 1 services. The trial work earnings requirement (\$670/month in 2008) represents a significant work and earnings milestone for beneficiaries, as well as an attainable payment point for ENs. In response to public comments that we not narrow our focus to prior services from the State VR agency, we provide in § 411.535(a)(1)(ii) that work activity above the trial work earnings level in the 18 months prior to the first ticket assignment on each ticket may preclude us from paying some or all of the Phase 1 milestones. We also clarify in § 411.535(a)(1)(iii) the circumstances

under which we will not pay Phase 1 milestones if a beneficiary received services from a State VR agency that elected the VR cost reimbursement option.

We also added a new rule, final § 411.536, which provides that we will pay an EN, or a State VR agency acting as an EN, for milestones that were unpaid because the beneficiary’s outcome payment period begins.

Phase 2 requires a substantial achievement on the path toward full self-sufficiency. The employment outcome triggering a Phase 2 milestone payment is a month where the beneficiary’s gross earnings equal or exceed the substantial gainful activity earnings level (in calendar year 2008, \$940). During Phase 2, we will make a maximum of 11 monthly milestone payments with respect to a title II beneficiary and a maximum of 18 monthly milestone payments with respect to a title XVI beneficiary. We anticipate that some but not all beneficiaries will progress to Phase 2, increasing work hours and earnings to above the substantial gainful activity (SGA) level. As the AOI Advisory Group recommended, we are encouraging the use of work incentives during both Phase 1 and Phase 2 by making payments to ENs based on gross earnings before adjustments for work incentives. We have provided for a greater number of milestone payments with respect to title XVI beneficiaries as part of our overall effort to equalize the monetary value of the milestones payments that potentially can be made with respect to title II and title XVI beneficiaries. Under our prior rules, the total value of the four title XVI milestones is less than 60 percent of the total value of the four title II milestones. However, under these final rules, the total value of the title XVI milestones will be 98 percent of the total value of the title II milestones. We anticipate that this will provide an additional incentive for ENs to accept tickets from title XVI beneficiaries. Final § 411.540 provides the revised payment amounts for milestone payments. For both title II and title XVI beneficiaries, the payment amount for each milestone payment in Phase 1 will be 120 percent of the title II payment calculation base defined in § 411.500(a)(1). The payment amount for each milestone payment in Phase 2 will be 36 percent of the respective title II or title XVI payment calculation base. Final § 411.545 provides the revised payment amounts for outcome payments under the outcome-milestone payment system, which is 36 percent of the respective title II or title XVI payment calculation base. Final

§ 411.550 provides the revised payment rates for outcome payments under the outcome payment system, which is 67 percent of the respective title II or title XVI payment calculation base.

The final phase is the outcome payment period, during which beneficiaries are not receiving Social Security disability benefits or Federal SSI cash benefits because of work or earnings. Consistent with the discussion above about milestones, we are leaving the title XVI outcome period at 60 outcome payment months in order to equalize the monetary value of the outcome payments and the total amount of all payments that potentially can be made to an EN with respect to title II and title XVI beneficiaries. Final § 411.535(a)(3) provides that a reconciliation payment, as described above, will be made equal to the total amount of unpaid Phase 1 and Phase 2 milestones that had been available at first ticket assignment, if the beneficiary does not achieve all the Phase 1 and Phase 2 milestones prior to the beginning of the beneficiary's outcome payment period. As previously noted, in response to public comments on this provision, we added final § 411.536 to explain how this reconciliation payment will be made.

Finally, both the AOI Advisory Group in its *Final Report: Recommendations*

for Improving Implementation of the Ticket to Work and Self-Sufficiency Program (Regulatory and Administrative Changes) and the Ticket to Work and Work Incentives Advisory Panel in its annual reports to the President and Congress expressed concerns (available at <http://www.dri.uiuc.edu/research/p03-08h/default.htm> and http://www.ssa.gov/work/panel/panel_documents/reports.html) that prior funding levels were inadequate to support the consumer-driven market-based employment service model that Congress envisioned in the Ticket legislation. The Ticket legislation established a maximum monthly outcome payment of 40% of the national average disability benefit payable under title II or title XVI, as appropriate, as the basis for EN payments under the Ticket to Work program. The Ticket legislation also requires us to periodically review this and other issues in order to determine whether, as relevant here, the percentage "provides an adequate incentive for employment networks to assist beneficiaries to enter the workforce, while providing for appropriate economies." The 40% rate has proved inadequate to attract sufficient ENs to the marketplace to allow for adequate access to services and consumer choice. Therefore,

consistent with our authority in section 1148(h)(5)(A) of the Act, final § 411.525 increases the overall percentage from 40% to 67% in the outcome payment system.

We believe that we will increase the financial incentives for small or undercapitalized providers to participate as ENs by offering a combination of: (1) Increasing the percent of the payment calculation base used to figure the payments; (2) reducing the differential between outcome and outcome-milestone payments; (3) equalizing funding for providing services to title II and title XVI beneficiaries; (4) increasing milestone payments; (5) making payments earlier in the return to work process; (6) recognizing that trial work level earnings constitute initial efforts at self-sufficiency for many beneficiaries; and (7) allowing beneficiaries to combine initial services provided by VR with ongoing support services from an EN. We also believe that the increased EN participation these changes will cause will improve beneficiary access to services and choice of quality providers. Final § 411.566 provides that an EN may use outcome or milestone payments to make payments to the beneficiary.

The revised payment rates are presented in charts I through III using the 2008 payment calculation base.

CHART I.—NEW OUTCOME-MILESTONE PAYMENT TABLE
[2008 figures for illustration only]

| Payment type | Beneficiary earnings | Title II amount of payment | Title XVI amount of payment |
|---------------------------------------|---|----------------------------|-----------------------------|
| Phase 1 (120% of Title II PCB) | | | |
| Milestone 1 | \$335/mo. \$670/mo. x 3 mo. work in a 6-month period. | \$1,177 | \$1,177 |
| Milestone 2 ..... | ..... | \$1,177 | \$1,177 |
| Milestone 3 | \$670/mo. x 6 mo. work in a 12-month period. | \$1,177 | \$1,177 |
| Milestone 4 | \$670/mo. x 9 mo. work in an 18-month period. | \$1,177 | \$1,177 |
| Total Phase 1 milestones ..... | ..... | \$4,708 | \$4,708 |
| Phase 2 (36% of PCB) | Gross Earnings>SGA. | | |
| Title II milestones 1–11 ..... | ..... | \$353 x 11 = \$3,883 | |
| Title XVI milestones 1–18 ..... | ..... |  | \$203 x 18 = \$3,654 |
| Total Phase 1 + 2 ..... | ..... | \$8,591 | \$8,362 |
| Outcome payments (36% of PCB) | | | |
| Title II = 1–36 | monthly cash benefit not payable due to SGA. | \$353 x 36 = \$12,708 | |
| Title XVI = 1–60 | Sufficient earnings for federal cash benefits = "0". | ..... | 203 x 60 = \$12,180 |
| Total milestone and outcome payments. | ..... | \$21,299 | \$20,542 |

Definitions and amounts: Payment Calculation Base (PCB)—The average

title II disability insurance benefit payable under section 223 of the Social

Security Act for all beneficiaries for months during the preceding calendar

year; and the average payment of supplemental security income benefits based on disability payable under title XVI (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who have attained 18 years of age but have not attained 65 years of age. (2008 title II = \$981.17, title XVI = \$563.35).

Gross earnings requirements for Phase 1 are based on Trial Work level amounts.

For Phase 1 milestones only, the payments are calculated for both title XVI and title II beneficiaries using the higher title II payment calculation base. All other payments are based on a percentage of the Payment Calculation Base (PCB) for the respective program (title XVI or title II). See § 411.535 for a discussion of the circumstances under which we will pay milestones.

Phase 1 milestones = 120% of PCB.
Phase 2 milestones = 36% of PCB.

Outcome payments (under the outcome-milestone payment system) = 36% of PCB.

Earnings used to meet the first, second, or third Phase 1 milestone may be counted again when determining if a later milestone is met, provided the earlier earnings fall within the relevant time period for meeting the later Phase 1 milestone (see 411.525(a)(2) for the relevant time period for each milestone).

CHART II.—NEW OUTCOME PAYMENT SYSTEM TABLE—TITLE II AND CONCURRENT

[2008 figures for illustration only]

| Payment type | Beneficiary earnings | Title II amount of monthly payment | Title II total payments |
|--|---|------------------------------------|-------------------------|
| Outcome payments 1–36 (67% of PCB) | Monthly cash benefit not payable due to SGA | \$657.00 | \$23,652 |

CHART III.—NEW OUTCOME PAYMENT SYSTEM TABLE—TITLE XVI ONLY

[2008 figures for illustration only]

| Payment type | Beneficiary earnings | Title XVI amount of monthly payment | Title XVI total payments |
|--|---|-------------------------------------|--------------------------|
| Outcome payments 1–60 (67% of PCB) | Earnings sufficient to “0” out Federal SSI cash benefits. | \$377.00 | \$22,620 |

Note: Outcome payment (outcome payment system) = 67% of PCB. Individual payments are rounded to the nearest dollar amount.

2008 non-blind SGA level = \$940.
2008 Blind SGA = \$1570.
2008 TWP service amount = \$670.

Ticket Eligibility for Beneficiaries Whose Conditions May Medically Improve

The Ticket to Work and Work Incentives Advisory Panel, in its July 26, 2001 report to the Commissioner, recommended that “All SSI and SSDI adult disability beneficiaries, including those with a Medical Improvement Expected (MIE) designation, should be eligible to participate in the Ticket program.” (Available at http://www.ssa.gov/work/panel/panel_documents/reports.html). (Note: The copy of the report at this link is not the official report, but a “duplicate report” that is “similar” to the original but which may contain “small differences.”) We agree and are making changes to the ticket eligibility rules set out in § 411.125 under subpart B to allow beneficiaries with an MIE designation to be eligible for a ticket without first requiring a continuing disability review to be conducted.

“Using a Ticket” and Related Timely Progress Rules

Subpart C (Suspension of Continuing Disability Reviews for Beneficiaries Who Are Using a Ticket) contains our rules on when a beneficiary will be considered to be “using a ticket” under the Ticket to Work program for the purpose of suspending the initiation of a medical continuing disability review (CDR) as provided under section 1148(i) of the Act. The rules in subpart C also describe the timely progress requirements which a beneficiary must meet to continue to be considered “using a ticket” under the program.

In final § 411.166, we explain that “using a ticket” means that a beneficiary has assigned a ticket to an EN or a State VR agency acting as an EN, or has a ticket in VR cost reimbursement status, and the beneficiary is making timely progress toward self-supporting employment. (As explained above, under these final rules, a beneficiary’s ticket is in VR cost reimbursement status when the beneficiary has a ticket that would otherwise be available for assignment and is receiving VR services under an IPE from a State VR agency which has elected the VR cost reimbursement option.) Section 411.165 explains that we will not begin a CDR during the period in which a beneficiary is “using a ticket.”

As in the prior rules, it is important that we continue to balance our desire to define “using a ticket” in a way that minimizes the disincentive for beneficiary participation that arises from the fear of having benefits terminated upon return to work because of a medical CDR, and our need to maintain the integrity of the disability programs by ensuring that beneficiaries who have medically improved do not continue to receive disability benefits for an undue length of time. We believe these final rules as described below maintain that balance.

In final § 411.180, we revised the timely progress guidelines contained in our prior rules. As we proposed in the August 13, 2007 NPRM, we added educational or technical training requirements to supplement the work requirements under the timely progress guidelines. We revised the work requirements under the guidelines and the documentation and other requirements for progress reviews to simplify the process for determining whether a beneficiary is making timely progress toward self-supporting employment. In addition, we eliminated the “initial 24-month period” after ticket assignment during which a beneficiary is considered to be making timely progress if actively participating in his or her employment plan. We

replaced this 24-month period with two successive 12-month progress certification periods during each of which the beneficiary must complete certain work requirements and/or educational or technical training requirements in order to be considered to be making timely progress until the next scheduled progress review.

We made changes from the guidelines proposed in the August 13, 2007 NPRM and included several important enhancements in final § 411.180. We extended the period for a beneficiary to complete a vocational or technical training program. In addition to the 4-year degree program, we added a 2-year degree or certification program to the guidelines. We also included obtaining a high school diploma or a General

Education Development (GED) certificate in the first 12-month progress certification period as a part of the timely progress guidelines. In addition, we provide in the final rules that a beneficiary will be considered to have met the requirements for an applicable progress certification period if the beneficiary completes a certain percentage of the work requirement and a certain percentage of the post-secondary education requirement or vocational or technical training requirement for that progress certification period and the sum of the two percentages equals 100 or more. We also added a variance tolerance to provide a margin of flexibility in determining whether a beneficiary has

met certain timely progress requirements. Under the variance tolerance, we will consider a beneficiary to have met the requirement for completing a specified amount of post-secondary credit hours in an educational degree or certification program or course requirements in a vocational or technical training program under § 411.180 in the applicable progress certification period if the beneficiary's completion of credit hours or course requirements in that period is within 10 percent of the specified goal.

As provided in final § 411.180, the timely progress guidelines for each 12-month progress certification period now reflect the following concrete, incrementally obtainable goals.

| 12-Month review period | Work requirement | High school diploma or GED | Degree or certification program | Technical, trade, or vocational program |
|------------------------|---|--|--|---|
| 1st* | 3 out of 12 months with trial work period level earnings. | Obtained high school diploma or GED certificate. | Completed 60 percent of full time course load for 1 year. | Completed 60 percent of full time course load for 1 year. |
| 2nd | 6 out of 12 months with trial work period level earnings. | | Completed 75 percent of full time course load for 1 year. | Completed 75 percent of full time course load for 1 year. |
| 3rd | 9 out of 12 months with substantial gainful activity level earnings. | | Completed a 2-year program or, for a 4-year program, completed an additional academic year of full time study. | Completed the program. |
| 4th | 9 out of 12 months with substantial gainful activity level earnings. | | Completed an additional academic year of full time study. | |
| 5th | 6 out of 12 months at level precluding Social Security and Federal SSI cash benefits. | | Completed an additional academic year of full time study or completed 4-year degree program. | |
| 6th | Work criteria are same for 5th and subsequent 12-month periods. | | Completed 4-year degree program. | |

In final § 411.166(b), we modified the definition of “timely progress toward self-supporting employment” to reflect that a high school diploma or GED certificate obtained in the first 12-month progress certification period counts as timely progress. In addition, we added a definition of “variance tolerance” in § 411.166(h).

In final § 411.171, we made several changes from the provisions of this section that were proposed in the September 30, 2005 NPRM. In final § 411.171(b), we deleted the references to prior §§ 411.190 and 411.195 since we are removing these sections of the regulations in these final rules. In final § 411.171(c), we changed the duration of the extension period from three months to 90 days to conform to the change in the duration of the extension period provided in final §§ 411.166 and 411.220, discussed below. This change to the duration of the extension period

coincides with the 90-day period described in final § 411.150(b)(3) and incorporates the provision that was proposed in paragraph (d) of this section in the September 2005 NPRM, making the latter provision unnecessary. In paragraph (d) of final § 411.171, we explain when the period of using a ticket may end for a beneficiary receiving services from a State VR agency that has elected the VR cost reimbursement option. Based on a public comment, as well as the foregoing change in final paragraph (d), proposed paragraphs (e) and (f) of this section in the September 30, 2005 NPRM have been removed in these final rules. In a related change, cross-references to final § 411.155(a)(4) and (c)(8), on when the ticket terminates if an individual's outcome payment period ends, have been added in final § 411.171(a).

