SOCIAL SECURITY ADMINISTRATION'S PROPOSAL TO IMPLEMENT RETURN TO WORK LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

FEBRUARY 28, 2001

Serial No. 107–3

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

73–529 WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: (202) 512–1800 Fax: (202) 512–2250
Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON WAYS AND MEANS

BILL THOMAS, California, *Chairman*

PHILIP M. CRANE, Illinois
E. CLAY SHAW, JR., Florida
NANCY L. JOHNSON, Connecticut
AMO HOUGHTON, New York
WALLY HERGER, California
JIM MCCRERY, Louisiana
DAVE CAMP, Michigan
JIM RAMSTAD, Minnesota
JIM NUSSLE, Iowa
SAM JOHNSON, Texas
JENNIFER DUNN, Washington
MAC COLLINS, Georgia
ROB PORTMAN, Ohio
PHIL ENGLISH, Pennsylvania
WES WATKINS, Oklahoma
J.D. HAYWORTH, Arizona
JERRY WELLER, Illinois
KENNY C. HULSHOF, Missouri
SCOTT MCINNIS, Colorado
RON LEWIS, Kentucky
MARK FOLEY, Florida
KEVIN BRADY, Texas
PAUL RYAN, Wisconsin

CHARLES B. RANGEL, New York
FORTNEY PETE STARK, California
ROBERT T. MATSUI, California
WILLIAM J. COYNE, Pennsylvania
SANDER M. LEVIN, Michigan
BENJAMIN L. CARDIN, Maryland
JIM MCDERMOTT, Washington
GERALD D. KLECZKA, Wisconsin
JOHN LEWIS, Georgia
RICHARD E. NEAL, Massachusetts
MICHAEL R. MCNULTY, New York
WILLIAM J. JEFFERSON, Louisiana
JOHN S. TANNER, Tennessee
XAVIER BECERRA, California
KAREN L. THURMAN, Florida
LLOYD DOGGETT, Texas
EARL POMEROY, North Dakota

ALLISON GILES, *Chief of Staff*
JANICE MAYS, *Minority Chief Counsel*

SUBCOMMITTEE ON SOCIAL SECURITY

E. CLAY SHAW, Florida, *Chairman*

SAM JOHNSON, Texas
MAC COLLINS, Georgia
J.D. HAYWORTH, Arizona
KENNY C. HULSHOF, Missouri
RON LEWIS, Kentucky
KEVIN BRADY, Texas
PAUL RYAN, Wisconsin

ROBERT T. MATSUI, California
LLOYD DOGGETT, Texas
BENJAMIN L. CARDIN, Maryland
EARL POMEROY, North Dakota
XAVIER BECERRA, California

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Ways and Means are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

CONTENTS

SOCIAL SECURITY ADMINISTRATION'S PROPOSAL TO IMPLEMENT RETURN TO WORK LEGISLATION

WEDNESDAY, FEBRUARY 28, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, DC

The Subcommittee met, pursuant to notice, at 2 p.m., in room B–318 Rayburn House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee), presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE
February 21, 2001
No. SS–1

CONTACT: (202) 225–9263

Shaw Announces Hearing on Social Security Administration's Proposal to Implement Return to Work Legislation

Congressman E. Clay Shaw, Jr. (R–FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the Social Security Administration's proposed regulation to implement portions of the "Ticket to Work and Work Incentives Improvement Act of 1999." **The hearing will take place on Wednesday, February 28, 2001, in room B–318 Rayburn House Office Building, beginning at 2:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Invited witnesses will include representatives of the Ticket to Work and Work Incentives Advisory Panel, consumer advocates, and rehabilitation service providers. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Social Security Disability Insurance (SSDI) program insures working Americans and their families against the loss of income due to disability. The Supplemental Security Income (SSI) program supplements the income of aged, blind, or disabled individuals with limited income and resources. About 6.6 million people now receive SSDI benefits and nearly 5.2 million disabled adults and children receive SSI benefits. Despite implementation of the Americans With Disabilities Act and advances in treatment, rehabilitation, and assistive technology, less than one percent of these beneficiaries re-enter the workforce each year due to successful rehabilitation.

The "Ticket to Work and Work Incentives Improvement Act of 1999" (P.L. 106–170) was designed to assist Americans with disabilities in obtaining and keeping jobs through expanded access to a broader range of vocational rehabilitation and employment support services and extended health care coverage for those who return to work. This Act created a Ticket to Work and Self-Sufficiency program which authorizes the Commissioner of Social Security to provide SSDI and disabled SSI beneficiaries with tickets to use to obtain employment services, vocational rehabilitation services, and other services from employment networks of their choosing to help beneficiaries re-enter the workforce. The Social Security Administration (SSA) will pay employment networks for services provided after beneficiaries have returned to the workforce or have met other goals designed to prepare them for sustained employment.

On December 28, 2000, SSA published a notice of proposed rulemaking to implement the Ticket to Work and Self-Sufficiency program. Public comments are due by February 26, 2001.

In announcing the hearing, Chairman Shaw stated: "The Ticket to Work and Work Incentives Improvement Act represents landmark legislation aimed at transforming Social Security disability programs from programs of dependency to programs of opportunity. I'm pleased that President Bush, through his 'New Freedom Initiative' has committed to sign an Order to support 'effective and swift' implementation of the Ticket to Work legislation. The details of how SSA proposes to implement this new law will determine its success. I look forward to hearing our witnesses' assessment of those details."

FOCUS OF THE HEARING:

During the hearing, the Subcommittee will consider the views of program experts, consumer advocates, and service providers on SSA's proposed regulation to implement the Ticket to Work and Self-Sufficiency program.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their name, address, and hearing date noted on a label, by the close of business, Wednesday, March 14, 2001, to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Social Security office, room B–316 Rayburn House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.
4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman SHAW. Good afternoon. I would begin with welcoming our new Subcommittee members, Mr. Lewis of Kentucky and Mr. Brady of Texas, Mr. Ryan of Wisconsin—neither of whom is here at the moment—and Mr. Becerra of California and Mr. Pomeroy of North Dakota.

Today we convene our first Subcommittee hearing on the 107th Congress to examine the Social Security Administration's proposed regulation to implement portions of the Ticket to Work and Work Incentives Improvement Act of 1999.

This landmark, bipartisan legislation transforms Social Security disability programs from programs of dependency to programs of opportunity, reducing barriers to equality that Americans with disabilities face. As part of President Bush's New Freedom Initiative, which will help integrate Americans with disabilities into the work force and into community life, the President will order effective and swift implementation of the Ticket to Work law.

The effectiveness of the Social Security Administration's implementation of this law will ultimately determine its success. Recognizing the depth of this challenge, the law provided for the creation of a Ticket to Work Advisory Panel to advise the Commissioner, the President and the Congress on issues related to work incentive programs, including the Ticket to Work and Self-Sufficiency program, where we focus our examination today.

This 12-member Panel represents a cross-section of individuals, several of whom are former or current beneficiaries, with vast experience and expert knowledge in employment services and vocational rehabilitation.

The Panel makes its first appearance before the Congress today. I am pleased to welcome two of the House-appointed Panel members, Mr. Start and Ms. Gracechild, to discuss the outstanding work completed thus far by the Panel.

Our second witness panel includes consumer advocates and representatives of service provider associations, each of whom provided this Subcommittee with immeasurable assistance in crafting and advancing the Ticket legislation.

As the old expression says, "The devil is in the details." Today we will examine the details of how the agency plans to implement the law and whether those details work in the eyes of those most knowledgeable about Americans with disabilities and the supports they need to achieve financial independence.

We may find a few devils here and there, but I am confident that, once appointed, the new leadership of the Social Security Administration will closely scrutinize all comments received and ultimately implement a Ticket program that achieves intended results, namely, opportunity, choice, jobs and independence. Americans with disabilities deserve nothing less.