As we proposed in the August 13, 2007 NPRM, in final § 411.166 and paragraphs (a) and (d)(2) of final § 411.220, we changed the duration of the extension period from three months to 90 days.

We removed prior §§ 411.185, 411.190, 411.191, and 411.195. The changes we are making to subpart C in these final rules make these sections of the prior rules obsolete. In the final rules, we modified the section heading of § 411.192 and paragraph (a) of that section to provide that a beneficiary may place his or her ticket in inactive status if he or she is temporarily or otherwise unable to make timely progress toward self-supporting employment during a progress certification period.

In final § 411.225, we revised the prior rule to explain that any month during which a beneficiary's ticket is not assigned and is not in VR cost reimbursement status will not count

towards the time limitations for the timely progress guidelines. Final § 411.180(b) includes a similar provision. This change is necessary to take account of the situation provided for in these final rules, where a beneficiary's ticket is not assigned, but the beneficiary has a ticket that would otherwise be available for assignment and is receiving services under an IPE from a State VR agency which has elected the VR cost reimbursement option. As explained above, in this situation, the beneficiary's ticket is considered to be in VR cost reimbursement status.

In final § 411.226, we explain how we will apply the revised timely progress provisions to a beneficiary who assigned his or her ticket prior to the effective date of these final rules. We describe how we will determine which progress certification period a beneficiary is in as of the date these final rules become effective. We explain that we will not conduct a progress review at the end of that period, but will conduct a progress review at the end of the beneficiary's next 12-month progress certification period. In final § 411.226(b), we explain that we will notify the beneficiary regarding the specific timely progress requirements that will apply to him or her and when they will begin to apply. In § 411.226(d), we explain that tickets assigned under the prior rules to State VR agencies that have chosen to be paid for their services under the cost reimbursement payment system will no longer be considered assigned beginning on the effective date of these final rules. Instead, the ticket of a beneficiary in this situation will be considered to be in VR cost reimbursement status. We explain that a beneficiary in this situation may continue to be considered "using a ticket" under the final rules in subpart C for purposes of protection against the initiation of a continuing disability review. We explain that the beneficiary may assign his or her ticket after the State VR agency has closed his or her case.

Other Changes We Are Making

In subpart A, we are removing the prior § 411.110, which explains how we will implement the Ticket program, because we already have implemented the program on a nationwide basis.

In § 411.120, we clarify what information will be included on the Ticket To Work document.

We are making several changes in subpart B (Tickets Under the Ticket to Work Program). We revised § 411.130 to clarify that we will mail a ticket to the beneficiary when the beneficiary is eligible. In final § 411.140, we clarify in

paragraph (a) that an individual with a ticket who has been receiving services under an IPE from a State VR agency which elected the VR cost reimbursement option may assign his or her ticket during the 90-day period after the State VR agency closes his or her case without having to meet the requirements of § 411.125(a)(2). The individual may assign his or her ticket after this 90-day period, but only if he or she meets the requirements of both paragraphs (a)(1) and (a)(2) of § 411.125. We are making this change in final § 411.140(a) to make this provision consistent with the similar rule for reassigning a ticket contained in final § 411.150(b)(3), discussed below.

We revised the section heading of § 411.145 to read "When can my ticket be taken out of assignment?". We revised the provisions of that section to indicate that, consistent with other sections of these final rules, a State VR agency will have a ticket assigned to it only if it elects to act as an EN. In a change from the September 30, 2005 NPRM, we added a provision to final § 411.145(a) to provide that if a beneficiary takes the ticket out of assignment, he or she will be sent a notice regarding the change. We changed § 411.150(a) to clarify that in all cases the ticket must be unassigned before it can be reassigned. We also revised § 411.150(b)(3) concerning the conditions under which a beneficiary may reassign a ticket even if the beneficiary does not meet certain requirements of § 411.125(a).

We also are making several changes in § 411.155. We are changing § 411.155(a)(2) to state that, if a beneficiary is entitled to widow's or widower's insurance benefits based on disability, the ticket terminates in the month in which the beneficiary attains full retirement age. We added §§ 411.155(a)(4) and (c)(8) to indicate that the ticket terminates in the month after the month in which the beneficiary's outcome payment period ends.

We are making changes to three sections in subpart E (Employment Networks). In § 411.310, we added new paragraph (d) to provide that one-stop delivery systems established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 *et seq.*) may participate in the Ticket to Work program as ENs without responding to our request for proposal (RFP). In response to public comments, we added new paragraph (e) to final § 411.310 to provide that 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. 441), also may participate as ENs without having to respond to our RFP. We explain that one-stop delivery systems and organizations administering Vocational Rehabilitation Services Projects for American Indians with Disabilities must enter into an agreement with us to serve as an EN under the Ticket to Work program and must maintain compliance with the rules that apply to ENs. We made corresponding changes in final § 411.315. We added new paragraphs (e) and (f) to final § 411.315 to provide that one-stop delivery systems and organizations administering Vocational Rehabilitation Services Projects for American Indians with Disabilities must still enter into an agreement with the Commissioner to be an EN and must maintain compliance with general and specific selection criteria of this section and § 411.305 to remain an EN.

In paragraph (a) of final § 411.325, we indicate that an EN must report to the PM in writing each time it accepts a ticket for assignment or no longer wants a ticket assigned to it.

In subpart F (State Vocational Rehabilitation Agencies' Participation), § 411.365(a) is revised to remove the reference to a letter we send to State VR agencies regarding implementation of the Ticket to Work program.

In subpart H (Employment Network Payment Systems), we are removing the prior § 411.530, which required that each outcome payment made to an EN under the outcome-milestone payment system be reduced by an amount equal to 1/60th of a milestone payment made to an EN with respect to the same individual. These final rules remove this requirement as one means of increasing the potential payment available to an EN and, as required by Ticket legislation, ensuring that these EN payment systems continue to provide adequate incentives for ENs to assist beneficiaries.

In addition, we made several additional changes in subpart H (Employment Network Payment Systems). We added a new § 411.552 to clarify that we will continue to make EN payments based on the title XVI payment structure once we authorize an outcome or milestone payment for a title XVI only beneficiary. If a title XVI beneficiary becomes entitled to title II disability benefits before we authorize an outcome or milestone payment we will make payments to the EN as if the individual were a title II beneficiary. By authorizing a payment we mean that we have performed the necessary actions to trigger a payment, whether or not the

Treasury Department has issued the payment or the EN has received the payment.

In final § 411.555, we eliminated the requirement in (b)(2) to adjust or recover an incorrect EN payment when the reason for the incorrect payment is because of a retroactive determination or decision SSA makes about an individual's right to benefits for the period of the payment. We made changes to § 411.555 to indicate that references to ENs refer to State VR agencies acting as EN as well. We also changed this section to reflect the difference in the number of outcome months for title XVI and title II beneficiaries.

Final § 411.575 explains that as primary evidence of the beneficiary's work and earnings we will require an original pay stub or an oral or written statement of monthly earnings from the employer or the employer's designated payroll preparer. It also explains that in lieu of primary evidence, we will accept two sources of secondary evidence, such as State unemployment insurance records and a signed beneficiary statement or federal or state tax returns. We also made two clarifications. We clarify in § 411.575(a)(2) that the request for each milestone payment must include evidence that the milestone was attained after ticket assignment and in § 411.575(b)(2) that as part of the payment request, we may require that the EN provide a summary of the services provided as described in the IWP/IPE.

New final § 411.581 explains the circumstances under which an EN can receive milestone and outcome payments for months after a beneficiary takes his or her ticket out of assignment.

Notice of Proposed Rulemaking

We issued two NPRMs proposing changes to our prior rules for the Ticket to Work program. We published an NPRM in the **Federal Register** on September 30, 2005 (70 FR 57222) and a second NPRM on August 13, 2007 (72 FR 45191). We provided the public 90 days in which to submit comments on the first NPRM and 60 days in which to submit comments on the second NPRM. The comment period for the first NPRM closed on December 29, 2005, and the comment period for the second NPRM closed on October 12, 2007.

We also held a series of town meetings in connection with the first NPRM to obtain additional input on the changes proposed in that NPRM. These meetings were open to the public and were announced in the **Federal Register** on October 19, 2005 (70 FR 60748) and November 1, 2005 (70 FR 65871). They

were conducted in Irvine, California on November 4, 2005; in Miami, Florida on November 16, 2005; in Hartford, Connecticut on December 6, 2005; and in Des Moines, Iowa on December 14, 2005.

We received a combined total of 128 public comments on the September 30, 2005 NPRM and the August 13, 2007 NPRM. The public comments we received on the September 2005 NPRM are posted on our Internet site at: <https://s044a90.ssa.gov/apps10/erm/rules.nsf/5da82b031a6677dc85256b41006b7f8d/9fe46866babbb19b8525708c006d230a!OpenDocument>.

The public comments we received on the August 2007 NPRM are posted on the Federal eRulemaking Portal at: <http://www.regulations.gov>.

As we explain below, in these final regulations, we are making some changes from the proposed rules in response to public comments received on the NPRMs. We discuss the significant comments on the NPRMs and respond to these comments below under "Public Comments." Although we condensed, summarized, or paraphrased the comments, we believe that we have expressed the views accurately and have responded to all of the significant issues raised by the commenters that are within the scope of the rulemaking.

In addition, some of the comments were about subjects that were outside the scope of the rulemaking. Except as noted below, we have not summarized and responded to these comments.

Public Comments

General

Many commenters endorsed the revision to § 411.125 to extend ticket eligibility to beneficiaries with an MIE designation. A number of commenters supported our proposal to provide a phased payment system that parallels the steps beneficiaries take toward self-sufficiency, which will expand an EN's ability to provide employment services to beneficiaries who have an initial goal to work part-time. Commenters also supported our other proposals to make other changes to the EN payment systems in order to increase EN participation, including increasing outcome payments under the outcome payment system from 40% of the payment calculation base to 67%, and increasing the total payment for ENs electing the outcome-milestone payment system to 90% of potential payments under the outcome payment system. Many commenters also supported our proposal to encourage partnerships

between State VR agencies and ENs to provide long-term services to a beneficiary by permitting the beneficiary to assign a ticket to an EN after receiving VR services.

Other Models

Comment: A number of commenters suggested a model in which an EN composed of friends and family members might be formed to assist a beneficiary by making payments to service providers and coordinating service provisions. Other commenters recommended that we consider the feasibility of permitting the beneficiary to be his or her own EN without seeking third party assistance.

Response: We have not adopted these comments. Section 1148(f)(1) of the Act states that ENs 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 individuals assigning tickets to the EN.

Retroactivity of These Revised Rules

Comment: A number of commenters recommended that these revised rules be effective retroactively, e.g., made effective for payments to ENs either from the date of their acceptance as an EN or from the beginning of calendar year 2005.

Response: An agency may not make its rules retroactive without appropriate legislative authority. The Act does not authorize us to make these rules retroactive.

Transitioning to These Revised Rules

Transition Rules for EN Payment Cases

Comment: Many commenters asked how we will make the transition to these new rules, i.e., how these new rules will apply to cases still pending on the effective date of the new rules. For example, one commenter noted that, if the new rules do not apply across the board to existing cases, ENs will delay ticket assignments or job placements, or otherwise jeopardize the benefits from this program for beneficiaries. Commenters asked specifically whether ENs will be given the opportunity to change their payment system election, in view of these revised rules, and how we would transition existing cases to the new EN payment systems.

Response: Final § 411.515 allows an EN to change its elected payment system once in each calendar year. We also added final § 411.551 to explain how we will move payment cases from

the prior EN payment system's schedule of payments and rates to the EN payment system's schedule of payments and rates in these final rules. We will process any EN payment requests received for milestones or outcomes that had been attained under our prior rules before we begin processing payments attained beginning with the effective date of the new rules. We will only accept payment requests for milestones or outcomes attained before the effective date of the new rules until March 31, 2009 or until the first payment is initiated under the new rules. Section 411.551 explains that milestones under our prior rules will be equated with Phase 1 milestones. For example, if a beneficiary has attained milestone 1 under our prior rules, then the next milestone to be achieved would be Phase 1 milestone 2 under the new rules (work in three months within a six-month period with gross earnings in each of the three months equal to a trial work period service month, i.e., \$670 in 2008).

If the beneficiary has attained all of the milestones under the prior rules, the next milestone to be achieved would be the first Phase 2 milestone (a calendar month in which the beneficiary has worked and has gross earnings from employment or net earnings from self-employment that are more than the SGA earnings level).

The maximum number of outcome payments available to an EN for a transition case will be computed as follows.

When the EN requests a payment for a milestone or outcome attained in July 2008 or later, we will first compute the amount already paid or that can be paid on any particular ticket for milestones or outcomes attained before July 2008. Then, we will subtract this amount from the total value of the ticket under the new rules for 2008. The total value of the ticket is the sum of the payment amount of all payments available under the EN's chosen payment system for 2008. See the *Outcome Milestone Payment System Table* in § 411.545(c) and the *Outcome Payment System Tables* in § 411.550 for the value of the ticket in the year 2008 under each payment system for title II beneficiaries or title XVI beneficiaries or beneficiaries concurrently entitled under title II and title XVI. We then will divide this amount by the applicable outcome payment amount (whether title II or title XVI) payable for 2008 and round the result in accordance with customary rounding principles. The resulting number represents the number of outcome payments available on this

ticket. In no case can this number exceed 60.

Timely Progress Transition Rules

Comment: Some commenters expressed concern that beneficiaries would receive a progress review using the new timely progress guidelines without having had advance notice of these guidelines and asked whether we would transition individuals with tickets assigned prior to the effective date of the final regulations to the new timely progress guidelines.

Response: In response to these comments, we made changes to § 411.226 in these final rules. We explain in the final rules that we will not conduct a progress review at the conclusion of the beneficiary's applicable 12-month progress certification period determined under § 411.226(a)(1) of these final rules. We explain that we will conduct a progress review using the provisions of these final rules at the conclusion of the beneficiary's next 12-month progress certification period. We also added a provision that we will send the beneficiary a notice explaining the specific timely progress requirements that will apply to the beneficiary and when they will begin to apply.

Subpart B—Tickets Under the Ticket to Work Program

General

Comment: One commenter recommended an "overlap" procedure under which "ticket-in-use" and "ticket-assigned" statuses could overlap. Under this proposal, once the VR client completed his or her individualized plan for employment (IPE), the State VR agency would advise the beneficiary that the ticket would be available for assignment to an EN for job development and placement, and the "overlap" period would begin with the State VR agency's approval, once the EN has advised the PM that the ticket is assigned. Once the EN has placed the beneficiary in a job, the 90 days required for case closure by the State VR agency would begin running. As the beneficiary works above SGA, the EN would subsequently become eligible for Phase 2 milestone payments, and the State VR agency would become eligible for cost reimbursement.