[The opening statement of Chairman Shaw follows:]

Opening Statement of the Hon. E. Clay Shaw, Jr., M.C., Florida, and Chairman, Subcommittee on Social Security

Good afternoon. First, let me say how pleased I am to welcome our new Subcommittee Members, Mr. Lewis of Kentucky, Mr. Brady of Texas, Mr. Ryan of Wisconsin, Mr. Becerra of California, and Mr. Pomeroy of North Dakota.

Today we convene our first Subcommittee hearing of the 107th Congress to examine the Social Security Administration's proposed regulation to implement portions of the Ticket to Work and Work Incentives Improvement Act of 1999.

This landmark, bipartisan legislation transforms Social Security disability programs from programs of dependency to programs of opportunity, reducing barriers to equality that Americans with disabilities face. As part of President Bush's "New Freedom Initiative" which will help integrate Americans with disabilities into the workforce and into community life, the President will order "effective and swift" implementation of the Ticket to Work law.

The Social Security Administration's implementation of this law will ultimately determine its success. Recognizing the depth of this challenge, the law provided for the creation of a Ticket To Work Advisory Panel to advise the Commissioner, the President, and the Congress on issues related to work incentive programs, including

the Ticket to Work and Self-Sufficiency program, where we focus our examination today.

This 12 member panel represents a cross-section of individuals, several of whom are former or current beneficiaries, with vast experience and expert knowledge in employment services and vocational rehabilitation.

The Panel makes its first appearance before the Congress today. I am pleased to welcome two of the House-appointed Panel members, Mr. Start and Ms. Gracechild, to discuss the outstanding work completed thus far by the Panel.

Our second witness panel includes consumer advocates and representatives of service provider associations, each of whom provided this Subcommittee with immeasurable assistance in crafting and advancing the Ticket legislation.

As the old expression says, "the devil is in the details." Today, we will examine the details of how the agency plans to implement the law and whether those details work in the eyes of those most knowledgeable about Americans with disabilities and the supports they need to achieve financial independence.

We may find a few "devils" here and there, but I am confident that once appointed, the new leadership of the Social Security Administration will closely scrutinize all comments received and ultimately implement a ticket program that achieves intended results, namely: opportunity, choice, jobs, and independence. Americans with disabilities deserve nothing less.

Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Mr. Chairman, I would like to begin by thanking you for holding today's hearing. I look forward to working with you and members of the disability community, vocational rehabilitation providers, and Social Security Administration to ensure that the Ticket to Work and Work Incentive Act is implemented successfully.

The 106th Congress made great strides in assisting people with disabilities as they return to work by enacting the Ticket to Work and Work Incentives Improvement Act. Once fully implemented, this act will help disabled Social Security beneficiaries to receive rehabilitation services that best meet their needs. The act also provides disabled beneficiaries with extended Medicare and Medicaid coverage by increasing the likelihood that they will be able to remain at work.

During today's hearing, we will hear from a number of witnesses about the Social Security Administration's plans to implement the Ticket portion of the act and whether the regulations proposed by SSA will maximize beneficiaries' access to the services that they need.

In particular, we will hear from two members of the Ticket to Work and Work Incentives Advisory Panel, as the Chairman mentioned, Mr. Stephen Start and Frances Gracechild. Ms. Gracechild is from my home district in Sacramento, and she is the Executive Director of the Resources for Independent Living in California, and her talent and leadership has helped many of my constituents in California and throughout the State to live more fulfilling and self-fulfilling lives. I want to thank both of you for your services, obviously, to our communities.

Since the Advisory Panel first met last July, it has gone on to great lengths to solicit the public views about the Ticket to Work Act and about what needs to be done to ensure that it is implemented properly. I look forward to hearing from Mr. Start and Ms. Gracechild about the information, lessons and suggestions that they have taken away from these meetings.

I would also like to welcome the other witnesses and thank them for the insights that they will provide on best how to implement this act.

Today's hearing will provide opportunities for the Advisory Panel, vocational rehabilitation providers and beneficiary groups to describe the specific changes to the proposed regulations that are necessary if the Ticket to Work Act is to be successful, a goal that certainly every one of us shares.

I believe that another goal Congress had in mind when we passed the legislation was to enable as many of the beneficiaries as possible to participate in this program. In keeping with that goal, it is imperative that the SSA modify the proposed regulations to allow beneficiaries who have been designated as Medical Improvement Expected, MIE, to be eligible for the Ticket.

I also am concerned that the payment structure proposed by the regulations may discourage vocational rehabilitation providers from serving beneficiaries with more complex needs, the very people who obviously need the Ticket program the most. Not all beneficiaries will be able to reach independence at the same period of time, and SSA must be able to make reasonable accommodations for the participants whose progress does not follow a predetermined path.

Finally, beneficiaries who find themselves in a dispute with the vocational rehabilitation provider must be given access to a fair and timely appeals process, including the options to request a judicial review.

So, Mr. Chairman, I again thank you for last year the bipartisan spirit that we were able to pass this legislation and certainly all of us look forward to working with you. Mr. Stark has a statement as well, and he requested that I seek permission to introduce it for the record.

Chairman SHAW. Who was that?

Mr. MATSUI. Mr. Stark.

Chairman SHAW. Oh, okay. Well, without objection, all of the members will have the ability to insert any opening statements or remarks that they might wish into the record.

[The opening statement of Mr. Matsui follows:]

Opening Statement of the Hon. Robert T. Matsui, M.C., California

I would like to begin by thanking Chairman Shaw for holding today's hearing. I look forward to working with Chairman Shaw, members of the disability community, vocational rehabilitation providers, and the Social Security Administration to ensure that the Ticket to Work and Work Incentives Act is implemented successfully.

The 106th Congress made great strides in assisting people with disabilities as they return to work by enacting the Ticket to Work and Work Incentives Improvement Act. Once fully implemented, this Act will help disabled Social Security beneficiaries receive the rehabilitation services that best meet their needs. The Act also provides disabled beneficiaries with extended Medicare and Medicaid coverage to increase the likelihood that they will be able to remain at work.

During today's hearing, we will hear from a number of witnesses about the Social Security Administration's plans to implement the "Ticket" portion of the Act and whether the regulations proposed by SSA will maximize beneficiaries' access to the services they need.

In particular, we will hear from two members of the Ticket to Work and Work Incentives Advisory Panel—Mr. Stephen Start and Ms. Frances Gracechild, from my home district of Sacramento. Ms. Gracechild is the Executive Director of Resources for Independent Living in California, and her talented leadership has helped many

of my constituents to live more fulfilling and self-sufficient lives. Ms. Gracechild, thank you for your service to our community.

Since the Advisory Panel first met last July, it has gone to great lengths to solicit the public's views about the Ticket to Work Act and about what needs to be done to ensure that it is implemented properly. I look forward to hearing from Mr. Start and Mrs. Gracechild about the information, lessons, and suggestions that the Panel took away from those meetings.

I would also like to welcome our other witnesses and thank them for the insights that they will provide on how best to implement the Act.

Today's hearing will provide the opportunity for the Advisory Panel, vocational rehabilitation providers, and beneficiary groups to describe the specific changes to the proposed regulations that are necessary if the Ticket to Work Act is to be a success—a goal that every one of us shares.

I believe that another goal Congress had in mind when we passed the Ticket to Work Act was to enable as many beneficiaries as possible to participate in the program. In keeping with that goal, it is imperative that SSA modify the proposed regulations to allow beneficiaries who have been designated as "medical improvement expected" to be eligible for a ticket.

I also worry that the payment structure proposed in the regulations may discourage vocational rehabilitation providers from serving beneficiaries with more complex needs—the very people who need the Ticket Program the most. Not all beneficiaries will be able to reach independence in the same time period, and the SSA must be able to make reasonable accommodations for participants whose progress does not follow a predetermined path.

Finally, beneficiaries who find themselves in a dispute with a vocational rehabilitation provider must be given access to a fair and timely appeals process, including the option to request a judicial review.

In conclusion, I would like to note that earlier this month, Congressman Pete Stark, the Ranking Member of the Subcommittee on Health, and I joined together earlier this month to introduce H.R. 481, the "Disabled Workers Opportunity Act of 2001." One of the key pieces of the Ticket to Work Act is an extension of Medicare coverage for people with disabilities who return to work.