One commenter noted that often State VR agencies contract with a community-based organization to provide services at the outset of its relationship with a beneficiary, and recommended that the regulations recognize this by providing for a joint State VR agency/EN assignment. Under this proposal, with

the individual's permission, the State VR agency and the community-based organization would be allowed to jointly submit an IPE that lays out the initial cost reimbursable services as well as the follow up services reimbursable to the EN by Phase 2 and outcome payments. This proposal would encourage the State VR agency and community-based organization to collaborate together in an efficient manner to plan out several years of service and support. In addition, this proposal would ensure that the VR client's supportive services can continue uninterrupted and in a consistent manner with the same service provider, if this is what the beneficiary chooses.

This commenter acknowledged that there may be some concern that such a process provides the community-based organizations that contract with State VR agencies an unfair advantage over other ENs in gaining access to beneficiaries with tickets who want to assign their tickets after working with a State VR agency who had chosen the cost reimbursement option. However, if the process is set up similar to the "overlap" system described above, all ENs could compete for a joint ticket assignment with the State VR agency. Those ENs who do not currently contract with a State VR agency could establish a working relationship with the State VR agency to create these joint plans for services, and this process may encourage new collaborations between the State VR agencies and the ENs. The individual would still be given the option to change service providers after the State VR agency closes the case. With this option, the individual's ability to choose service providers is protected, and those beneficiaries who choose to allow this joint submission process at the beginning will still have the same rights as those who did not choose this route.

Response: We agree that coordination of services between a State VR agency providing initial services and an EN providing ongoing support services would be beneficial. We do not believe that Congress intended the Ticket to Work program to make duplicate payments for services provided under the Rehabilitation Act. Therefore, when a beneficiary with a ticket receives VR services from a State VR agency which has elected the VR cost reimbursement option, these rules provide that the VR case must be closed by the State VR agency before the beneficiary may assign a ticket to an EN. We are, however, encouraging joint planning between the State VR agency and the EN selected by the consumer to provide ongoing support services as early as

possible. In this way, when the VR case is closed, the transition to ongoing supports under the Ticket to Work program will be seamless for the beneficiary.

Section 411.140 When may I assign my ticket and how?

Comment: A number of commenters asked how we would know that a person is a client of a State VR agency.

Response: We will use the procedures under § 411.385 for the State VR agency to notify the PM that an IPE has been signed so that we can record that the beneficiary's ticket is in use so that we can ensure that we will not initiate a continuing disability review.

Comment: One commenter recommended that the proposed rules be amended to require a State VR agency that has chosen the cost reimbursement payment system to notify a beneficiary upon case closure of his or her right to assign the ticket to an EN for follow-up services. Failure to provide this notice should constitute grounds for denying payment under the cost reimbursement payment system. The commenter indicated that the rules should also require the State VR agency to notify us of the case closure. We should also provide the beneficiary with a notice that his or her ticket is available for assignment, so that the beneficiary will be aware of and take advantage of this new process.

Response: We are not addressing the rules for the State VR Reimbursement program in this regulation. However, we are working out a process through which the State VR agency can efficiently inform the PM when it closes a case for beneficiaries participating in the program. We believe there are sufficient incentives built into the new payment system to encourage State VR agencies to facilitate the connection to an EN for ongoing support services. We also will publicize the provisions of these new rules so that beneficiaries are aware of their rights under these final rules.

Comment: A number of commenters suggested that it should be feasible to allow for simultaneous EN and State VR services in situations where the EN is not receiving any payments for services being provided by a State VR agency and the services provided by the State VR agency are not duplicating any services being provided by the EN.

Response: We do not agree. We do not believe that Congress intended to allow a beneficiary to be served simultaneously by a State VR agency and an EN under the Ticket to Work program. We believe that these final rules will provide incentives for

beneficiaries to work with the State VR agency when they are developing the IPE to consider the expanded opportunities under the Ticket to Work program for receiving job retention and other support services from an EN after the close of VR services.

Comment: Another commenter noted that limiting the ability of State VR agencies to take a ticket as an EN after it has served a beneficiary and received cost reimbursement would seem to be an appropriate approach in many instances. However, there are situations where this may not be true. If there are no available ENs in an area and the State VR agency is willing to provide the long term follow up, then consideration should be given to allowing the State VR agency to function as an EN. There may also be situations where the State VR agency has unique expertise with certain populations that cannot be met by other ENs. In these circumstances, the commenter recommended that the VR agency should be permitted to function as an EN.

Response: We understand the concern expressed by this commenter and we will carefully monitor the availability of ENs in all regions of the country to ensure that we are not unduly restricting beneficiary choice. While we are confident that the new payment system should facilitate many additional ENs entering the program, we will make necessary changes to our rules if our evaluation shows that the Ticket to Work program is not serving our beneficiaries to the fullest extent possible.

Comment: A number of commenters noted that proposed § 411.140(a) stated that "you may also assign your ticket during the 90-day period your ticket is considered in use after State VR services end" and asked how we define "end" of VR services—after provision of direct cost services or after case closure?

Response: For purposes of these rules, we consider VR services to end when the VR case is closed by the State VR agency. We made changes in final §§ 411.140(a) and 411.171(d) to clarify that the 90-day period discussed in these sections begins after the date the beneficiary's case is closed by the State VR agency.

As we explain earlier in this preamble, we are also revising the provision in proposed § 411.140(a), referenced above, to indicate that an individual may assign his or her ticket during the 90-day period after his or her VR case is closed by a State VR agency that elected the cost reimbursement option, without having to meet the requirements of § 411.125(a)(2). We are

making this change in the provision in these final rules to conform to the similar provision contained in final § 411.150(b)(3). Section 411.150(b)(3) provides that an individual whose ticket is no longer assigned to an EN or State VR agency acting as an EN, may reassign the ticket within 90 days of the effective date the ticket was no longer assigned, without meeting the requirements of § 411.125(a)(2).

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

General

We received many public comments regarding the proposed changes to the timely progress provisions described in the NPRM that was published in the **Federal Register** on August 13, 2007. Most of these comments concerned the educational requirements or the work requirements for making timely progress toward self-supporting employment. We also received comments on the changes to subpart C that were proposed in the September 30, 2005 NPRM.

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

Comment: The majority of commenters expressed support for the proposal to include educational or vocational or technical training requirements as part of the timely progress guidelines. However, based on the view that obtaining a high school diploma or its equivalent, such as a general education development (GED) certificate, increases an individual's ability to obtain and maintain self-supporting employment, some commenters suggested that we add language that incorporates a GED as part of the timely progress guidelines.

Response: We agree with the commenters' suggestion and have incorporated it in these final rules. We have expanded the timely progress requirements in § 411.180(c)(1) of the final rules to provide that an individual who obtains a high school diploma or a GED certificate during the first 12-month progress certification period will be considered to be making timely progress toward self-supporting employment for the purpose of the progress review conducted at the end of this 12-month period.

Comment: The majority of commenters suggested that we lower the educational and vocational or technical training requirements for making timely progress toward self-supporting employment. Some commenters asked that we allow flexibility to combine the achievement of work goals and

educational or vocational or technical training goals under the timely progress guidelines. Several commenters also asked that we provide beneficiaries with more time to complete educational or vocational or technical training requirements because of their disability and other factors that affect their ability to sustain heavy course loads.

Response: In response to these comments, we made changes in § 411.180 to lower the educational requirements and the vocational or technical training requirements from expecting the beneficiary to carry a full-time course load in the first two years to carrying 60 percent of a full-time course load in the first year and 75 percent in the second year. This has the effect of lengthening the amount of time a beneficiary has to complete a degree or certification program, or a vocational or technical training program. We also provide that if a beneficiary completes a certain percentage of the work requirement and a certain percentage of the post-secondary education requirement or vocational or technical training requirement in the applicable progress certification period, and the sum of the two percentages equals 100 or more, we will consider the beneficiary to have met the timely progress requirements for purposes of the progress review conducted at the end of the 12-month progress certification period. In addition, we included a variance tolerance of 10 percent to make the requirements for completing a specified amount of credit hours or course requirements easier to achieve. These measures will increase the flexibility of these provisions and give beneficiaries more time to gradually progress toward their work or educational goals.

Comment: A few commenters suggested that we give credit toward timely progress for Compensated Work Therapy, individuals in on-the-job, supported employment and specialized training in a community rehabilitation agency.

Response: We did not adopt this comment because the types of programs the commenters suggested may not be indicative of work that equates to trial work or SGA level earnings or training that typically leads directly to increased and sustained earnings at these levels. We will give credit for a post-secondary education program at an educational institution as defined in § 411.167, or for vocational or technical training at a technical, trade or vocational school as defined in § 411.167. We also will give credit for a high school diploma or a GED certificate obtained during the first 12-month progress certification period.

Comment: Some commenters suggested using the Individualized Plan for Employment (IPE) as a measure of timely progress and others suggested we retain the prior rules for timely progress during the initial 24-month period.

Response: We did not adopt these comments because they are inconsistent with the goals we are trying to accomplish with the revised timely progress guidelines. The IPE and IWP were essentially used to determine whether a beneficiary was making timely progress under the prior rules. We found that the initial 24-month period and the use of the IPE or IWP goals as a measure of timely progress did not always include specific enough rules to encourage the beneficiary to make concrete strides toward self-sufficiency early enough in the process. Furthermore, under the prior rules, the use of the IPE or IWP for progress reviews was administratively burdensome to service providers, who had to evaluate a beneficiary's goals and achievements under the IPE or IWP in order to provide the PM with their assessment as to whether the beneficiary was expected to meet the timely progress guidelines for the next progress review period.

Comment: A commenter requested clarification on the type of administrative records and educational documentation to be used to determine whether a beneficiary is meeting the timely progress guidelines.

Response: Social Security and SSI beneficiaries with disabilities are required to report their work and earnings to us. ENs and State VR agencies are also required to submit evidence of beneficiaries' earnings to support some types of payments under the Ticket to Work program. The administrative records referred to in § 411.200 are our records that contain this information, including any Program Manager (PM) records, which may include additional information such as certification of educational accomplishments.

Concerning the educational documentation, if our records do not show that the work or educational requirements have been met, we will send a letter to the beneficiary asking him or her to provide appropriate information about any work or educational progress made during the period. If the beneficiary does not respond, we will contact the EN or State VR agency. We plan to implement this part of the process in a way that should not be burdensome to ENs or State VR agencies. The PM will be accepting electronic notifications, and we will

work to make the process as efficient as possible.

Section 411.192 What choices do I have if I am unable to make timely progress toward self-supporting employment?

Comment: Some commenters suggested that we allow beneficiaries with significant disabilities who do not expect that they will ever meet the timely progress requirements and whose medical conditions are not likely to improve, the choice of opting out of having their ticket being considered "in-use" with a VR agency. This would prevent the PM from requesting the beneficiary or the State VR agency to submit information for purposes of progress reviews in situations where the beneficiary isn't expected to meet the timely progress requirements and where a medical CDR is a non-issue because medical improvement is unlikely.

Response: In response to this comment, we modified § 411.192 to provide that a beneficiary may request to have his or her ticket placed in inactive status if the beneficiary is temporarily or otherwise unable to make timely progress toward self-supporting employment.

Comment: Some commenters requested that we clarify the role of the VR Agencies in providing evidence of tickets in-use under the cost reimbursement program and how to notify the PM when a beneficiary is receiving services under an IPE.

Response: In order to extend CDR protection to beneficiaries, State VR agencies will need to inform the PM when they initiate an IPE. In addition, we will need to know when cases are closed so that we can end the "in-use" period and make the ticket available for assignment. We intend to implement this part of the process in a way that will be least burdensome to State VR agencies. The PM will be accepting electronic notifications, and we will work to make the process as efficient as possible. State VR agencies can continue using SSA Form SSA-1365 if they are assigning a ticket and choosing to be paid under an EN payment system rather than the cost reimbursement payment method.

Comment: A few commenters suggested we extend the 90-day period for ticket assignment that begins after VR case closure by a State VR agency which elected the VR cost reimbursement option so the ticket can be available for assignment at any point after the VR case closure.

Response: The beneficiary can assign the ticket any time after the VR case closure. We clarified in § 411.140(a) of

the final rules that a beneficiary may assign the ticket during the 90-day period after his or her case is closed by a State VR agency that elected the VR cost reimbursement option, without meeting the requirements of § 411.125(a)(2). Also, if the beneficiary assigns the ticket within the 90-day period, the medical CDR protection does not lapse. Nevertheless, the beneficiary may assign the ticket at any time as long as he or she remains eligible to participate in the Ticket to Work program.

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

Comment: Proposed § 411.171(e)(1) and (f)(1) discussed when the period of using a ticket ended for a title II beneficiary (the 36th month for which an outcome payment is made to an EN) or title XVI beneficiary (the 60th month for which an outcome payment is made to an EN). One commenter noted that the language in paragraphs (e)(1) and (f)(1) of proposed § 411.171 was not about “the period of using a ticket” as much as it related to when the ticket actually terminated and was no longer available for use with anyone. Therefore, the commenter recommended that it was more appropriate to put the language of these paragraphs into § 411.155 (When does my ticket terminate?).

Response: In response to this comment, we removed proposed § 411.171(e) and (f) from these final rules. We have incorporated in final § 411.171(d) the discussion contained in proposed § 411.171(e)(2) and (f)(2) concerning when the period of using a ticket may end for a beneficiary receiving services from a State VR agency electing the VR cost reimbursement option.

Comment: One commenter recommended that the clock for “timely progress” be re-started to day 1 when the ticket-user assigns his or her ticket with an EN after receiving services from a State VR agency, because a beneficiary might find an EN unwilling to subsequently accept a ticket for assignment if the beneficiary has already used up a significant portion of the timely progress period during “in-use” status with the State VR agency.

Response: We do not agree. We believe the new payment options provide sufficient incentives for ENs to accept tickets regardless of where the beneficiary is in the progress certification period. Timely progress rules only limit CDR protections, not the assignability of the ticket.

Subpart E—Employment Networks

Section 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?

Comment: Many commenters supported the decision to allow one-stop delivery systems to participate as ENs without responding to the RFP. While they supported making it easier for one-stop delivery systems to become ENs, they still had concerns about whether or not the one-stop delivery systems would be physically or programmatically accessible to people with disabilities.

One commenter also suggested we include the 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 in the Ticket to Work program which could benefit their communities.

Response: In order for a one-stop delivery system to operate as an EN and to remain an EN, they must enter into an agreement with us and must maintain compliance with both general and specific selection criteria found in § 411.305 and § 411.315. These sections require the EN to be physically and programmatically accessible to beneficiaries seeking services.

We amended final § 411.310(e) so that 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 may participate in the Ticket program without responding to the RFP. We made a corresponding change to final § 411.315(f) to indicate that they must enter into an agreement with us and must maintain compliance with both general and specific selection criteria found in §§ 411.305 and 411.315.

Comment: Some commenters suggested we allow veterans programs under title 38 of the U.S.C. to apply to become an EN.