Many beneficiaries who return to work will continue to struggle with serious medical conditions throughout their lives and will require seamless health care coverage. In response to this need, H.R. 481 builds upon the progress made by the Ticket to Work Act and provides permanent Medicare coverage for beneficiaries who return to work but who continue to experience a disability.

[The statement of Mr. Stark follows:]

Statement of the Hon. Fortney Pete Stark, a Representative in Congress from the State of California

I am pleased to participate in today's hearing on proposed regulations for the Ticket-to-Work and Work Incentives Improvement Act. This important legislation extends and improves healthcare and vocational rehabilitation opportunities for people with disabilities. Appropriate regulations are vital to its success and today's hearing provides a chance to understand and incorporate key stakeholder perspectives.

While the Ticket-to-Work and Work Incentives Improvement Act has the potential to transform many lives, I believe it does not go far enough in one fundamental respect. Instead of allowing disabled workers to permanently retain access to health insurance, people with disabilities who have worked a total of 8.5 years (whether consecutive or not) will lose their Medicare benefits under existing law.

While 8.5 years may sound like a sufficient transition period, managing a physical or mental disability is a lifelong process. Someone with a spinal cord injury or a serious mental illness can face health challenges and vulnerabilities throughout their lives. The original version of the Work Incentives bill recognized this fact and there was broad bipartisan support for providing permanent coverage under Medicare.

That is why I introduced the Disabled Workers Opportunity Act (HR 481) together with Rep. Matsui and several additional colleagues. Our legislation would improve the Ticket-to-Work and Work Incentive Improvement Act by making Medicare coverage permanent for disabled, working beneficiaries who qualify for SSDI. This small but critical fix will help remove an ongoing barrier facing disabled workers—the threat of losing healthcare coverage after returning to work.

President Bush's New Freedom Initiative shares the same goal as our disabled workers bill—to help people with disabilities become permanent working members

of our community. I look forward to working with President Bush and my Congressional colleagues to pass this small, but important piece of legislation that would make a real difference in the lives of those people on SSDI who are able and willing to remain in our workforce.

Chairman SHAW. To again introduce the first panel, who has been introduced twice now, we have Stephen L. Start; he is Chief Executive Officer of S.L. Start and Associates, Spokane, Washington; and Ms. Frances Gracechild, who is a member of the Ticket to Work and Work Incentive Advisory Panel and Executive Director of Resources for Independent Living, Inc. in Sacramento, California.

Welcome, both of you. And for all of the witnesses today, your full statement will be made a part of the record, and you may summarize as you see fit.

Mr. Start.

Mr. START. Chairman Shaw, in preparing my remarks today, Frances was given the task of doing a general overview of our recommendations, so I would recommend that we start with her and then follow with myself, if you don't mind.

Chairman SHAW. I have no problem with that. Ladies first, anyway.

Ms. Gracechild.

STATEMENT OF FRANCES GRACECHILD, MEMBER, TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL, AND EXECUTIVE DIRECTOR, RESOURCES FOR INDEPENDENT LIVING, INC., SACRAMENTO, CALIFORNIA

Ms. GRACECHILD. Good afternoon, Chairman Shaw, Congressman Matsui and other Subcommittee members and staff who have helped make this meeting possible.

I, first of all, want to thank my beloved Congressman from my home district for appointing me to the Panel. We have been working hard, and I hope we have a telling report for you today.

Mr. Chairman, you are exactly right, the devil is in the details; and it is 31 pages of details which I promise I will not read to you today. Your staff will probably be digesting it for you. I have the sweet and short comments that will highlight our recommendations. Many of them our Congressman alluded to, and you will hear them again as I speak them.

I am Frances Gracechild, and I am pleased to be here. Our Panel has been holding official meetings since July of 2000. We have held 12 days of public meetings, we have had seven public conference calls, and we have provided ample opportunity for the public input. We have received over 25 hours of public comments and 100 sets of written comments.

Throughout the country, from our regional meetings and our teleconferences, we have been hearing that there needs to be much more public outreach and public education. The disability community in the 13 roll-out States—and if you need to be refreshed on which States those are, I could read them to you later, or they are probably in your briefing packets—those 13 States and other providers have expressed great concern to us over the roll-out sched-

ule. They are apprehensive at the thought that hundreds of thousands of beneficiaries will be receiving a ticket and might not know even what it is or how to use it and put it in use. Some comments have even suggested that the agency might consider reopening the public comment for an additional 60 days and using the first 30 days as a massive public education blitz.

I want to be very careful that you understand this is not an official recommendation of the Panel. I am simply the messenger here, that we have heard this in several different places throughout the country.

I will give you some very specific and official recommendations in a minute, but I did want to get that on record.

It is for these reasons that our chairperson, Sarah Wiggins Mitchell, who was appointed by the President and is dearly loved by our Panel and is doing an excellent job but was unable, because of her other responsibilities, to be here, she recently wrote to the Acting Commissioner Halter to express the Panel's concerns that Social Security proceed very carefully in implementing this first roll-out phase.

Specifically, the majority of the Panel members believe that the agency should delay two things, and I would like to read them very slowly to you into the record. One, we would like to delay the distribution of tickets until the final rules are issued; and, two, we would like to delay the publishing of the RFP, the Request for Proposal, for employment networks for at least 2 months until after the close of the public comment period. Now, you may recall that the public comment period closed earlier this week, Monday, February 26th, so we are talking about delaying until the end of April.

In the area of the Ticket to Work and beneficiary use of the regulations, the proposed regulations, the Panel is proposing the following: We would like you to think carefully about not excluding 16- and 17-year-old beneficiaries from the Ticket program. This could send the wrong message. Not all transition-age youth will want to participate in the program, but some might, and some might be prepared to make very good use of this program. So we would like you to rethink that. All SSA disability beneficiaries with a Medical Improvement Expected designation, that is referred to as the MIE that you spoke of, Congressman, should be eligible to participate in the Ticket program.

Now, for those of you who may not be familiar with this group that I am talking about, it seems to be primarily a big group of persons with psychiatric disabilities get assigned this. We have some expert testimony that is going to be speaking later very detailed-wise on this and how it adversely affects persons in mental illness populations, so I won't say anything more about that. But I am just highlighting, as you did, Congressman Matsui, that we want to talk some more about this and have you think about that.

In the area of employment network requirements and qualifications, the Panel is recommending that an employment network should be permitted to retain staff with other types of qualifications than just the traditional vocational rehab counseling qualifications. The Social Security Administration should not require licensing andro certification that would exclude employers with other types of provider qualifications in working with people with

disabilities, especially those who provide nontraditional supports. I am thinking a good example would be independent living centers which might very well be able to serve as employment networks.

In this area of the regulations, the proposed regulations, the Panel is also suggesting and recommending that timely progress, which is one of the ways we are going to evaluate whether or not people are meeting their goals, should be defined in the final rules as beneficiary compliance with the terms and conditions of their Individual Work Plan, often referred to as the IWP. That timely progress would be complied with if the participants performed as agreed by the beneficiary and the employment network when they signed their Individual Work Plan.

We also believe that timely progress should be reported by the EN in their annual report so that people aren't making duplicate reporting but that we are able to accomplish all of the things we need to in just a few easy tomes of paper.

Also, Social Security should permit other individualized service delivery systems to be used as a substitute to the IWP. For instance, if a vocational rehab agency was using their particular planning document, their IEP I think they are called, Individual Employment Plan, that if it contained all of the minimum requirements in the TWWIA statute, then that could be the planning document that they would sign that would be the contract.

In the area of dispute resolution, wherever there are human beings there are going to be some disputes, so we have worked hard on that in making sure that the regulations talk about all possible ways that people could dispute and disagree; and our first recommendation is that all beneficiaries have access to protection and advocacy services and that mediation should be available to them, but not mandatory. We also think that all decisions by Social Security involving disputes from any of the parties, the ENs, the beneficiaries, the providers, the program managers, that all parties should be subject to external review; and that could be through the in-house exhaustive process at Social Security and then on to judicial review, if necessary.

Finally, information about protection and advocacy services should be available at any time to all of the beneficiaries. There are many different specific junctures in implementing this where that would be necessary. As I reminded you, the details of when those times might be is in the full 31-page report.

In conclusion, I would like to say that the Panel, we view ourselves as a partner with the administration and with you, the Congress, and representatives of the Congress, in the successful implementation of this important, innovative program. We also recognize that the implementation and roll-out of the Ticket program poses some pretty tight time frames and demands major changes in the infrastructure and new ways of doing business. We are impressed with the agency's effort to adhere to this tight time frame in the statute. However, at the same time, we have become aware of the most recent Social Security Advisory Board report that raises a number of administrative, resource and infrastructure issues.

In light of this goal and with our recent report and with this testimony you are going to hear today, we want to advise the administration and the Congress of our findings thus far in order to sup-

port a very effective and successful implementation for this first year of roll-out States. I believe that if we proceed very carefully with the agency and that if we listen to the public comments carefully and if people listen to the advice of our Advisory Panel that we have an excellent opportunity with the Ticket program to give people with disabilities in this country a real chance at joining the American work force, for many of them for the very first time in their lives. And that when we do that it is pretty exciting to think that we are taking tax users and making taxpayers out of them, and at the same time, while we dramatically improve the quality of their lives and their ability to make real contributions to our lives, we might even save a little money in the Social Security Trust Fund.

So on that high hope, I am going to pass the microphone on to Steve Start.

Chairman SHAW. Mr. Start.

STATEMENT OF STEPHEN L. START, MEMBER, TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL, AND PRESIDENT AND CHIEF EXECUTIVE OFFICER, S.L. START & ASSOCIATES, SPOKANE, WASHINGTON

Mr. START. Good afternoon, Chairman Shaw, Congressman Matsui and members of the Subcommittee. On behalf of the Ticket to Work and Work Incentive Advisory Panel, I am pleased and honored to appear before you today to talk about SSA's proposal to implement return-to-work legislation.

Specifically, I will address the issue of provider payment methods proposed by the agency and summarize the Panel's recommendations to the Commissioner on the payment structures for the employment networks who will provide services under this program. I will condense my remarks compared to those in front of you to fit within the allotted time, at least a little bit.

The Ticket program is specifically designed to expand the universe of service providers available to beneficiaries. To encourage broad participation by the largest number of service providers, the rules regulating payment systems must accomplish two fundamental objectives. Number one, they must develop a payment system that is reasonable, timely and accurate and, number two, keep reporting and administrative requirements to a minimum.

A Panel work group on payment methods met with Social Security officials and payment method experts to discuss how the Panel should address provisions in the notice of proposed rulemaking related to the outcome and milestone payment methods used within the Ticket program. It is a very unique system which pays the outcome piece only after beneficiaries have come off the rolls, which is very different than previous reimbursement methods. A list of our distinguished experts is contained in our written testimony.

For the most part, there is agreement among the experts that the milestone payment system currently proposed is not adequate. It is not adequate to create the market incentives needed to recruit employment networks. As proposed, the milestone payment system is not attractive to potential employment networks because it yields a much smaller payment than the pure outcome-based system, places a majority of the financial burden and risk on the em-

ployment networks themselves, and requires an unrealistic up-front investment on the part of the networks. The experts encouraged a payment design that address these issues. Alternate proposals were presented. These are reflected in our recommendations that will follow and in our written testimony.

Commenters at public meetings across the Nation concurred with the experts. That is, the proposed milestone payment system is inadequate. Panel members also heard from advocates and providers who successfully operate milestone payment systems in such places as Oklahoma and Massachusetts. Their experiences have also been included in our recommendations. Some commenters advocated for a system that would allow for individualized milestones, especially for harder to serve populations.

I am using the phrase "harder to serve" to refer to four categories of beneficiaries identified in the Ticket legislation. They are individuals with a need for ongoing support and services, individuals with a need for high-cost accommodations, those who earn subminimum wage, and those who work and receive partial cash benefits.

The Panel is of the opinion that a milestone payment system with more payments earlier on in the employment process would be more attractive to providers of services and, thus, increasing consumer choice. A system that pays a greater overall percentage compared to the pure outcome-based model would be more appealing to employment networks than that proposed.

Individualized milestones could increase the likelihood that those harder to serve would be served by networks and would, in fact, better match the current work and payment rules. This may provide the incentive and support necessary for employment networks to serve difficult to serve individuals.

The Panel in its recent advisory report to the Commissioner recommends SSA reevaluate the proposed payment structure to determine the feasibility of adopting a system that pays at least four milestone payments—I will discuss that later in the recommendations—and has a second tier to the milestone system that would be individualized for beneficiaries who significantly need more support.

The specific recommendations are:

A, pay a minimum milestone when a beneficiary and employment network signs a written work plan.

B, pay an additional milestone payment at 12 months of SGA equal to the first two proposed by SSA, which are at 3 and 7 months.

C, amortize the milestone payment over the entire 60-month outcome-only payment period rather than the first 12 months.

I know this is detailed and I will be glad to answer questions about it later, but they are very relevant recommendations.

D, pay a greater overall percentage of the pure outcome-only payment option under the combined model than the 85 percent currently proposed.

E, equalize monthly outcome payments under the milestone and outcome combination system payment period rather than use a graduated method that is currently included in the regulations.

F, provide individualized milestones for those who are harder to serve. The Panel has reviewed several existing models that warrant close review that seem to be working in various States.

Among the various suggestions from the public were payment models specifically for SSI beneficiaries. The milestone system was designed as a method of sharing risk between SSI and providers. Under the proposed system, most of the risk is on the employment network. It requires that all cash benefits cease before an outcome payment can be made to a network. Under this scenario, SSI beneficiaries may be disadvantaged because of the current 1-dollar-for-2-dollar cash offset in the SSI incentives. This would require SSI recipients to earn significantly more than those on SSDI before an outcome payment could be received by a network. As a result, employment networks may be discouraged from serving the SSI population, a group that also has a lower education level and a much weaker work history, leaving SSI recipients at a very distinct disadvantage in the program.

The Panel has recommended that SSA consider developing two milestone payment systems, one for SSI beneficiaries and another for SSDI beneficiaries. The Panel has made other recommendations for new studies in its recent report to the Commissioner. I will not take your time to go over these today. For a full account of the Panel's preliminary recommendations, please review the Commissioner's—the report to the Commissioner in our written testimony.

On behalf of the Panel, I thank you for inviting us to comment on the implementation of this important legislation. Thank you.

[The prepared joint statement of Ms. Gracechild and Mr. Start follows:]

Joint Statement of Stephen L. Start, Member, Ticket to Work and Work Incentives Advisory Panel; and Founder, President and Chief Executive Officer, S.L. Start & Associates, Spokane, Washington and Frances Gracechild, Member, Ticket to Work and Work Incentives Advisory Panel; and Executive Director, Resources for Independent Living, Inc., Sacramento, California

Background

Public Law 106–170, The Ticket to Work and Work Incentives Improvement Act of 1999, establishes programs that are designed to provide SSA beneficiaries with disabilities with a broader array of providers and improved access to employment services and supports, vocational rehabilitation services and other support services. The Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170) authorizes the Ticket program to expand the universe of service providers available to beneficiaries with disabilities. Social Security beneficiaries who are seeking employment services, vocational rehabilitation services, and other support services to assist them in obtaining, regaining, and maintaining gainful employment can use a ticket and other work incentives to secure work.

The Act also establishes the Ticket to Work and Work Incentives Advisory Panel, whose duty is to advise the Commissioner of Social Security and report to the President and Congress on issues related to work incentive programs, planning and assistance for individuals with disabilities and the Ticket to Work and Self-Sufficiency Program established under this Act.