Response: Section 1148(f)(1)(A) of the Act provides that an 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. Therefore, federally-operated veterans programs under title 38 of the U.S. Code are not eligible to participate as an EN. However, their contractors may qualify.

Subpart F—State Vocational Rehabilitation Agencies' Participation

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 or reassignment?

Comment: Noting that proposed § 411.385 continued to require that a State VR agency submit the information prescribed in proposed § 411.385(a) in order for us to consider a beneficiary to be “using a ticket,” a number of State VR agencies indicated that this requirement requires a substantial amount of time and resources, and asked if this process could be simplified. Another commenter suggested that we continue to use the form SSA-1365 (Agency Ticket Assignment Form), but amend it so that it does not require the beneficiary's signature and it indicates whether the form is being submitted for “in use” purposes or is a request for ticket assignment. Another commenter recommended that we give consideration to allowing State VR agencies to submit a monthly list of beneficiaries being served in lieu of providing a paper copy of the signed IPE, to reduce the burden of collecting and submitting these copies.

Response: While these final rules still require the submission of the information prescribed in § 411.385, we are considering ways to simplify the process under which State VR agencies will notify the PM when an IPE is signed and the State VR agency has elected the VR cost reimbursement option. The PM will accept electronic notifications. We will work out an efficient means to allow the State VR agencies to regularly provide the PM a listing of ticket holders who recently signed an IPE.

Subpart H—Employment Network Payment Systems

Comment: One commenter recommended simplification of the payment systems to only one system, in order to streamline the administration of the Ticket to Work program. The commenter suggested that the outcome-milestone system would appear to cover the widest range of possible employment situations.

Response: We are unable to limit the EN payment systems to payment under only one system, because the Ticket legislation specifies in section 1148(h) of the Act that the Ticket to Work program shall provide ENs with a choice to be paid under either the outcome payment system or the outcome-milestone payment system.

Comment: One commenter asked whether an EN could be compensated under the Ticket to Work program if the extended services provided following VR services are being funded from a different financial source.

Response: Section 1148(b)(4) of the Social Security Act and § 411.570 of our regulations prohibit an EN from requesting or receiving compensation from the beneficiary for the services of the EN. Otherwise, nothing in the Ticket to Work rules would preclude an EN from seeking financial support for services being provided to a beneficiary. We encourage ENs to seek financial support from other sources for services provided to beneficiaries.

Section 411.515 Can the EN change its elected payment system?

Comment: Section 411.515(b) provides the opportunity for an EN to make one change in its elected payment system at any time prior to the close of the 12th month following the month in which the EN first elects an EN payment system. One commenter noted that the 12-month period seems to be a minimal level of flexibility, given that State VR agencies can decide on a case-by-case basis whether to serve the beneficiary as an EN. Another commenter suggested that as a strategy to offer greater flexibility to ENs, we may want to consider allowing ENs the option of choosing the outcome or the outcome-milestone payment system on a case-by-case basis.

Response: We removed § 411.515(c), which says that after the year ends in which the beneficiary first elected a payment system, we will offer the opportunity for each EN to make a change in its elected payment system at least every 18 months. As revised, this section clarifies that after an EN elects a payment system, the EN can make one change in its elected payment system in each calendar year thereafter. We believe an annual opportunity to change the payment system election is reasonable and administratively prudent.

Section 411.525 What payments are available under each of the EN payment systems? and § 411.535 Under what circumstances will milestones be paid?

Comment: Proposed § 411.535(a)(3) provided that “If the beneficiary does not achieve all Phase 1 and Phase 2 milestones prior to the beginning of the beneficiary’s outcome period, then we will pay the EN (or State VR agency acting as an EN) the final milestone payment equal to the total amount of the remaining unpaid Phase 1 and Phase 2 milestones.” A number of commenters

expressed concern about this provision. They noted that there might be unintended consequences from providing this final milestone payment in a lump sum, which could result in a financial disincentive to continuing serving a beneficiary after the first year, if the lump sum was paid because the beneficiary went to work and immediately left the benefit rolls, or might provide an incentive for the State VR agency to choose the less-challenging milestone payment system over the cost reimbursement payment system. Another commenter noted that the proposed outcome-milestone payment system could result in shifting too much of the Ticket to Work program’s value to the first couple months of employment, thus diminishing a beneficiary’s ability to negotiate for needed service later in his or her efforts to return to work. The commenter recommended that we review the lump sum milestone payment provision to ensure that beneficiaries do not lose this protection. Commenters also recommended withholding the lump sum payment for anywhere from 6 to 18 months into the outcome period.

Response: In response to these comments, we added § 411.536 to explain how we will make the reconciliation payment if the beneficiary does not achieve all Phase 1 and Phase 2 milestones prior to the beginning of the beneficiary’s outcome period.

We will make a reconciliation payment to the EN once the beneficiary achieves 12 outcome payment months. Congress intended that milestone payments should lead to permanent employment. The reconciliation payment will be equal to the total of all Phase 1 and 2 milestone payments which could have been payable with respect to a ticket but that were not paid prior to the beginning of the outcome payment period.

Comment: Proposed § 411.535(a)(4) provided that if the State VR agency already has received payment for services under the cost reimbursement payment system, we would not pay Phase 1 milestones to an EN. A number of commenters indicated that there are conditions under which an EN should be paid for Phase 1 milestones if the State VR Agency has received payment under cost reimbursement. They note that it is important that ENs and State VR agencies not be put in a position of “competing for ticket holders.” While understanding our fiscal concern about paying for the same service twice, they still do not want to discourage ENs from referring beneficiaries to the State VR

agencies for services or vice versa. One commenter requested that we attempt to craft a rule that focuses on the beneficiary and the employment outcomes they have achieved prior to ticket assignment and is not VR-centric as in the NPRM.

Response: We agree that the rules in this regard should broadly consider work before ticket assignment and not focus exclusively on cases where a beneficiary received services from a State VR agency. The intent of the Phase 1 milestone payments is to support the high costs ENs frequently incur during the initial job acquisition phase of return to work, e.g., job development and on-the-job training and support. In developing these rules, we also wanted to address the concerns that the ticket should not pay for employment results that have recently been attained. We attempted to address this by revising § 411.535, “Under what circumstances will milestones be paid?” In that section we preclude payment of all Phase 1 milestones if the State VR agency services, under the cost reimbursement option, ended in an employment outcome before case closure. In addition, we limit payment of some or all of Phase 1 milestones when the beneficiary had significant work activity prior to ticket assignment.

Section 411.566 May an EN use outcome or milestone payments to make payments to the beneficiary?

Comment: Proposed § 411.566 provided that an EN could use outcome or milestone payments to pay bonuses to beneficiaries. A number of commenters expressed concern that this new section might lead to expectation that an EN must make these payments to beneficiaries. Beyond that, commenters noted a concern on how these bonus payments would affect a beneficiary’s benefits, e.g., by counting as unearned income for title XVI beneficiaries.

Response: We changed the title of final § 411.566 to “May an EN use outcome or milestone payments to make payments to the beneficiary?” and revised this section to remove references to these payments as bonus payments. We must count income under our rules, but we have work incentives outreach efforts to help beneficiaries plan for how income affects them. In addition to work incentives specialist within SSA, § 1148 of the Act established Work Incentive Planning and Assistance Organizations in communities across the country that provide benefits planning and assistance to help beneficiaries anticipate and plan for the effect of work and earnings and other income,

such as the payments a beneficiary may receive from an EN, on their benefits.

Section 411.582 Can a State VR agency receive payment under the cost reimbursement system if a continuous 9-month period of substantial gainful activity is completed after the ticket is assigned to an EN?

Comment: A number of commenters provided the example of a case in which the State VR agency selects the traditional cost reimbursement payment system using the form SSA-1365 and provides services to the beneficiary that cost \$25,000. In this example, the beneficiary completes the VR services and the case is closed. Three months later the beneficiary assigns his or her ticket to an EN which chooses the proposed outcome milestone payment and provides both job placement and supported employment. The beneficiary is successful and his or her SSI checks stop. The commenter asked if the State VR agency would get the reimbursement of the \$25,000 plus administrative costs, and if the EN would have the potential to receive the full value of the ticket.

Response: The State VR agency can receive cost reimbursement and the EN can receive payments under its elected EN payment system with respect to the same ticket. After VR case closure an EN can receive Phase 2 milestone payments intended to support job retention and

outcome payments. However, in the situation described by this commenter, the EN may be able to also receive Phase 1 milestones if the beneficiary did not achieve a successful employment outcome before the VR agency closed the case (see § 411.535).

Comment: One commenter noted that the citation to 34 CFR 361.12 in the proposed § 411.582 is incomplete, and should be cited as 34 CFR part 361 because VR services are provided pursuant to a number of sections in part 361.

Response: We agree, and corrected this citation in the final § 411.582.

Section 411.590 What can an EN do if the EN disagrees with our decision on a payment request?

Comment: One commenter noted that while we proposed to revise § 411.590(d), we also proposed to retain language commented on in the past, i.e., “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.” The commenter remains concerned that this sentence appears to encourage ENs to turn against beneficiaries if the ENs are unsuccessful in disputes with us over whether payments are due to the EN. The commenter believes that should

an EN lose its dispute with us, the only alternative we have offered is for the EN to submit evidence against the beneficiary in the beneficiary’s claim for cash benefits. The commenter believes this approach creates the potential for a serious conflict between the beneficiary and the EN in a contractual arrangement where the beneficiary needs to trust that the EN is working in the beneficiary’s best interest in job preparation, placement, and follow-up.

Response: As we noted in response to this concern expressed by a number of commenters in the preamble to the prior regulations published on December 28, 2001 (66 FR 67370, 67416), we do not want to create an adversarial relationship between beneficiaries and ENs. For this reason, we clearly state in § 411.590(c) and (d) of the prior rules that an EN cannot appeal a determination we make about a beneficiary’s right to benefits, but an EN may furnish evidence in support of the EN’s claim for payment.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and have determined that these final rules meet the criteria for an economically significant regulatory action under Executive Order 12866, as amended.

ESTIMATED INCREASES (+) AND DECREASES (–) IN OASDI BENEFITS AND FEDERAL SSI PAYMENTS DUE TO THE PROVISIONS OF THE FINAL RULE UNDER CONSIDERATION FOR THE TICKET TO WORK PROGRAM, FISCAL YEARS 2008–18
[In millions]

| Provision | Fiscal year | | | | | | | | | | | Totals | |
|--|-------------|------|------|------|-------|-------|-------|-------|-------|-------|-------|---------|---------|
| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2008–13 | 2008–18 |
| Change due to proposed new EN payment structure (including State VR agencies): | | | | | | | | | | | | | |
| OASDI benefit payments | \$1 | \$7 | \$29 | \$93 | \$154 | \$233 | \$290 | \$342 | \$376 | \$405 | \$421 | \$517 | \$2,351 |
| Federal SSI payments | 1 | 11 | 31 | 47 | 70 | 94 | 112 | 133 | 150 | 165 | 176 | 254 | 989 |
| Subtotal, OASDI and SSI | 2 | 19 | 60 | 140 | 224 | 326 | 403 | 474 | 525 | 570 | 597 | 771 | 3,340 |
| Change due to deferral of CDRs: | | | | | | | | | | | | | |
| OASDI benefit payments | | | (1)\ | 2 | 5 | 12 | 21 | 32 | 44 | 58 | 76 | 20 | 251 |
| Federal SSI payments | - | (1)\ | 1 | 2 | 3 | 4 | 5 | 5 | 5 | 6 | 5 | 10 | 36 |
| Subtotal, OASDI and SSI | | (1)\ | 1 | 4 | 8 | 16 | 26 | 36 | 50 | 64 | 81 | 30 | 287 |
| Change due to increase in work activity among OASDI and SSI beneficiaries: | | | | | | | | | | | | | |
| OASDI benefit payments | | | | -3 | -26 | -71 | -123 | -178 | -247 | -305 | -363 | -99 | -1,315 |
| Federal SSI payments | (2)\ | -7 | -28 | -60 | -75 | -106 | -128 | -146 | -176 | -183 | -185 | -276 | -1,093 |
| Subtotal, OASDI and SSI | (2)\ | -7 | -28 | -63 | -101 | -176 | -251 | -324 | -422 | -488 | -548 | -375 | -2,408 |
| Net total increase in outlays due to proposed rule changes: | | | | | | | | | | | | | |
| OASDI benefit payments | 1 | 7 | 29 | 92 | 134 | 174 | 189 | 195 | 173 | 158 | 134 | 438 | 1,288 |
| Federal SSI payments | 1 | 5 | 4 | -11 | -3 | -8 | -11 | -8 | -20 | -13 | -4 | -12 | -68 |
| Total, OASDI and SSI | 2 | 12 | 33 | 81 | 131 | 166 | 178 | 187 | 153 | 146 | 130 | 426 | 1,219 |

¹ Increase of less than \$500,000.
² Reduction of less than \$500,000.

Notes:

- See covering memorandum and table 1 for details of the proposed changes.
- Above estimates are consistent with the assumptions underlying the President’s FY 2009 Budget, and assume that a final regulation establishing the provisions of the proposed rule would become effective as of July 21, 2008.

3. Totals may not equal sum of rounded components.

4. SSI payments due on October 1st in fiscal years 2012, 2017 and 2018 are included in payments for the prior fiscal year.

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/>

a004/a-4.pdf), in Table 2, we have prepared an accounting statement showing the annualized economic

impact of implementing the Ticket to Work program. All estimated impacts are classified as transfers.

TABLE 2.—ACCOUNTING STATEMENT: ESTIMATED ECONOMIC IMPACT OF PROVISIONS TO ENHANCE THE TICKET TO WORK PROGRAM

[Fiscal years 2008–2018 in 2008 dollars]

| Category | Transfers |
|--------------------------------------|---|
| Annualized Monetized Transfers | \$98.8 million (7% discount rate). \$102.6 million (3% discount rate). |
| From Whom To Whom? | From the Social Security trust funds and the general fund to SSA beneficiaries. |

Regulatory Flexibility Act

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

Federalism

We have reviewed these final rules under the threshold criteria of Executive Order 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. These final rules will complement and enhance the existing State vocational rehabilitation program.

Paperwork Reduction Act

We are revising our regulations for the Ticket to Work and Self-Sufficiency Program (Ticket to Work program), which was authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work program provides Social Security Disability Insurance and Supplemental Security Income beneficiaries expanded options for access to employment services, vocational rehabilitation services, and other support services. We are revising our prior rules to improve the overall effectiveness of the program to maximize the economic self-sufficiency of beneficiaries through work opportunities. We have based these revisions on our projections of the future direction of the Ticket to Work program, our experience using the prior rules, and recommendations made by a number of commenters on the program.

We published a Notice of Proposed Rulemaking on September 30, 2005 at 70 FR 57222 and solicited comments under the Paperwork Reduction Act (PRA) on the public reporting requirements in §§ 411.145(a), 411.190, 411.325(a), 411.140(d)(3), 411.365(a), 411.385, 411.390 and 411.575. We solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. None of the comments submitted by the public on this regulation were related to these issues. On November 23, 2005 OMB filed comment on the NPRM in accordance with 5 CFR 1320. In response to the comment, we clarified the reporting requirement in § 411.325(a), “What reporting requirements are placed on an EN as a participant in the Ticket to Work Program?”

We published a second Notice of Proposed Rulemaking on August 13, 2007 at 72 FR 45191 and solicited comments under the PRA on the public reporting requirements in §§ 411.192(b) and (c), 411.200(b), and 411.210. We solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. None of the comments submitted by the public on this regulation were related to these issues.

As required by the PRA, we have submitted a clearance request to OMB for approval. We will publish the OMB number and expiration date upon approval. Requests for the Information Collection Request Package should be

directed to SSA through the SSA Reports Clearance Officer at 410–965–0454 or to OPLM.RCO@ssa.gov.

(Catalog of Federal Domestic Assistance 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: February 6, 2008.

Michael J. Astrue,
Commissioner of Social Security.

Editorial Note: This document was received at the Office of the Federal Register on May 12, 2008.

■ For the reasons set out in the preamble, we are amending subparts A, B, C, E, F and H of part 411 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 411—THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

■ 1. Revise the authority citation for part 411 to read as follows:

Authority: Secs. 702(a)(5) and 1148 of the Social Security Act (42 U.S.C. 902(a)(5) and 1320b–19); sec. 101(b)–(e), Public Law 106–170, 113 Stat. 1860, 1873 (42 U.S.C. 1320b–19 note).

Subpart A—[Amended]

§ 411.110 [Removed]

■ 2. Remove § 411.110.

■ 3. In § 411.115, redesignate paragraph (s) as paragraph (t) and add a new paragraph (s) to read as follows:

§ 411.115 Definitions of terms used in this part.

* * * * *

(s) *VR cost reimbursement option* means an arrangement under which your ticket is not assigned to the State VR agency but you do receive services pursuant to an individualized plan for employment where the State VR agency has chosen to receive payment under the cost reimbursement payment system.

* * * * *

Subpart B—[Amended]

■ 4. In § 411.120, revise paragraphs (b) and (c) to read as follows:

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

* * * * *

(b) The left side of the ticket 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.) in the last position signifying that this is the first ticket, second ticket, etc., that the beneficiary has received.

(c) The right side of the ticket includes the signature of the Commissioner of Social Security and provides a description of the Ticket to Work program. The description of the program will tell you how you may offer the ticket to an EN or State VR agency. The description will also tell you how the EN provides services to you.

■ 5. In § 411.125, revise paragraphs (a)(1) and (a)(2)(ii)(C), and remove paragraph (a)(3) to read as follows:

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

(a) * * *

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

(2) * * *

(ii) * * *

(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).

* * * * *

■ 6. Revise § 411.130 to read as follows:

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

If you are eligible to receive a ticket under § 411.125, we will send a ticket to you by mail.

■ 7. Revise § 411.135 to read as follows:

§ 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. You may choose either to assign your ticket to an EN by signing an individual work plan (see §§ 411.450 through 411.470) or receive services from your State VR agency by entering into and signing an individualized plan for employment. If the State VR agency provides services to you, it will decide whether to accept your ticket. If it accepts your ticket, you will have assigned your ticket to the State VR agency and it will receive payment as an EN. If the State VR agency decides to be paid under the cost reimbursement payment system, you have not assigned your ticket and you may assign your ticket after the State VR agency has closed your case.

■ 8. In § 411.140, revise the section heading, paragraph (a), the introductory text of paragraph (d), paragraph (d)(3), and the first sentence of paragraph (e) to read as follows:

§ 411.140 When may I assign my ticket and how?

(a) You may assign your ticket during a month in which you meet the requirements of § 411.125(a)(1) and (a)(2). You may assign your ticket during the 90-day period after your case is closed by a State VR agency that elected the VR cost reimbursement option (see § 411.171(d)), without meeting the requirements of § 411.125(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 acting as an EN if you are eligible to receive VR services under 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. You may not assign your ticket until after the State VR agency has closed your case if you are receiving VR services pursuant to an individualized plan for employment from a State VR agency which has elected the VR cost reimbursement option. You also may not assign your ticket to a State VR agency if that VR agency previously served you and elected the VR cost reimbursement option and closed your case.

* * * * *

(d) In order for you to assign your ticket to an EN or State VR agency acting as an EN, all of the following requirements must be met:

* * * * *

(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, acting as an EN, must submit the completed and signed form (as described in § 411.385(a) and (b)) to the PM.

* * * * *

(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 acting as an EN.

* * *

■ 9. Revise § 411.145 to read as follows:

§ 411.145 When can my ticket be taken out of assignment?

(a) If you assigned your ticket to an EN or a State VR agency acting as an EN, 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 acting as an EN, 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 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.

(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 no longer be 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 acting as an EN 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 acting as an EN may ask the PM to take your ticket out of assignment with that EN or State VR agency. The ticket will no longer be assigned to that EN or State VR agency acting as an EN effective on the first day of the month following the month in which the EN or State VR agency acting as an EN 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 acting as an EN. 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.

■ 10. In § 411.150, revise the section heading, and paragraphs (a) and (b)(3) to read as follows:

§ 411.150 Can I reassign my ticket?

(a) If you previously assigned your ticket and your ticket is no longer assigned (see § 411.145), 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 a State VR agency acting as an EN if you are eligible to receive VR services under 34 CFR 361.42. If you previously assigned your ticket to a State VR agency acting as an EN, 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 acting as an EN if you are eligible to receive VR services under 34 CFR 361.42.

(b) * * *

(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. You may reassign your ticket within 90 days of the effective date your ticket was no longer assigned, without meeting the requirements of § 411.125(a)(2).

* * * * *

■ 11. In § 411.155, revise paragraphs (a)(2) and (a)(3), add a new paragraph (a)(4), remove the word “or” at the end of paragraph (c)(6), replace the period at the end of paragraph (c)(7) with “; or”, and add a new paragraph (c)(8) to read as follows:

§ 411.155 When does my ticket terminate?

(a) * * *

(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 full retirement age;

(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; or

(4) The month after the month in which your outcome payment period ends (see § 411.500(b)).

* * * * *

(c) * * *

(8) The month after the month in which your outcome payment period ends (see § 411.500(b)).

Subpart C—[Amended]

■ 12. In § 411.165, revise the section heading and the second sentence to read as follows:

§ 411.165 How does using a ticket under the Ticket to Work program affect my continuing disability reviews?

* * * However, we will not begin a continuing disability review during the period in which you are using a ticket.
* * *

■ 13. Revise § 411.166 to read as follows:

§ 411.166 Glossary of terms used in this subpart.

(a) *Using a ticket* means you have assigned a ticket to an Employment Network (EN) or a State VR agency that has elected to serve you as an EN, and you are making timely progress toward self-supporting employment as defined in § 411.180; or you have a ticket that would otherwise be available for assignment and are receiving VR services pursuant to an individualized plan for employment (IPE) and the State VR agency has chosen to be paid for these services under the cost reimbursement payment system, and you are making timely progress toward self-supporting employment as defined in § 411.180. (See § 411.171 for when the period of using a ticket ends.)

(b) *Timely progress toward self-supporting employment* means you have completed the specified goals of work and earnings, or completed the specified post-secondary education credits at an educational institution (see § 411.167) in pursuit of a degree or certificate, or completed specified course requirements for a vocational or technical training program at an educational institution consisting of a technical, trade or vocational school (see § 411.167), or completed a certain percentage of the work requirement and a certain percentage of the post-secondary education requirement or vocational or technical training requirement and the sum of the two

percentages equals 100 or more (see § 411.180(c)), or obtained a high school diploma or General Education Development (GED) certificate in the applicable progress certification period as described in § 411.180.

(c) *Timely progress guidelines* mean the guidelines we use to determine if you are making timely progress toward self-supporting employment (see § 411.180).

(d) *Progress certification period* means any 12-month progress certification period described in § 411.180(b).

(e) *Progress review* means the reviews the PM conducts to determine if you are meeting the timely progress guidelines described in § 411.180. We explain the method for conducting progress reviews in § 411.200.

(f) *Extension period* is a period of up to 90 days 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 EN or State VR agency acting as an EN (see § 411.220).

(g) *Inactive status* is a status in which you may place your ticket if you are temporarily or otherwise unable to make timely progress toward self-supporting employment during a progress certification period. See § 411.192 for the rules on placing your ticket in inactive status and on reactivating your ticket.

(h) *Variance tolerance* means the margin of flexibility whereby we will consider you to have met the requirement for completing a specified amount of post-secondary credit hours in an educational degree or certification program or the course requirements in a vocational or technical training program under § 411.180 in the applicable progress certification period if your completion of credit hours or course requirements in this period is within 10% of the goal. Figures representing the number of credit hours required for the first and second progress certification periods as described in § 411.180 will be rounded by dropping any fractions. Under the variance tolerance, we also will consider you to have met the requirements in an applicable progress certification period if you complete a certain percentage of the work requirement and a certain percentage of the post-secondary education requirement or vocational or technical training requirement in the period and the sum of the two percentages is within 10% of the goal. See § 411.180(a) and (c).

(i) *VR cost reimbursement option* means an arrangement under which your ticket is not assigned to the State VR agency but you do receive services pursuant to an individualized plan for employment where the State VR agency has chosen to receive payment under the cost reimbursement payment system.

(j) *VR cost reimbursement status* means the status of your ticket under the arrangement described in paragraph (i) of this section. The period during which your ticket is in VR cost reimbursement status begins on the date described in § 411.170(b) and ends on the date your case is closed by the State VR agency.

■ 14. Add § 411.167 to read as follows:

§ 411.167 What is an educational institution or a technical, trade or vocational school?

(a) *Educational institution* means a school (including a technical, trade, or vocational school), junior college, college or university that is: operated or directly supported by the United States; operated or directly supported by any State or local government or by a political subdivision of any State or local government; or approved by a State agency or subdivision of the State, or accredited by a State-recognized or nationally recognized accrediting body.

(b) *Technical, trade or vocational school* is an educational institution that is approved by a State agency or subdivision of the State or accredited by a State-recognized or nationally recognized accrediting body to provide technical, trade or vocational training.

(c) *State-recognized accrediting body* means an entity designated or recognized by a State as the proper authority for accrediting schools, colleges or universities.

(d) *Nationally recognized accrediting body* means an entity determined to be such by the U.S. Department of Education.

(e) *Approval by a State agency or subdivision of the State* includes approval of a school, college or university as an educational institution, or approval of one or more of the courses offered by a school, college or university.

■ 15. Remove the undesignated center heading before § 411.170.

■ 16. Revise § 411.170 to read as follows:

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

(a) 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.

(b) If you have a ticket that would otherwise be available for assignment and are receiving VR services pursuant to an individualized plan for employment (IPE) and the State VR agency has elected the VR cost reimbursement option, the period of using a ticket begins on the later of—

(1) The effective date of your IPE; or

(2) The first day your ticket would otherwise have been assignable if you had not been receiving services from a State VR agency that elected the VR cost reimbursement option.

■ 17. Revise § 411.171 to read as follows:

§ 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 last day of the month before the month in which the ticket terminates as a result of one of the events listed in § 411.155 (see § 411.155(a)(4) and (c)(8) for when your ticket terminates if your outcome payment period ends);

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

(c) The last day of the 90-day extension period which begins with the first day of the first month in which your ticket is no longer assigned to an EN or State VR agency acting as an EN (see § 411.145), unless you reassign your ticket within the 90-day extension period (see § 411.220 for an explanation of the 90-day extension period); or

(d) If your ticket was in VR cost reimbursement status as described in § 411.166(j), the 90th day following the date the State VR agency closes your case, unless you assign your ticket during this 90-day period.

■ 18. In § 411.175, revise the section heading and the first and fourth sentences of paragraph (a) to read as follows:

§ 411.175 What if a continuing disability review is begun before my ticket is in use?

(a) If we begin a continuing disability review before the date on which your ticket is in use, you may still assign the ticket and receive services from an EN or a State VR agency acting as an EN under the Ticket to Work program, or you may still receive services from a State VR agency that elects the VR cost reimbursement option. * * * However, if your ticket was in use 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). * * *

* * * * *

■ 19. Remove the undesignated center heading before § 411.180.

■ 20. Revise § 411.180 to read as follows:

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

(a) *General*. We consider you to be making timely progress toward self-supporting employment when you show progress as described below toward the ability to work at levels which will reduce your dependence on Social Security disability benefits or SSI benefits. We will also consider you to be making timely progress when you obtain a high school diploma or GED certificate in the first 12-month progress certification period, or if you show progress as described below toward obtaining an educational degree or certificate or vocational or technical training that will enhance your ability to return to work. In addition, if you complete a certain percentage of the work requirement and a certain percentage of the post-secondary education requirement or vocational or technical training requirement in the applicable progress certification period under the guidelines below, and the sum of the two percentages equals 100 or more, we will consider you to have met the timely progress requirements for purposes of the progress review conducted at the end of the 12-month progress certification period. For example, if you complete 33.3 percent of the work requirement during the first 12-month progress certification period as described in paragraph (c)(1)(i) of this section (i.e., one month of work with earnings equal to or greater than the amount representing a trial work service month), and complete 66.7 percent of the requisite credit hours in an educational program during this period as described in paragraph (c)(1)(iii) of this section (i.e., 40 percent of the post-secondary credit hours that are considered to represent an academic year of full-time study), we will consider you to have met the timely progress requirements for purposes of the progress review conducted at the end of the first 12-month progress certification period. In addition, we will apply the variance tolerance described in § 411.166(h) in determining whether you have met the requirements in paragraph (c)(1)(iii), (iv) or (v), paragraph (c)(2)(ii), (iii) or (iv), paragraph (c)(3)(iii) or (v), paragraph (c)(4)(ii) or (iii), or paragraph (c)(5)(ii) or (iii) of this section.

(b) *12-month progress certification periods.* The first 12-month progress certification period begins with the month following the month in which you first assigned your ticket, or with the month beginning after the date described in § 411.170(b) if you have a ticket that would otherwise be available for assignment and are receiving VR services under an IPE from a State VR agency which has chosen the VR cost reimbursement option. Any subsequent 12-month progress certification period will begin with the month following the end of the previous 12-month progress certification period. In computing any 12-month progress certification period, we do not count any month during which—

(1) Your ticket is not assigned to an EN or State VR agency acting as an EN and is not in VR cost reimbursement status (as described in § 411.166(j)); or

(2) Your ticket is in inactive status (see § 411.192).

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

(1) During the first 12-month progress certification period, you must be making timely progress as follows:

(i) You must have worked in at least three months within this 12-month period and have earnings in each of those three months that are equal to or greater than the amount representing a trial work service month (see § 404.1592(b) of this chapter); or

(ii) You must have obtained a high school diploma or GED certificate within this 12-month period; or

(iii) You must have been enrolled in a two- or four-year degree or certification program at an educational institution and have completed 60 percent of the post-secondary credit hours that are considered to represent an academic year of full-time study in the program by the end of this 12-month period; or

(iv) You must have been enrolled in a vocational or technical training program at an educational institution consisting of a technical, trade or vocational school and have completed 60 percent of the course requirements that are considered to represent a year of full-time study in the program by the end of this 12-month period; or

(v) You must have completed a percentage of the required number of months of work and earnings described in paragraph (c)(1)(i) of this section and a percentage of the specified amount of post-secondary credit hours or course requirements required under paragraph (c)(1)(iii) or (iv) of this section within

this 12-month period so that the sum of the two percentages equals 100 or more.