The Panel is composed of twelve individuals, four of whom were appointed by the President, four by the Senate and four by the House of Representatives. The appointees represent a cross-section of individuals with experience and expert knowledge as recipients, providers, employers and employees in the fields of employment services, vocational rehabilitation and other related support services. The majority of the members are individuals with disabilities or their representatives. There are several current or former disability beneficiaries of Social Security on the Panel as well. A complete list of the Panel members and their bios is provided in Appendix A.

The Panel held its first public meeting July 24–25, 2000 in Arlington, Virginia. Since then, the Panel has held 17 public meetings (face-to-face and by 800 number conference calls) providing ample opportunity at each meeting for public comments from citizens with disabilities, their advocates, and other stakeholders. A schedule of Panel meetings and other activities is provided in Appendix B. The goal of these meetings and calls was to solicit comments and opinions about SSA's plans for implementation and first year roll out of the Ticket program in 13 states as well as the proposed regulations contained in the Notice of Proposed Rule Making (NPRM). In short, the Panel has received over 20 hours of public comments and over 80 sets of written comments. The list of commenters and their organizational affiliations is provided in Appendix C.

During the past 6 months of Panel activity, specific issues relating to implementation and rollout as well as the proposed regulations in the NPRM, published in the Federal Register on December 28, 2000, have surfaced repeatedly in public comment and in Panel deliberations. The Panel intends to collect additional information, do further analysis and solicit additional public comment in order to develop and submit its final advice report on the NPRM to the Commissioner in late March or early April 2001.

SUMMARY AND RECOMMENDATIONS

A summary of the Panel's initial twenty-two (22) recommendations to the Commissioner of SSA on the proposed rules precedes the full report.

SUMMARY OF PANEL RECOMMENDATIONS ON THE PROPOSED RULES

TICKET TO WORK AND BENEFICIARY USE

Recommendation 1: Sixteen (16) and seventeen (17) year old beneficiaries should be eligible to participate in the Ticket program.

Recommendation 2: All SSA disability beneficiaries with a medical improvement expected (MIE) diary should be eligible to participate in the Ticket program.

Recommendation 3: SSA should conduct a cost benefit analysis on the feasibility of a beneficiary receiving more than one ticket within a period of disability and the agency should assess the potential impact of beneficiaries using more than one ticket in its "Adequacy of Incentives" report due to Congress at the end of the Ticket implementation period.

EMPLOYMENT NETWORK REQUIREMENTS AND QUALIFICATIONS

Recommendation 4: An employment network (EN) should be required to retain staff that are otherwise qualified based on education or direct services experience, such as employees with a college degree in a related field, including but not limited to vocational counseling, education, human resources, human relations, social work, teaching, or psychology or employees with equivalent experience. SSA should not require licensure and/or certification that would exclude employers or other types of providers qualified to work with people with disabilities such as those who offer non-traditional supports that result in employment. SSA should delete Section 411.315(c).

Recommendation 5: Section 411.325(g) should be deleted from the list of EN reporting requirements. Section 411.325(g) currently requires ". . . among other things, submitting to the Program Manager, on an annual basis, a financial report that shows the percentage of the employment network's budget that was spent on serving beneficiaries with Tickets . . ."

Recommendation 6: The Panel recommends that timely progress be defined as beneficiary compliance with the terms and conditions of the IWP, as agreed to by the beneficiary and EN and that the reporting mechanism be the annual report in Section 411.325(e).

Recommendation 7: SSA should permit other individualized service delivery plans to be used as a substitute to the IWP provided they meet the minimum requirements detailed in the statute.

Recommendation 8: SSA should re-write Section 411.385 to make it clear that an SSA beneficiary with a ticket who applies for State Vocational Rehabilitation services has a choice in deciding whether to assign his/her ticket to the State VR agency, to assign it to another EN, or not to assign it at all.

DISPUTE RESOLUTION

Recommendation 9: All beneficiaries should have access to P&A services.

Recommendation 10: Mediation should be available as an avenue for resolving disputes but it should not be mandatory. It should be an option available to the parties to the dispute, after the matter has been considered for resolution by the Program Manager.

• All parties must agree to enter into mediation.
• Mediation should be external to the Social Security Administration and should not be provided or paid for by protection advocacy agencies. Mediation is a more efficient and cost-effective way to resolve disputes.
• Participation in the mediation process should not bar a party's access to further appeals.
• The Social Security Administration should set aside additional funds to support the use of mediation for all parties.
• The Social Security Administration should look at other successful mediation program models such as those established at EEOC and the Department of Justice.

Recommendation 11: All decisions by the Social Security Administration involving disputes between or among all parties should, at the option of the parties, be subject to external review by either the Social Security Administration's administrative review process and/or judicial review.

Recommendation 12: Information about protection and advocacy services and how to access them should be available at any time to all beneficiaries seeking or using SSA or other work incentive programs, including the Ticket. Specifically, a beneficiary should receive a formal notice of the availability of protection and advocacy services when he or she is issued a ticket and at the following junctures in the process:

- When he or she applies to the employment network for services;
- At the signing of his or her individual work plan;
- In the event his or her services are decreased, suspended or terminated; or
- When he or she filed a complaint against the network.

Recommendation 13: The beneficiary's filing of a complaint against an EN should, with the beneficiary's consent, trigger a notice to the protection and advocacy agency regarding the dispute to allow for an inquiry by the protection and advocacy agency as to the beneficiary's wish for protection and advocacy assistance.

Recommendation 14: Notices from the EN and the protection and advocacy agency, the beneficiary's IWP and any other documents should be in the beneficiary's primary or accessible language of communication.

Recommendations 15: Timelines for dispute resolution should be as follows:

• Employment networks should have fifteen working days to resolve a complaint filed by a beneficiary. If not resolved satisfactory, the beneficiary should be permitted to request a review by the Program Manager.
• The request for review, with the submission of all supporting documentation by both parties, should be submitted within ten (10) working days after the beneficiary receives the emloyment network's decision.
• The Program Manager should complete its review and render a decision within fifteen working days, unless the parties agree to mediation.
• If the parties agree to mediation, mediation should commence within ten (10) working days after the Program Manager receives the parties' request for mediation and should be completed within twenty (20) working days after it is scheduled.
• The Social Security Administration should have no more than twenty (20) working days to resolve individual appeals.
• All disputes involving Employment Networks, State vocational rehabilitation agencies, and the Program Manager must be resolved within sixty (60) working days, including Social Security Administration review and issuance of a decision.

Recommendation 16: During the appeals process, services and supports to the beneficiary should be continued at the same level; that is, services and supports should not be reduced or suspended by the Employment Network without the beneficiary's consent.

Recommendation 17: All parties in a dispute should have access to all information that is being considered and used to render a decision in the dispute.

EMPLOYMENT NETWORK PAYMENT RECOMMENDATIONS

Recommendation 18: SSA Ticket implementation staff should re-evaluate the proposed payment structure to determine the feasibility of adopting a system that pays at least four milestone payments: (1) at the signing of the IWP; (2) at 3 months of SGA; (3) at 7 months of SGA; (4) at 12 months of SGA. A second-tier of the milestone system would be a system in which milestones would be individualized for beneficiaries who need significantly more supports.

Specifically the system would:

(a) Pay a minimal milestone when a beneficiary and employment network signs an IWP;

(b) Pay an additional milestone payment equal to the first two proposed (i.e., 3 and 7 months of SGA) at the end of 12 months of SGA;

(c) Amortize the milestone payments over the entire 60-month outcome-only payment period rather than the 12 months proposed;

(d) Pay a greater overall percentage of the outcome-only payment option under the milestone/outcome payment option than the proposed 85%;

(e) Equalize the monthly outcome payments under the milestone/outcome payment period rather than the graduated method proposed in the NPRM;

(f) Provide individualized milestones for individuals with a need for on-going support services, individuals who need high-cost accommodations, individuals who earn a sub minimum wage, and individuals who work and receive partial cash benefits along the lines of systems already in use in Massachusetts, Oklahoma and other states. (These systems use the individualized planning process to determine if and when a different set of milestones is necessary, and establish a plan for payments and accountability for the payments.)