(2) During the second 12-month progress certification period, at the conclusion of 24 months of ticket use, you must be making timely progress as follows:

(i) You must have worked in at least six months within this 12-month period and have earnings in each of those six months that are equal to or greater than the amount representing a trial work service month (see § 404.1592(b) of this chapter); or

(ii) You must have been enrolled in a two- or four-year degree or certification program at an educational institution and have completed an additional 75 percent of the post-secondary credit hours that are considered to represent an academic year of full-time study in the program by the end of this 12-month period; or

(iii) You must have been enrolled in a vocational or technical training program at an educational institution consisting of a technical, trade or vocational school and have completed an additional 75 percent of the course requirements that are considered to represent a year of full-time study in the program by the end of this 12-month period; or

(iv) You must have completed a percentage of the required number of months of work and earnings described in paragraph (c)(2)(i) of this section and a percentage of the specified amount of post-secondary credit hours or course requirements required under paragraph (c)(2)(ii) or (iii) of this section within this 12-month period so that the sum of the two percentages equals 100 or more.

(3) During the third 12-month progress certification period, at the conclusion of 36 months of ticket use, you must be making timely progress as follows:

(i) You must have worked in at least nine months within this 12-month period and have gross earnings from employment (or net earnings from self-employment as defined in § 404.1080 of this chapter) in each of those nine months that are more than the SGA threshold amount specified in § 404.1574(b)(2) of this chapter; or

(ii) You must have completed the course work and earned a degree or certificate from a two-year degree or certification program at an educational institution by the end of this 12-month period; or

(iii) You must have been enrolled in a four-year degree or certification program at an educational institution and completed additional post-secondary credit hours that are considered to represent an academic

year of full-time study in the program by the end of this 12-month period; or

(iv) You must have been enrolled in a vocational or technical training program at an educational institution consisting of a technical, trade or vocational school and have completed the course requirements of the program by the end of this 12-month period; or

(v) You must have completed a percentage of the required number of months of work and earnings described in paragraph (c)(3)(i) of this section and a percentage of the specified amount of post-secondary credit hours required under paragraph (c)(3)(iii) of this section within this 12-month period so that the sum of the two percentages equals 100 or more.

(4) During the fourth 12-month progress certification period, at the conclusion of 48 months of ticket use, you must be making timely progress as follows:

(i) You must have worked in at least nine months within this 12-month period and have gross earnings from employment (or net earnings from self-employment as defined in § 404.1080 of this chapter) in each of those nine months that are more than the SGA threshold amount specified in § 404.1574(b)(2) of this chapter; or

(ii) You must have been enrolled in a four-year degree or certification program at an educational institution and completed additional post-secondary credit hours that are considered to represent an academic year of full-time study in the program by the end of this 12-month period; or

(iii) You must have completed a percentage of the required number of months of work and earnings described in paragraph (c)(4)(i) of this section and a percentage of the specified amount of post-secondary credit hours required under paragraph (c)(4)(ii) of this section within this 12-month period so that the sum of the two percentages equals 100 or more.

(5) During the fifth 12-month progress certification period, at the conclusion of 60 months of ticket use, you must be making timely progress as follows:

(i) You must have worked in at least six months within this 12-month period and have earnings in each of those six months that preclude payment of Social Security disability benefits and Federal SSI cash benefits; or

(ii) You must have been enrolled in a four-year degree or certification program at an educational institution and either completed additional post-secondary credit hours that are considered to represent an academic year of full-time study in the program or completed the course work and earned a degree or

certificate from the program by the end of this 12-month period; or

(iii) You must have completed a percentage of the required number of months of work and earnings described in paragraph (c)(5)(i) of this section and a percentage of the specified amount of post-secondary credit hours required under paragraph (c)(5)(ii) of this section within this 12-month period so that the sum of the two percentages equals 100 or more.

(6) During the sixth 12-month progress certification period, at the conclusion of 72 months of ticket use, you must be making timely progress as follows:

(i) You must have worked in at least six months within this 12-month period and have earnings in each of those six months that preclude payment of Social Security disability benefits and Federal SSI cash benefits; or

(ii) You must have completed the course work and earned a degree or certificate from a four-year degree or certification program at an educational institution by the end of this 12-month period.

(7) During all subsequent 12-month progress certification periods, you must have worked in at least six months within the 12-month period and have earnings in each of those six months that preclude payment of Social Security disability benefits and Federal SSI cash benefits.

§ 411.185 [Removed]

■ 21. Remove § 411.185.

§ 411.190 [Removed]

■ 22. Remove § 411.190.

§ 411.191 [Removed]

■ 23. Remove § 411.191.

■ 24. Add § 411.192 to read as follows:

§ 411.192 What choices do I have if I am unable to make timely progress toward self-supporting employment?

(a) If you report to the PM that you are temporarily or otherwise unable to make timely progress toward self-supporting employment during a progress certification period, the PM will give you the choice of placing your ticket in inactive status or, if applicable, taking your ticket out of assignment with the EN or State VR agency acting as an EN. The choice of placing your ticket in inactive status applies whether your ticket is assigned or in VR cost reimbursement status (as described in § 411.166(j)).

(b) You may place your ticket in inactive status at any time by submitting a written request to the PM asking that your ticket be placed 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.

(c) You may reactivate your ticket and return to in-use status if your ticket is still assigned to an EN or State VR agency acting as an EN. You may also reactivate your ticket and return to in-use status if you have a ticket which would otherwise be available for assignment, you were receiving services under an IPE from a State VR agency which chose the VR cost reimbursement option, and your VR case has not been closed by the State VR agency. You may reactivate your ticket 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. The progress certification period will resume counting from the last month of in-use status, and the next progress review will be due when the progress certification period has been completed. Earnings from work, obtaining a high school diploma or GED certificate, or completion of post-secondary education credits in a two- or four-year degree or certification program or course requirements in a vocational or technical training program, as described in § 411.180, during the period your ticket is in inactive status may be counted toward meeting the requirements for the next progress review.

(d) You may take your ticket out of assignment under § 411.145(a) at any time.

§ 411.195 [Removed]

■ 25. Remove § 411.195.

■ 26. Revise § 411.200 to read as follows:

§ 411.200 How will the PM conduct my progress reviews?

The PM will conduct a progress review at the end of each 12-month progress certification period.

(a) The PM will first review the available administrative records to determine if you completed the work requirements as specified in § 411.180 in the applicable progress certification period.

(b) If the administrative records do not indicate that you met the work

requirements, the PM will contact either you or your EN or State VR agency to request additional information to determine if you completed the work requirements or have met the educational or training requirements as specified in § 411.180 in the applicable progress certification period.

(c) If the PM finds that you completed the work requirements or met the educational or training requirements as specified in § 411.180 in the applicable progress certification period, the PM will find that you are making timely progress toward self-supporting employment. On the basis of that finding, we will consider you to be making timely progress toward self-supporting employment until your next scheduled progress review.

(d) If the PM finds that you did not complete the work requirements or meet the educational or training requirements as specified in § 411.180 in the applicable progress certification period, the PM will find that you are not making timely progress toward self-supporting employment. If the PM makes such a finding, the PM will send a written notice of the decision to you at your last known address. This notice will explain the reasons for the decision and inform you of the right to ask us to review the decision. This 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.

■ 27. In § 411.210, revise paragraph (b), the heading of paragraph (c), and the fourth sentences of both paragraphs (c)(1) and (c)(2) to read as follows:

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

* * * * *

(b) *Re-entering in-use status.* If you failed to meet the timely progress guidelines for a 12-month progress certification period and you believe that you have now met the applicable requirements for that progress certification period as described in § 411.180, you may request that you be reinstated to in-use status. In order to do so, you must submit a written request to the PM asking that you be reinstated to in-use status and you must provide evidence showing that you have met the applicable requirements for the progress certification period. The PM will decide whether you have satisfied the applicable requirements for the progress certification period and may be reinstated to in-use status. If the PM determines you have met the applicable requirements for the progress certification period, you will be

reinstated to in-use status, provided that your ticket is assigned to an EN or State VR agency acting as an EN or in VR cost reimbursement status (as described in § 411.166(j)). See paragraph (c) of this section for when your reinstatement to in-use status will be effective. The month after you are reinstated to in-use status, your next 12-month progress certification period will begin.

(c) *Decisions on re-entering in-use status.* (1) * * * 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 acting as an EN or in VR cost reimbursement status), you will be reinstated to in-use status effective with the date on which the PM sends the notice of the decision to you. * * *

(2) * * * 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 acting as an EN or in VR cost reimbursement status), you will be reinstated to in-use status effective with the date on which we send the notice of the decision to you.

■ 28. In § 411.220, revise the first sentence of paragraph (a), revise paragraph (d)(2), remove paragraph (e), and redesignate paragraph (f) as paragraph (e) to read as follows:

§ 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 acting as an EN and is no longer assigned, you are eligible for an extension period of up to 90 days to reassign your ticket. * * *

* * * * *

(d) * * *

* * * * *

(2) Ends 90 days after it begins or when you assign your ticket to a new EN or State VR agency, whichever is sooner.

* * * * *

■ 29. In § 411.225, revise paragraphs (b) and (c), and remove paragraph (d) to read as follows:

§ 411.225 What if I reassign my ticket after the end of the extension period?

* * * * *

(b) *Time limitations for the timely progress guidelines.* Any month during which your ticket is not assigned and not in VR cost reimbursement status (as described in § 411.166(j)), either during or after the extension period, will not count toward the time limitations for the timely progress guidelines.

(c) *If you reassign your ticket after the end of the extension period.* If you

reassign your ticket after the end of the extension period, the period comprising the remaining months in the applicable 12-month progress certification period will begin with the first month beginning after the day on which the reassignment of your ticket is effective under § 411.150(c).

■ 30. Add § 411.226 to read as follows:

§ 411.226 How will SSA determine if I am meeting the timely progress guidelines if I assign my ticket prior to July 21, 2008?

(a) If you assigned your ticket to an EN or State VR agency prior to July 21, 2008, we will determine which 12-month progress certification period in § 411.180 you are in as of July 21, 2008 using the rules in paragraph (a)(1) of this section. We will not conduct a progress review at the end of that progress certification period. We will conduct a progress review at the end of your next progress certification period as explained in paragraph (a)(2) of this section.

(1) We will consider you to be in the first or a subsequent 12-month progress certification period under § 411.180 as of July 21, 2008. We will determine your applicable 12-month progress certification period and the number of months remaining in that period as of July 21, 2008 by counting all months during which your ticket was assigned and in use during the period—

(i) Beginning with the month following the month in which you first assigned your ticket under the rules in effect prior to July 21, 2008; and

(ii) Ending with the close of June 2008.

(2) We will use the timely progress guidelines in § 411.180(c) beginning with your next 12-month progress certification period. At the conclusion of that progress certification period, we will conduct a progress review to determine whether you are making timely progress toward self-supporting employment using the guidelines in § 411.180(c) that apply in that period.

(b) Prior to the conclusion of your applicable 12-month progress certification period determined under paragraph (a)(1) of this section, we will send you a notice telling you that we will not conduct a progress review at the end of that progress certification period, and that we will conduct a progress review at the conclusion of your next 12-month progress certification period using the guidelines in § 411.180(c). We will tell you in the notice when this next 12-month progress certification period will begin and will describe the specific timely progress guidelines you must meet in this 12-month period.

(c) Subsequent 12-month progress certification periods will follow the rules in § 411.180.

(d) If, on June 30, 2008, your ticket is in use and assigned to a State VR agency which chose to be paid for services it provides to you under the cost reimbursement payment system, your period of using a ticket may continue under the rules in this subpart, including the rules in paragraphs (a), (b) and (c) of this section. While your ticket may still be considered in-use for the purpose of the suspension of continuing disability reviews, it will no longer be considered assigned to that State VR agency effective July 21, 2008. You may assign your ticket after the State VR agency has closed your case.

Subpart E—[Amended]

■ 31. In § 411.310, add paragraphs (d) and (e) to read as follows:

§ 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?

* * * * *

(d) One-stop delivery systems established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 *et seq.*) may participate in the Ticket to Work program as ENs and do not need to respond to the RFP. However, in order to participate in the Ticket to Work program, the one-stop delivery system must enter into an agreement with the Commissioner to be an EN and must maintain compliance with general and specific selection criteria as described in § 411.315 in order to remain an EN.

(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. 741), may participate in the Ticket to Work program as ENs and do not need to respond to the RFP. However, in order to participate in the Ticket to Work program, the organization administering the project must enter into an agreement with the Commissioner to be an EN and must maintain compliance with general and specific selection criteria as described in § 411.315 in order to remain an EN.

■ 32. In § 411.315, add paragraphs (e) and (f) to read as follows:

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

* * * * *

(e) One-stop delivery systems established under subtitle B of title I of the Workforce Investment Act of 1998

(29 U.S.C. 2811 *et seq.*) are qualified to be ENs. A one-stop delivery system must enter into an agreement with the Commissioner to be an EN and must maintain compliance with general and specific selection criteria of this section and § 411.305 in order to remain an EN.

(f) 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. 741), are qualified to be ENs. An organization administering such a project must enter into an agreement with the Commissioner to be an EN and must maintain compliance with general and specific selection criteria of this section and § 411.305 in order to remain an EN.

■ 33. In § 411.325, revise paragraph (a) to read as follows:

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

* * * * *

(a) Report to the PM in writing each time the EN accepts a ticket for assignment or the EN no longer wants a ticket assigned to it;

* * * * *

Subpart F—[Amended]

■ 34. Revise § 411.350 to read as follows:

§ 411.350 Must a State VR agency participate in the Ticket to Work program?

A State VR agency may elect, but is not required, to participate in the Ticket to Work program as an EN. The State VR agency may elect on a case-by-case basis to participate in the Ticket to Work program as an EN, or it may elect to provide services to beneficiaries under the VR cost reimbursement option. (See § 411.115(s) for a definition of the VR cost reimbursement option.)

■ 35. In § 411.355, revise the section heading, the third sentence of the introductory text of paragraph (a), and the last sentence of paragraph (c), and remove paragraph (d) to read as follows:

§ 411.355 What payment options does a State VR agency have?

(a) * * * On a case-by-case basis, the State VR agency may participate either—

* * * * *

(c) * * * When serving a beneficiary who does not have a ticket that can be assigned pursuant to § 411.140, the State VR agency may seek payment only under the cost reimbursement payment system.

§ 411.360 [Removed]

■ 36. Remove § 411.360.

■ 37. In § 411.365, revise the section heading and paragraph (a) to read as follows:

§ 411.365 How does a State VR agency notify us about its choice of a payment system for use when functioning as an EN?

(a) The State VR agency must send 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.

* * * * *

§ 411.370 [Removed]

■ 38. Remove § 411.370.

■ 39. In § 411.385, revise the introductory text of paragraph (a) and paragraph (a)(1) to read as follows:

§ 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)). The State VR agency must submit the following information to the PM in order for the beneficiary's ticket to be considered in use:

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

* * * * *

■ 40. Revise § 411.390 to read as follows:

§ 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, the State VR agency must submit the information required in § 411.385(a) to the PM. We require this information in order for the beneficiary's ticket to be considered in use. 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, the State VR agency is limited to the cost reimbursement payment system, unless both the beneficiary and the State VR agency agree to have the ticket assigned to the State VR agency.

Subpart H—[Amended]

■ 41. In § 411.500, revise paragraphs (b), (c), (e), and (f) and add paragraphs (g) and (h) to read as follows:

§ 411.500 Definitions of terms used in this subpart.

* * * * *

(b) *Outcome Payment Period* means a period of 36 months for a title II disability beneficiary or a period of 60 months for a title XVI disability beneficiary who is not concurrently a title II disability beneficiary, not necessarily consecutive, for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of the performance of substantial gainful activity (SGA) or by reason of earnings from work activity. The outcome payment period begins with the first month, ending after the date on which the ticket was first assigned to an EN (or to a State VR agency acting as an EN), for which such benefits are not payable to the beneficiary because of SGA or by reason of earnings from work activity. The outcome payment period ends as follows:

(1) For a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary), the outcome payment period ends with the 36th month, consecutive or otherwise, ending after the date on which the ticket was first assigned to an EN (or to a State VR agency acting as an EN), for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of earnings from work activity (except as provided for in § 411.551).

(2) For a title XVI disability beneficiary who is not concurrently a title II disability beneficiary, the outcome payment period ends with the 60th month, consecutive or otherwise, ending after the date on which the ticket was first assigned to an EN (or to a State VR agency acting as an EN), for which Federal SSI cash benefits are not payable to the beneficiary by reason of earnings from work activity (except as provided for in § 411.551).

(c) *Outcome Payment System* is a system providing a schedule of payments to an EN (or a State VR agency acting as 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.

* * * * *

(e) *Outcome Payment Month* means a month, during the beneficiary's outcome payment period, for which Social

Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of work or earnings.

(f) *Outcome-Milestone Payment System* is a system providing a schedule of payments to an EN (or State VR agency acting as an EN) that includes, in addition to any outcome payments which may be made during the individual's outcome payment period, payments for completion by a title II or title XVI disability beneficiary of up to four Phase 1 milestones; and up to eleven Phase 2 milestones for a title II disability beneficiary or a concurrent beneficiary or up to eighteen Phase 2 milestones for a title XVI disability beneficiary who is not a concurrent title II disability beneficiary.

(1) *Phase 1 milestones* are based on the beneficiary achieving a level of earnings that reflects initial efforts at self-supporting employment. They are based on the earnings threshold that we use to establish a trial work period service month as defined in § 404.1592(b) of this chapter. We use this threshold amount as defined in § 404.1592(b) of this chapter in order to measure whether the beneficiary's earnings level meets the milestone objective.

(2) *Phase 2 milestones* are based on the beneficiary achieving a level of earnings that reflects substantial efforts at self-supporting employment. They are based on the earnings threshold that we use to determine if work activity is SGA. We use the SGA earnings threshold amount in § 404.1574(b)(2) of this chapter. We use the SGA threshold amounts in order to measure whether the beneficiary's gross earnings level meets the milestone objective.

(g) *Transition case* is a case where milestones or outcomes had been attained before July 21, 2008 (that is, the work required to meet such a milestone or outcome had been completed by that date). Section 411.551 explains how subsequent payments will be made to the EN (or State VR agency acting as an EN) on a transition case.

(h) *Reconciliation payment* is a final payment equal to the milestone payments that are unpaid when the beneficiary enters the outcome payment period before all the milestone payments are paid (see §§ 411.525(c) and 411.536).

■ 42. Revise § 411.505 to read as follows:

§ 411.505 How is an EN paid?

An EN (including a State VR agency acting as 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 us. (For State VR agencies, see § 411.365.) The EN (or State VR agency) may periodically change its elected EN payment system as described in § 411.515.

■ 43. In § 411.510, revise paragraph (c) to read as follows:

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

* * * * *

(c) 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, the State VR agency is limited to the cost reimbursement payment system, unless both the beneficiary and the State VR agency agree to have the ticket assigned to the State VR agency (see § 411.390).

■ 44. In § 411.515, revise paragraph (b) and remove paragraph (c) to read as follows:

§ 411.515 Can the EN change its elected payment system?

* * * * *

(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 in each calendar year (January–December) thereafter. The first EN payment system election constitutes the only election an EN may make for that calendar year.

■ 45. In § 411.525, revise the section heading, paragraphs (a)(1)(i), (a)(2), (b) and (c), and add paragraphs (d) and (e), to read as follows:

§ 411.525 What payments are available under each of the EN payment systems?

(a) * * *

(1)(i) Under the outcome payment system, we can pay up to 36 outcome payments to the EN (or State VR agency acting as an EN) for a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary). We can pay up to 60 outcome payments to the EN (or State VR agency acting as an EN) for a title XVI disability beneficiary who is not concurrently a title II disability beneficiary. For each month during the beneficiary's outcome payment period for which Social Security disability benefits and Federal SSI cash benefits are not payable to the beneficiary because of the performance of SGA or by reason of earnings from work activity, the EN (or the State VR agency acting as an EN) is eligible for a monthly outcome payment. Payment for an outcome payment month under the outcome payment system is equal to

67% of the payment calculation base for the calendar year in which such month occurs, rounded to the nearest whole dollar (see § 411.550).

* * * * *

(2) Under the outcome-milestone payment system:

(i) We can pay the EN (or State VR agency acting as an EN) for up to four Phase 1 milestones attained within the required earnings period for a title II or title XVI disability beneficiary who has assigned his or her ticket to the EN (or State VR agency acting as an EN). The first Phase 1 milestone is met when a beneficiary has worked in a month and earned at least 50% of the amount of earnings considered to represent a trial work period service month as defined in § 404.1592(b) of this chapter. The second Phase 1 milestone is met after a beneficiary has worked for three months within a six-month period and has gross earnings in each of those three months equal to or greater than a trial work period service amount as defined in § 404.1592(b) of this chapter. The third Phase 1 milestone is met after a beneficiary has worked for a total of six months within a twelve-month period and had gross earnings in each of those six months equal to a trial work period service amount as defined in § 404.1592(b) of this chapter. The fourth Phase 1 milestone is met after a beneficiary has worked a total of nine months within an 18-month period and had gross earnings in each of those nine months equal to a trial work period service amount as defined in § 404.1592(b) of this chapter and the EN has substantially completed the services agreed to in the IWP/IPE, including any amendments. Earnings used to meet the first, second or third Phase 1 milestone may be counted again when determining if a later Phase 1 milestone is met, provided the earlier earnings fall within the relevant time period for meeting the later milestone.

(ii) We can also pay the EN (or State VR agency acting as an EN) up to eleven Phase 2 milestones achieved by a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary) or up to eighteen Phase 2 milestones achieved by a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary) who has assigned his or her ticket to the EN (or State VR agency acting as an EN). A Phase 2 milestone is met for each calendar month in which the beneficiary has worked and has gross earnings from employment (or net earnings from self-employment as defined in § 404.1080 of this chapter) in that month that are more than the SGA

threshold amount as defined in § 404.1574 of this chapter.

(iii) We pay available milestone payments in sequence except when the beneficiary's outcome period begins before the beneficiary has achieved all Phase 1 and Phase 2 milestones. Example: The individual, in the first month of employment after assigning the ticket, earns above the SGA level. Despite having exceeded trial work period level earnings and earned above the SGA level as required for Phase 2 payments in paragraph (a)(2)(ii) of this section, based on the individual's earning we would pay the EN the sequentially available milestone, which in this case would be Phase 1, milestone 1.

(iv) In addition to the milestone payments, monthly outcome payments can be paid to the EN (or State VR agency acting as an EN) during the outcome payment period.

(b) The outcome-milestone payment system is designed so that the total payments to the EN (or the State VR agency acting as an EN) for a beneficiary are less than the total amount that would have been paid if the EN were paid under the outcome payment system. Under the outcome-milestone payment system, the total payment to the EN (or the State VR agency acting as an EN) is about 90% of the total that would have been potentially payable under the outcome payment system for the same beneficiary.

(c) Except as provided in § 411.536 (reconciliation payments) the milestones for which payments may be made must occur prior to the beginning of the beneficiary's outcome payment period.

(d) We will pay an EN (or State VR agency acting as an EN) to which the beneficiary has assigned a ticket for milestones or outcomes achieved only 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 (or State VR agency acting as an EN) based on a beneficiary's work or earnings activity in or after the month in which the ticket terminates.

(e) If a title XVI disability beneficiary becomes entitled to title II benefits after we authorize the first milestone or outcome payment, we will continue to calculate the EN payments using title XVI payment calculation base under the outcome payment system on the basis of paragraph (a)(1)(i) and under the outcome-milestone payment system on the basis of paragraph (a)(2). This applies even if the title XVI eligibility is subsequently terminated and the person becomes only a title II beneficiary.

§ 411.530 [Removed]

■ 46. Remove § 411.530.

■ 47. In § 411.535, revise the section heading and paragraph (a) to read as follows:

§ 411.535 Under what circumstances will milestones be paid?

(a)(1)(i) Under the outcome-milestone payment system, an EN (or a State VR agency acting as an EN) can earn up to four Phase 1 milestone payments for serving beneficiaries whose gross earnings were less than the trial work level in each of the 18 months before the ticket was first assigned to an EN. All work and earnings counted toward reaching the four Phase 1 milestones must occur after the ticket is assigned and before the beginning of the beneficiary's outcome payment period (see § 411.500(f)) except as provided in § 411.536 (reconciliation payments).

(ii) Significant work activity prior to ticket assignment will limit the availability of Phase 1 milestone payments. The PM will make this assessment of work activity prior to the first ticket assignment on each ticket, irrespective of the EN's chosen payment system, in order to determine how many milestone payments may be available for serving an individual in the Ticket to Work program. The first Phase 1 milestone payment is not available to be made to an EN if the beneficiary has worked above the trial work level in the calendar month prior to the first ticket assignment on each ticket in the Ticket to Work program. The second Phase 1 milestone payment is not available if the beneficiary has worked above the trial work level in three of the six months prior to the first ticket assignment on each ticket in the Ticket to Work program. The third Phase 1 milestone is not available if the beneficiary has worked above the trial work level in six of the twelve months prior to the first ticket assignment on each ticket in the Ticket to Work program. The fourth Phase 1 milestone is not available if the beneficiary has worked above the trial work level in nine of the 18 months prior to the first ticket assignment on each ticket in the Ticket to Work program.

(iii) If a beneficiary had a ticket that otherwise was available for assignment and chose to receive services under an IPE from a State VR agency that elected the VR cost reimbursement option, payment of Phase 1 milestones to an EN or a different VR agency acting as an EN with respect to the same ticket is precluded if the State VR Agency that elected the VR cost reimbursement option achieved an employment

outcome (as described in 34 CFR 361.56) before case closure. An EN or a different VR agency acting as an EN can be paid Phase 2 milestones as described in paragraph (2) of this section with respect to this ticket.

(2) Under the outcome-milestone payment system, an EN can receive up to eleven Phase 2 milestone payments for work by a title II disability beneficiary (including a concurrent title II/title XVI disability beneficiary), or up to eighteen Phase 2 milestone payments for work by a title XVI disability beneficiary. Earnings prior to the first assignment of the ticket in the Ticket to Work program are not taken into account when determining whether sufficient earnings exist for payment of Phase 2 milestones.

(3) If the beneficiary's outcome payment period begins before the beneficiary has achieved all Phase 1 and Phase 2 milestones, then we will pay the EN a final payment in accordance with § 411.536 (reconciliation payments) to account for unpaid milestone payments that had been available when the ticket was first assigned.

* * * * *

■ 48. Add § 411.536 to read as follows:

§ 411.536 Under what circumstances can we make a reconciliation payment under the outcome-milestone payment system?

When the beneficiary's outcome payment period begins before the beneficiary has attained all Phase 1 and Phase 2 milestones, we will pay the EN (or a State VR agency acting as an EN) a reconciliation payment. The reconciliation payment will equal the total amount of the milestone payments that were available with respect to that ticket, when the ticket was first assigned, but that have not yet been paid. The reconciliation payment will be based on the payment calculation base for the calendar year in which the first month of the beneficiary's outcome period occurs, rounded to the nearest whole dollar. The payment will be made after an EN has qualified for 12 outcome payments. Where multiple ENs had the ticket assigned at some time, the PM will apply the rule under § 411.560 to determine the allocation of the reconciliation payment.

■ 49. Revise § 411.540 to read as follows:

§ 411.540 How are the payment amounts calculated for each of the milestones?

(a) For both title II disability beneficiaries and title XVI disability beneficiaries, the payment amount for each of the Phase 1 milestone payments is equal to 120% of the payment

calculation base for title II (as defined in § 411.500(a)(1)) for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

(b) The payment amount for each of the Phase 2 milestones:

(1) For title II disability beneficiaries (including concurrent title II/title XVI disability beneficiaries) is equal to 36% of the payment calculation base as defined in § 411.500(a)(1) for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar;

(2) For title XVI beneficiaries (who are not concurrently title II disability

beneficiaries) is equal to 36% of the payment calculation base as defined in § 411.500(a)(2) for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest whole dollar.

■ 50. Revise § 411.545 to read as follows:

§ 411.545 How are the outcome payments calculated under the outcome-milestone payment system?

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

(a) For title II disability beneficiaries (including concurrent title II/title XVI

disability beneficiaries), an outcome payment is equal to 36 percent of the payment calculation base as defined in § 411.500(a)(1) for the calendar year in which the month occurs, rounded to the nearest whole dollar;

(b) For title XVI disability beneficiaries (who are not concurrently title II/title XVI disability beneficiaries), an outcome payment is equal to 36% of the payment calculation base as defined in § 411.500(a)(2) for the calendar year in which the month occurs, rounded to the nearest whole dollar.

(c) The following chart provides an example of how an EN could receive milestone and outcome payments:

OUTCOME-MILESTONE PAYMENT TABLE
CHART I—NEW OUTCOME-MILESTONE PAYMENT TABLE
 [2008 figures for illustration only]

| Payment type | Beneficiary earnings | Title II amount of payment | Title XVI amount of payment |
|---------------------------------------|---|----------------------------|-----------------------------|
| Phase 1 (120% of Title II PCB) | | | |
| Milestone 1 | \$335/mo. \$670/mo. × 3 mo. work in a 6-month period. | \$1,177 | \$1,177 |
| Milestone 2 ..... | ..... | \$1,177 | \$1,177 |
| Milestone 3 | \$670/mo. × 6 mo. work in a 12-month period | \$1,177 | \$1,177 |
| Milestone 4 | \$670/mo. × 9 mo. work in an 18-month period | \$1,177 | \$1,177 |
| Total Phase 1 milestones ..... | ..... | \$4,708 | \$4,708 |
| Phase 2 (36% of PCB) | Gross Earnings>SGA | | |
| Title II milestones 1–11 ..... | ..... | \$353 × 11=\$3,883 | |
| Title XVI milestones 1–18 ..... | ..... |  | \$203 × 18 = \$3,654 |
| Total Phase 1 + 2 ..... | ..... | \$8,591 | \$8,362 |
| Title II = 1–36 | Outcome payments (36% of PCB). | | |
| Title XVI = 1–60 | Monthly cash benefit not payable due to SGA | \$353 × 36 = \$12,708 | |
| | Sufficient earnings for federal cash benefits = "0". | 203 × 60 = \$12,180. | |
| Total milestone and outcome payments. | ..... | \$21,299 | \$20,542 |

Definitions and amounts: Payment Calculation Base (PCB)—The average title II disability insurance benefit payable under section 223 of the Social Security Act for all beneficiaries for months during the preceding calendar year; and the average payment of supplemental security income benefits based on disability payable under title XVI (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who have attained 18 years of age but have not attained 65 years of age. (2008 title II = \$981.17, title XVI = \$563.35).