Recommendation 19: Because the Title II and Title XVI programs are distinctly different from each other with differing processes and timelines, SSA should develop two milestone payment systems; one for SSI beneficiaries and another for SSDI beneficiaries, that take into account the differences between the two programs. (See attachment C—Seifert and O'Brien models.)

Recommendation 20: SSA should consider applying the same earnings level ($740 monthly) for all Ticket users as the threshold for outcome payments to employment networks.

Recommendation 21: SSA should commission a full cost benefits study to evaluate the ticket program. Such a study should begin with a more complete view of the direct savings to the SSA trust fund, but should also consider savings to the Federal treasury and increased productivity to the nation as a whole. Such a study would at a minimum consider the impact of increased FICA contributions by working beneficiaries, reduced use of Medicare, cash trust fund savings by beneficiaries who work but who only receive partial cash benefits and estimated trust fund savings beyond 60 months. The study should also consider reduced use of all other government transfers and increased taxes paid. It should consider the addition to net national product of increased work. It should evaluate costs and benefits from SSA's point of view, from the view of the Federal government, from the view of the beneficiary and from society as a whole.

Recommendation 22: SSA should resolve the conflict between Sections 411.510 and 411.390 regarding VR's choice of payment systems for beneficiaries who are already clients of VR.

NPRM ISSUES, SUMMARY OF PUBLIC INPUT DISCUSSION AND RECOMMENDATIONS

INTRODUCTION

The Ticket to Work and Work Incentives Advisory Panel take seriously its duty to advise and assist the Commissioner of the Social Security Administration and to report to the President and the Congress. Because one of the first major tasks outlined in the Ticket to Work and Work Incentives Improvement Act (TWWIIA) is to advise the Commissioner on the regulations for the Ticket program, the Panel, since their initial meeting in July, has focused its attention primarily on the Notice of Proposed Rulemaking (NPRM).

In September, the Panel created four workgroups to focus on certain topic areas covered in the NPRM: Ticket to Work and Beneficiary Use of Ticket; Employment Network Requirements and Qualification; Dispute Resolution; and, Provider Payment. This Preliminary Advice Report reflects the work of these workgroups, expert advice from invited guests of the workgroups, public input and Panel deliberations.

The Panel deemed it essential to reach out to a variety of constituents and advocates to solicit comments and opinions about the NPRM and the Agency's plans for Ticket implementation. To achieve this the Panel has conducted eleven (11) days of public meetings and seven (7) public conference calls since July 2000. We hosted over twenty (20) hours of public comment at those meetings. Additionally, public meetings in Phoenix, Minneapolis, Salt Lake, and Atlanta as well as two teleconferences in California have been devoted solely to public comment on the NPRM. At each meeting citizens with disabilities, their advocates, and other stakeholders, were provided ample opportunity to comment. Additionally, individual Panel members have attended numerous meetings in their home states and have been asked to speak to a variety of groups and organizations about the Panel and the Ticket's implementation. We have also solicited and received correspondence from the public regarding the agency's Ticket implementation plans and the NPRM. In sum, the Panel has made a concerted effort to solicit input from a broad cross-section of program constituents by holding meetings in Washington, D.C., as well as regional

meetings and teleconferences across the country. The twenty (20) hours of public comments and the over eighty (80) sets of comments received by letter and e-mail reflect this diversity of input.

During this first six months of Panel activity, specific issues and concerns regarding implementation and rollout of the Ticket program and the proposed regulations have surfaced repeatedly in public comments and in Panel deliberations. After extensive discussion in our January and February meetings, the Panel concluded that a letter outlining key implementation issues and concerns should be sent to the Acting Commissioner of SSA, prior to close of the NPRM public comment period.

SSA has provided the Panel regular briefings and updates on the NPRM and administrative implementation activities such as evaluation plans, contracting, grantmaking, and other critical administrative rollout activities. The Panel recognizes that the implementation and rollout of the new Ticket program pose tight timeframes and demands major changes in the culture and business practices of the Agency. However, if implemented carefully, with consideration given by the agency to public comments and to the input and advice of the Panel, the Ticket to Work and Self-Sufficiency program has the potential to improve vastly the quality and availability of rehabilitation services, employment services and supports, and related health services for this country's citizens with disabilities.

TICKET TO WORK AND BENEFICIARY USE

Issue 1: Should transition-aged youth (16–18) be eligible to receive and use a Ticket in the Ticket to Work and Self-Sufficiency Program?

Summary of Input: The Panel received comments from the public that overwhelmingly supported providing Tickets to at least 16 and 17 year olds. There was consensus that the longer people receive cash benefits the less likely they are to be able to achieve independence and become self-supporting. The public also agreed that the expectations created for a young person with a disability might be the most important factor in whether they work or rely on benefits and that allowing them to participate in the Ticket program makes another tool available to encourage positive expectations. Experts told the Panel that schools themselves could potentially be Employment Networks for youth.

Discussion: Making transition-aged youth ineligible for the Ticket program would send the wrong message to youth and could have the effect of encouraging lifelong dependency upon benefits. There may or may not be a determinable increase in cost to the program in the short-term. The long-term benefits to the program and the youth beneficiaries could far outweigh those expenditures. Many youth may not choose to participate in the program until after they are 18, but those who wish to participate should be allowed to do so. Programs and policy in the Individuals with Disabilities Education Act and the Workforce Investment Act promote seamless programming from school to work for students and young adults with and without disabilities.

The proposed regulations limit participation in the Ticket program to disability beneficiaries between the ages of 18 and 64. 18-year-old SSI recipients must be determined disabled under adult rules before being able to receive a Ticket. As youth prepare to transition out of school to the workforce, the Ticket program could be a value-added tool to assist them to plan work.

Recommendation 1: Sixteen (16) and seventeen (17) year old beneficiaries should be eligible to participate in the Ticket program.

Issue 2: Should disability beneficiaries classified with a "Medical Improvement Expected (MIE)" diary be eligible to participate in the Ticket program?

Summary of Input: Public comment supported the inclusion of beneficiaries with the MIE diary in the Ticket program. Members of the public indicated that services should be available to all disability beneficiaries sooner rather than later as policy, since recent research supports findings that the longer someone receives cash benefits the harder it is for them to become self-supporting. The public also cited that most people with MIE diary do not know they have been given that designation. Further, testimony to the Panel indicated that in their practical experience, people with MIE diaries undergo delayed initial Drs often times years after the date on which they are supposed to. Concern was expressed by national leaders from mental health and national organizations representing people who are developmentally disabled, that people with long-term mental illness (such as bipolar disorder) and cognitive impairments receive this designation disproportionately, often with no real indication that improvement is likely. In addition, members of the public were of the opinion that if the designation of the MIE diary category for CDRs would be used to limit a person's access to a benefit, it must be subject to due process review or appeal.

In addition, agency officials stated that it is not known how many beneficiaries have their benefits terminated due to a CDR based on the MIE diary, and then reapply based on a decline in their condition and then are awarded benefits a second time.

Discussion: The Panel agreed that limiting a person's access to a Federal benefit (i.e. the ticket) without providing for a due process review is questionable practice/policy. If this exclusion remains in the final rule, it should outline a procedure for timely review and appeal. This would increase the administrative burden to SSA, the cost of which may outweigh the possible savings to the programs created by such exclusion. One likely consequence may be that the length of time required to process all appeals, not just MIE cases, will be negatively impacted, that is, all appeal cases would take longer given the additional caseload.

If the rule becomes final with its effect to limit a person's access to the benefits of the Ticket program, SSA should commit to policy and procedures that beneficiaries with the MIE designation receive their initial CDR on schedule.

The exclusion of beneficiaries with the MIE diary from participation in the Ticket program does not appear to be justified. The SSA program and policy officials were not able to provide the Panel with sound statistical analysis to justify this exclusion. The Panel was not provided with data on how long it takes for a person with the MIE diary to have the initial CDR completed. There was also no information that indicated that a significant number of people with the MIE designation would be terminated after the completion of their initial CDR. There was no evidence to counter the argument that people with a MIE designation would be more successful in staying off the rolls through being allowed early participation in the Ticket program, even if their initial CDR would result in a termination of benefits.