Gross earnings requirements for Phase 1 are based on Trial Work level amounts.

For Phase 1 milestones only, the payments are calculated for both title XVI and title II beneficiaries using the

higher title II payment calculation base. All other payments are based on a percentage of the Payment Calculation Base (PCB) for the respective program (title XVI or title II). See § 411.535 for a discussion of the circumstances under which we will pay milestones.

Phase 1 milestones = 120% of PCB.

Phase 2 milestones = 36% of PCB.

Outcome payments (under the outcome-milestone payment system) = 36% of PCB Earnings used to meet the first, second, or third Phase 1 milestone may be counted again when determining if a later milestone is met, provided the earlier earnings fall within the relevant time period for meeting the later Phase 1 milestone (see 411.525(a)(2) for the relevant time period for each milestone).

■ 51. Revise § 411.550 to read as follows:

§ 411.550 How are the outcome payments calculated under the outcome payment system?

The amount of each monthly outcome payment under the outcome payment system is calculated as follows:

(1) For title II disability beneficiaries (including concurrent title II/title XVI disability beneficiaries), an outcome payment is equal to 67% of the payment calculation base as defined in § 411.500(a)(1) for the calendar year in which the month occurs, rounded to the nearest whole dollar;

(2) For title XVI disability beneficiaries (who are not concurrently title II/title XVI disability beneficiaries), an outcome payment is equal to 67% of the payment calculation base as defined

in § 411.500(a)(2) for the calendar year in which the month occurs, rounded to the nearest whole dollar.

CHART II.—NEW OUTCOME PAYMENT SYSTEM TABLE—TITLE II AND CONCURRENT
[2008 figures for illustration only]

| Payment type | Beneficiary earnings | Title II amount of monthly outcome payment | Title II total outcome payments |
|--|---|--|---------------------------------|
| Outcome payments 1–36 (67% of PCB) | Monthly cash benefit not payable due to SGA | \$657.00 | \$23,652 |

CHART III.—NEW OUTCOME PAYMENT SYSTEM TABLE—TITLE XVI ONLY
[2008 figures for illustration only]

| Payment type | Beneficiary earnings | Title XVI amount of monthly outcome payment | Title XVI total outcome payments |
|--|---|---|----------------------------------|
| Outcome payments 1–60 (67% of PCB) | Earnings sufficient to “0” out Federal SSI cash benefits. | \$377.00 | \$22,620 |

Note: Outcome payment (outcome payment system) = 67% of PCB Individual payments are rounded to the nearest dollar amount.
2008 non-blind SGA level = \$940.
2008 Blind SGA = \$1570.
2008 TWP service amount = \$670.

■ 52. Add § 411.551 to read as follows:

§ 411.551 How are EN payments calculated for transition cases pending on July 21, 2008?

A *Transition case* is a case where a ticket had been assigned and milestones or outcomes had been attained as of June 30, 2008 (that is, the individual has completed the necessary work to trigger a milestone or outcome payment before July 21, 2008 regardless of whether the payment has actually been made). We will pay outcome and milestone payments at the rate in effect when the work leading to such outcome or milestone is attained. Since milestone and outcome payments are numbered and attained in sequence, the EN must request the final payment for which it expects payment under the prior rules before we can determine the number of the milestone or outcome payment that represents the first payment after July 21, 2008. In addition, for cases on which an EN has attained an outcome payment before July 21, 2008 we must know the sum of the amount paid on the ticket before we can determine the remaining amount that can be paid in outcome payments on the ticket. Therefore, with respect to a ticket, we will only accept payment requests for milestones or outcomes attained under the prior rules until March 31, 2009 or until we make the first payment on the ticket under § 411.525. Payments to an EN (or State VR agency acting as an EN) after July 21, 2008 on a transition case will be made as follows:

(a) The four milestones under the prior rules will be equated with the four Phase 1 milestones available under the rules after July 21, 2008. For example, if a beneficiary had attained milestone 1 under our prior rules (1 month above the gross SGA level, e.g., \$940 in 2008), then the next milestone to be achieved would be Phase 1 milestone 2 under these rules (work in three months with gross earnings in each of these months equal to a trial work period service month, e.g., \$670 in 2008).

(b) If the beneficiary had attained all four of the milestones under the prior rules, the next milestone to be achieved would be the first Phase 2 milestone (a calendar month in which the beneficiary has worked and has gross earnings from employment or net earnings from self-employment that are more than the substantial gainful activity threshold level, e.g., \$900 in 2007).

(c) The maximum number of outcome payments available to an EN with respect to a ticket for a transition case will be computed as follows:

(1) First, we will compute the total dollar amount already paid or payable with respect to a ticket, including all outcome and milestone payments.

(2) Then, we will subtract the total dollar amount already paid from the total value of the ticket under the new rules for the year when these rules take effect. The total value of the ticket will be calculated based on the elected payment system for the beneficiary, i.e., the outcome or the outcome-milestone payment system, and on the appropriate payment calculation base for either a title II disability beneficiary (including a concurrent title II and title XVI disability) or a title XVI disability

beneficiary (see §§ 411.500 and 411.505). For accounting purposes, we will use the payment calculation base for 2008 and assume that all payments could be earned in that year in calculating the total value of the ticket.

(3) We then will divide this amount by the applicable outcome payment amount (whether title II or title XVI) payable for 2008 and round the result in accordance with customary rounding principles. The resulting number represents the number of outcome payments available to be paid with respect to the ticket. In no case can this number exceed 60.

■ 53. Add § 411.552 to read as follows:

§ 411.552 What effect will the subsequent entitlement to title II benefits have on EN payments for title XVI beneficiaries after they assign their ticket?

If a beneficiary is only eligible for title XVI benefits when we authorize the first milestone or outcome for which an EN can be paid, but the beneficiary later becomes entitled to title II benefits, we will continue to make payments as though the beneficiary were only a title XVI beneficiary, up to the maximum number of milestone and outcome payments payable for that ticket for title XVI beneficiaries. If a beneficiary who is eligible for title XVI disability benefits becomes entitled to title II disability benefits before we authorize the first milestone or outcome payment, we will make payments to the EN pursuant to the rate, payment calculation base and number of payments available for title II beneficiaries, as described in this subpart.

■ 54. Revise § 411.555 to read as follows:

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

(a) Yes. The EN (or State VR agency acting as an EN) can keep each milestone and outcome payment for which the EN (or State VR agency acting as an EN) is eligible, even though the title II beneficiary does not achieve all 36 outcome months or the title XVI beneficiary does not achieve all 60 outcome months.

(b) Except as provided in paragraph (c) of this section, payments which we make or deny to an EN (or a State VR agency acting 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 an allocation of payment under § 411.560.

(c) If we determine that an overpayment or underpayment to an EN has occurred, we will notify the EN (or State VR agency acting as an EN) of the adjustment. We will not seek an adjustment if a determination or decision about a beneficiary's right to benefits causes an overpayment to the EN. 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).

■ 55. Revise § 411.560 to read as follows:

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

It is possible for more than one EN (including a State VR agency acting as an EN) to receive payment based on the same milestone or outcome. If the beneficiary has assigned the ticket to more than one EN (or State VR agency acting as an EN) at different times, and more than one EN (or State VR agency) requests payment for the same milestone, outcome or reconciliation payment under its elected payment system, the PM will make a determination of the allocation of payment to each EN (or State VR agency acting as an EN). The PM will make this determination based upon the contribution of the services provided by each EN (or State VR agency acting as an 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 (including a State VR agency acting as an EN).

■ 56. Revise § 411.565 to read as follows:

§ 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 (or State VR agency acting as an EN) according to its elected EN payment system in effect at the time the beneficiary assigned the ticket to the EN (or the State VR agency acting as an EN).

■ 57. Add § 411.566 to read as follows:

§ 411.566 May an EN use outcome or milestone payments to make payments to the beneficiary?

Yes, an EN may use milestone or outcome payments to make payments to a beneficiary.

■ 58. In § 411.575, revise the introductory text; paragraph (a)(1) introductory text; and paragraphs (a)(1)(i), (a)(2), (b)(1) introductory text, (b)(1)(ii), and (b)(2); and add paragraph (c) to read as follows:

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

The EN (or State VR agency acting as an EN) will send its request for payment, evidence of the beneficiary's work or earnings, and other information to the PM. In addition, we or the PM may require a summary of the services provided as described in the IWP/IPE.

(a) *Milestone payments.* (1) We will pay the EN (or State VR agency acting as an EN) for milestones only if—

(i) The outcome-milestone payment system was the EN's (or State VR agency's) elected payment system in effect at the time the beneficiary assigned a ticket to the EN (or the State VR agency acting as an EN);

(2) The EN (or State VR agency acting as an EN) must request payment for each milestone attained by a beneficiary who has assigned a ticket to the EN (or State VR agency acting as an EN). The request must include evidence that the milestone was attained after ticket assignment and other information as we may require to evaluate the EN's (or State VR agency's) request. If the EN is requesting payment for months after the ticket is no longer assigned to it, the payment request shall include evidence that the services agreed to in the IWP/IPE were provided and those services contributed to the employment milestones or outcomes that the beneficiary attained in months after the ticket had been assigned to the EN. We do not have to stop monthly benefit payments to the beneficiary before we can pay the EN (or State VR agency

acting as an EN) for milestones attained by the beneficiary.

(b) *Outcome payments.* (1) We will pay an EN (or State VR agency acting as an EN) an outcome payment for a month if—

* * * * *

(ii) We have not already paid for 36 outcome payment months for a title II disability beneficiary (or a concurrent title II/title XVI disability beneficiary), or paid for 60 outcome payment months for a title XVI disability beneficiary who is not concurrently a title II disability beneficiary, on the same ticket; and

* * * * *

(2) The EN (or State VR agency acting as an EN) must request payment for outcome payment months. In its initial request, the EN (or State VR agency acting as an 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, or an unaltered copy of the beneficiary's pay stub). After we have started paying outcome payments to an EN (or State VR agency acting as an EN) based on evidence of the beneficiary's earnings, the EN (or State VR agency) must provide documentation of the beneficiary's continued work or earnings in such a manner or form and at such time or times as we may require. Exception: If the EN (or State VR agency) does not currently hold the ticket because it is assigned to another EN (or State VR agency), the EN (or State VR agency) must request payment, but is not required to submit evidence of the beneficiary's work or earnings. However, if the payment request is for work the beneficiary attained in a month in which the EN no longer held the ticket, the payment request should include evidence that the services agreed to in the IWP/IPE were provided and those services contributed to the beneficiary's work.

(c) *Evidence requirements for payment.* As primary evidence, we require original pay slips, or oral or written statements from an employer or the employer's designated payroll preparer. In lieu of primary evidence, we accept two sources of secondary evidence, such as photocopies of pay slips, a signed beneficiary statement, State unemployment records or federal/state tax returns. The evidence must be clear and legible and include the beneficiary's name, gross earnings or net earnings from self employment, pay date and pay period of wages or monthly net earnings of self-employment earnings.

■ 59. Revise § 411.580 to read as follows:

§ 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 (or State VR agency acting as an EN) may be paid only for milestones or outcome payment months that are achieved after the month in which the ticket is assigned to the EN or State VR agency acting as an EN (except as provided for in § 411.536).

■ 60. Add a new § 411.581 to read as follows:

§ 411.581 Can an EN receive milestone and outcome payments for months after a beneficiary takes his or her ticket out of assignment?

Yes. If an individual whose ticket is assigned to an EN (or State VR agency acting as an EN) takes his or her ticket out of assignment (see § 411.145), the EN (or State VR agency) can receive payments under its elected payment system for milestones or outcome payment months that occur after the ticket is taken out of assignment, provided the ticket has not terminated for any of the reasons listed in § 411.155. The PM will make a determination about eligibility for a payment based upon the contribution of services provided by an EN toward the achievement of the outcome or milestones. See § 411.560 for situations in which payment may be made to more than one EN or State VR agency based on the same milestone or outcome.

■ 61. Add a new § 411.582 to read as follows:

§ 411.582 Can a State VR agency receive payment under the cost reimbursement payment system if a continuous 9-month period of substantial gainful activity is completed after the ticket is assigned to an EN?

Yes. If a State VR agency provides services to a beneficiary under 34 CFR part 361, and elects payment under the cost reimbursement payment system under subpart V of part 404 (or subpart V of part 416) of this chapter, the State VR agency can receive payment under the cost reimbursement payment system for services provided to the beneficiary if all the requirements under subpart V of part 404 (or subpart V of part 416) of this chapter and § 411.585 are met even when these requirements are met after the ticket has been assigned to the EN. The EN can be paid during this period in accordance with §§ 411.525 and § 411.535.

■ 62. Revise § 411.585 to read as follows:

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

Yes. A State VR agency and an EN can both receive payment for serving the same beneficiary, but the ticket can only be assigned to one EN, including a State VR agency acting as an EN, at a time. It also cannot be assigned to an EN and placed in the VR cost reimbursement status at the same time.

(a) A State VR agency may act as an EN and serve a beneficiary. In this case, both the State VR agency acting as an EN and another EN may be eligible for payment based on the same ticket (see § 411.560).

(b) If a State VR agency is paid by us under the VR cost reimbursement option, such payment does not preclude payment by us to an EN or to another

State VR agency acting as an EN under its elected EN payment system. A subsequent VR agency also may choose to be paid under the VR cost reimbursement option.

(c) If an EN or a State VR agency acting as an EN is paid by us under one of the EN payment systems, that does not preclude payment by us to a different State VR agency under the VR cost reimbursement option. The subsequent State VR agency also may choose to be paid under its elected EN payment system.

§ 411.587 [Removed]

■ 63. Remove § 411.587.

■ 64. In § 411.590, revise paragraph (d) to read as follows:

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

* * * * *

(d) Determinations or decisions we make about a beneficiary's right to benefits may cause payments we have already made to an EN (or denial of payment to an EN) to be incorrect, resulting in an underpayment or overpayment to the EN. If this happens, we will make any necessary adjustments to future payments (see § 411.555). See § 411.555(c) for when we will not make an adjustment in a case in which an overpayment results from a determination or decision we make about a beneficiary's right to benefits.) 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.

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