The proposed regulation state that a person who is awarded benefits with an MIE diary for the scheduling of their first Continuing Disability Review (CDR) is not eligible for the Ticket program until after the completion of their first CDR. A beneficiary with this designation is scheduled to have their case reviewed within 6 to 18 months after receiving benefits. This MIE category was created for the sole purpose of determining when the first CDR for a beneficiary should be completed.

In 1999, there were 60,766 DI and SSI adult beneficiaries who were classified first time MIEs on the rolls. Data from the disability determination services decision files indicate that in 1999, 9,663 beneficiaries with a MIE diary were ceased for medical improvement. On the average, about 16% of initial Titles II and XVII MIE allowances that come up for first-time continuing disability reviews (CDRs) are ceased, usually 18–24 months after allowance, for medical improvement.

Recommendation 2: All SSA disability beneficiaries with a medical improvement expected (MIE) diary should be eligible to participate in the Ticket program.

Issue 3: Should a person be entitled to more than one ticket within a period of disability?

Summary of Input: Concern was expressed by the public that beneficiaries would not be able to find ENs that would provide services to them if they have a partially used ticket. Current research (Schur, 2000) finds that people with disabilities are twice as likely as non-disabled people to work in part time and temporary work. Concern was raised that the program would not work for a large segment of beneficiaries particularly those with disabilities that are episodic in nature.

Discussion: Many beneficiaries using the Ticket program are likely to go in and out of work, and not transition at first attempt from receipt of cash benefits to 60 months of continuous employment. A beneficiary whose ticket is partially used and needs other continuing support services may have a difficult time finding an EN willing to work with them. For example, a beneficiary returns to cash benefits after a work stoppage in the "Easy Back On" provision of TWWIIA. The person wants to return to work again and decides he/she needs support services. This consumer will be at a distinct disadvantage even though if interested in continuing to work. There is nothing in the statute that prevents a beneficiary from receiving a second ticket and there may well be unassessed cash savings to SSA programs in allowing two or more tickets to a beneficiary, as warranted or appropriate.

In Section 411.125(b), the proposed rule states that a person can have only one ticket during a period of entitlement for which a beneficiary is eligible to receive disability benefits. The Panel has asked for clarification only have 25 outcome payments left to pay out. That is what is being described as a partially used ticket. A related issue is whether an EN, new or old, would be willing to provide a full array of services to a beneficiary with a partially used ticket and a significantly reduced number of payments.

Recommendation 3: SSA should conduct a cost benefit analysis on the feasibility of a beneficiary receiving more than one ticket within a period of disability and the agency should assess the potential impact of beneficiaries using more than

one ticket in its "Adequacy of Incentives" report due to Congress at the end of the Ticket implementation period.

EMPLOYMENT NETWORK REQUIREMENTS AND QUALIFICATIONS

Issue 4: Who should be in an Employment Network providing services to beneficiaries who are Ticket holders?

Summary of Input: Many of the commenters stated that State licensure laws dictate requirements for certain providers so SSA should defer to those State rules. Some commenters expressed concern that the quality of services may be compromised if provided by less that trained personnel, however, they recognized the benefits of allowing support and other services by non-credentialed providers if under the auspices of an EN who is ultimately accountable for the services provided.

Discussion: Many people with disabilities have a "circle of support," that is, people who they trust to provide additional support services. Most often, these individuals are non-credentialed support providers. In some instances, they are family members, neighbors, or friends who provide needed supports. The final rule regarding EN qualifications should be broad enough to accommodate non-traditional providers while accomplishing the stated purpose of the Ticket program, to "expand the universe of service providers available to individuals who are entitled to Social Security benefits based on disability . . ." §411.105

According to the proposed rule, an Employment Network is any qualified entity that has entered into an agreement with SSA to function as an EN; and assumes responsibility for the coordination and delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries who have assigned their ticket to that EN. The proposed rule would require that an eligible entity must assure that it is licensed, certified, accredited, or registered if so required by state law to provide these services either directly or through arrangements with other entities.

Recommendation 4: An employment network (EN) should be required to retain staff that are otherwise qualified based on education or direct services experience, such as employees with a college degree in a related field, including but not limited to vocational counseling, education, human resources, human relations, social work, teaching, or psychology or employees with equivalent experience. SSA should not require licensure and/or certification that would exclude employers or other types of providers qualified to work with people with disabilities such as those who offer non-traditional supports that result in employment. SSA should delete Section 411.315(c).

Issue 5: What financial reporting is needed by the Program Manager or SSA from the Employment Network?

Summary of Input: Many commenters recommended that the agency try to "keep it simple" and not require reporting that is not necessary. Some were concerned that a few of the reporting requirements may place an undue administrative burden on ENs and discourage the participation of potential providers. Still others in the public and on the Panel were of the opinion that it is inappropriate, invasive and unreasonable for SSA to require these kinds of reports in an outcome-based program.

Discussion: While there is a substantive evaluation component in the Ticket program, the Panel thinks that using the financial reporting requirements in Section 411.325(g) is not the way to collect data for it. The requirement will prohibit providers and employers from participating who have no intention of adding to the financial disclosures they already make to the Federal government.

Section 411.325 of the NPRM outlines the proposed reporting requirements of an EN. One of those requirements is for the EN to submit to the Program Manager, annually, a financial report that shows the percentage of the Employment Network's budget that was spent on serving beneficiaries with tickets.

Recommendation 5: Section 411.325(g) should be deleted from the list of EN reporting requirements. Section 411.325(g) currently requires ". . . among other things, submitting to the Program Manager, on an annual basis, a financial report that shows the percentage of the employment network's budget that was spent on serving beneficiaries with Tickets . . ."

Issue 6: Should "timely progress" toward an employment goal be measured by minimum standards for all beneficiaries, or, should the terms and conditions agreed to in each IWP determine timely progress?

Summary of Input: The Panel did not receive extensive public comment on this issue, however the Panel did engage in extensive discussion and deliberation and they came to a consensus on a recommendation.

Discussion: Beginning with a 24 month review after a Ticket is assigned to an EN, the proposed regulations require the Program Manager to assess whether a

beneficiary is making "timely progress towards self-supporting employment" which will then keep Continuing Disability Review (CDR) suspensions in place. There are no "timely progress" requirements in the statute. "Timely progress" requirements in the proposed rule are directly related to the suspension of CDRs for Ticket program users. A ticket holder must meet the "timely progress" requirements to avoid a CDR. One option would be to have the same net outcome as the proposed rule for the first three years. It would require the same minimum work standards for all Ticket participants in years three, four and five of an EN–Ticket contract with a beneficiary. The second option, and the option that the Panel is recommending, would individualize "timely progress" and place the responsibility of proof and reporting on the EN with oversight by the Program Manager.

Another question raised in discussion was, should there be set minimum requirements for employment in years four and five of Ticket use in order to keep CDR suspensions in place. The statute, and the proposed rule in Section 411.325(e), require annual progress reports from the EN to the Program Manager using progress tracked in the Individual Work Plan.

Recommendation 6: The Panel recommends that timely progress be defined as beneficiary compliance with the terms and conditions of the IWP, as agreed to by the beneficiary and EN and that the reporting mechanism be the annual report in Section 411.325(e).

Issue 7: Should the State VR agency be allowed to use the Individual Plan for Employment (IPE) as a substitute for the Individual Work Plan (IWP)? If so, should other individualized service delivery plans be acceptable alternatives, provided they meet the minimum standards outlined in the statute for an IWP?

Summary of Input: The few commenters who touched on this issue stated that the IPE or any other work plan that meets the minimum IWP standards described in the statute should be an acceptable alternative to the IWP. They stressed the need to reduce duplication with the same person, eliminate unnecessary paperwork, and reduce administrative burden.

Discussion: If a document already exists that meets the statutory requirements of an IWP there should not be a requirement for a duplicate document. The proposed regulations recognize this and permit State VR agency to use the IPE as a substitute for the IWP. Other programs should be permitted to do the same.

Recommendation 7: SSA should permit other individualized service delivery plans to be used as a substitute to the IWP provided they meet the minimum requirements detailed in the statute.

Issue 8: When a SSA beneficiary with a ticket applies to the state VR agency for services, should the beneficiary have the option of retaining their ticket for use with other ENs?

Summary of Input: The commenters we heard from are concerned about choice, both here and in the connected context of the rule allowing only one ticket per eligible beneficiary per period of entitlement for benefits. The proposed rule should not presume that an applicant for VR services who is a SSA beneficiary would assign their ticket to VR.

Panel members received widespread comments that VR receives special treatment in many respects throughout the rule. In this context, there have been comments that § 411.385 needs clarification or change in the context of other special arrangements in the rule for the State VR agency.

NPRM Section 411.385 states: "What does a State VR agency do if a beneficiary who is applying for services has a ticket that is available for assignment?" (a) Once the State VR agency determines that beneficiary who is applying for services has a ticket that is available for assignment (see § 411.140) and the State VR agency and the beneficiary have agreed to and signed the individualized plan for employment (IPE) required under Section 102(b) of the Rehabilitation Act of 1973, as amended, the beneficiary's ticket is considered to be assigned.

Discussion: People with disabilities are eligible for a number of public programs that offer counseling, rehabilitation, training, job placement, other employment services and support services from a wide variety of state and Federal systems and delivered at Federal, state and local levels. These systems include Federal housing programs, State developmental disabilities services, State mental health services, transportation services, one-stop training and employment services, independent living services, transition and special education, health care and related supports, and assistive technology, just to name a few. The intent of the Ticket program was to expand services and supports, not to limit them. A ticket should be seen as yet another tool that the SSA beneficiary can choose to use to supplement what is already available to the individual under current public programs. Use of the ticket should improve that individual's chance of success in employment.

Informed choice is a key concern of the Panel. The agency's outreach on the Ticket program should inform beneficiaries of the choice issues that are raised when they decide to apply for VR services. Eligibility for VR services and VR client status should not dictate when a beneficiary can use their ticket or where a beneficiary can deposit their ticket.

Recommendation 8: SSA should re-write Section 411.385 to make it clear that an SSA beneficiary with a Ticket who applies for State Vocational Rehabilitation services has a choice in deciding whether to assign his/her Ticket to the State VR agency, to assign it to another EN, or not to assign it at all.

DISPUTE RESOLUTION AND MEDIATION

Issue 9: Should protection and advocacy services be available to all beneficiaries of the Social Security Administration regardless of whether or not they are Ticket users or living in a Ticket roll out state?

Discussion: Section 1150(a)(b) (1) and (2) of the legislation provides that SSA beneficiaries are eligible for obtaining information and advice about vocational rehabilitation and employment services and advocacy or other services that a disabled beneficiary may need to secure or regain gainful employment. There is no requirement in the legislation that a beneficiary be a ticket holder or currently living in a roll out state in order to be eligible for protection and advocacy services.

Summary of Input: There was substantial public input in support of protection and advocacy services being provided to all SSA beneficiaries. Additionally, the Panel received substantial public comment regarding the fact that beneficiaries face many barriers to obtaining needed services and supports to enable them to go to work. Commenters stated over and over again that P&A services should be available to assist all SSA beneficiaries, regardless of their status as a Ticket holder or residence in a Ticket roll out state.

Recommendation 9: All beneficiaries should have access to P&A services.

Issue 10: Should mediation be a part of the dispute resolution process?

Summary of Input: Commenters agree that voluntary mediation should be available to all parties involved in a dispute under the Ticket to Work Program and that mediation services should be paid for by the agency.

Discussion: Subpart 1 of the proposed regulations on dispute resolution (Section 411.600 et seq.) does not address the use of mediation as a means of resolving disputes. Mediation is an informal, cost effective means of resolving disputes and should be available on a voluntary basis. Neither Section 411.600 et seq. nor Section 411.435 addresses the use of mediation as a means of resolving disputes. Sections 411.660 and 411.630 of the proposed regulations state that Social Security Administration makes the final decision in all disputes. There is no mention of an opportunity for an external review process.

Recommendation 10: Mediation should be available as an avenue for resolving disputes but it should not be mandatory. It should be an option available to the parties to the dispute, after the matter has been considered for resolution by the Program Manager.

- All parties must agree to enter into mediation.
- Mediation should be external to the Social Security Administration and should not be provided or paid for by protection advocacy agencies. Mediation is a more efficient and cost-effective way to resolve disputes.
- Participation in the mediation process should not bar a party's access to further appeals.
- The Social Security Administration should set aside additional funds to support the use of mediation for all parties.
- The Social Security Administration should look at other successful mediation program models such as those established at EEOC and the Department of Justice.

Issue 11: Should there be an external appeals process for all parties? Should there be an opportunity for all parties to a dispute to have access to a review of SSA's decision, either through a SSA review process or an external judicial review process.

Summary of Input: Commenters were unanimous in their recommendations that all parties to disputes should have the opportunity to an external appeal process beyond what is currently offered in the regulation. This more fully ensures that fairness and impartiality are observed throughout the dispute resolution process.

Discussion: The Panel was in complete agreement.

Recommendation 11: All decisions by the Social Security Administration involving disputes between or among all parties should, at the option of the parties, be subject to external review by either the Social Security Administration's administrative review process and/or judicial review.

Issues 12–14: At what point or points should a beneficiary receive information about the availability of protection and advocacy services and in what format should such information and other materials be provided?

Summary of Input: The Panel heard widespread comments that beneficiaries should be provided with notice of their right to advocacy and representation several times throughout their Ticket experience. Beneficiaries will be overwhelmed with information about this new program and they should be reminded several times at key points throughout their experience of their right to legal advocacy and representation, especially, at the time of ticket issuance. All notices of this right as well as other materials must be available in the beneficiary's primary or accessible communications language the individual's primary language and or alternative formats that provides effective communication for that individual.

Discussion: Section 411.465 (regarding requirements for an IWP) and Sections 411.605 and 411.610 require notice regarding the availability of protection and advocacy assistance in resolving disputes only to beneficiaries who become Ticket users. There is no reference in the regulations to the need or requirement that all beneficiaries receive information regarding protection and advocacy assistance in areas other than dispute resolution or to beneficiaries who have not exercised their option to use their ticket.

Recommendation 12: Information about protection and advocacy services and how to access them should be available at any time to all beneficiaries seeking or using SSA or other work incentive programs, including the Ticket. Specifically, a beneficiary should receive a formal notice of the availability of protection and advocacy services when he or she is issued a Ticket and at the following junctures in the process:

- When he or she applies to the employment network for services;
- At the signing of his or her individual work plan;
- In the event his or her services are decreased, suspended or terminated; or
- When he or she filed a complaint against the network.

Recommendation 13: The beneficiary's filing of a complaint against an EN should, with the beneficiary's consent, trigger a notice to the protection and advocacy agency regarding the dispute to allow for an inquiry by the protection and advocacy agency as to the beneficiary's wish for protection and advocacy assistance.

Recommendation 14: Notices from the EN and the protection and advocacy agency, the beneficiary's IWP and any other documents should be in the beneficiary's primary or accessible language of communication.

Issues 15–17: Should there be time limits and other requirements imposed on all parties involved in the dispute resolution process?

Summary of Input: Commenters were concerned about the impact on a beneficiary once a dispute arises. One aspect of that concern is length of time it will take to resolve a complaint and what happens to the beneficiary's training and employment status during the complaint review process. It was suggested that there should be strict timelines to minimize the adverse impact on all parties when a complaint is filed.

Discussion: The Panel hosted lengthy public discussion on this topic and they were in agreement that timelines need to be spelled out in the final regulations. The proposed regulations either do not reflect timelines for a dispute resolution or, where they do, they are inadequate. For example, there are no timelines for the employment network's internal grievance process or the Social Security Administration's review process. (See Sections 411.435, 411.615, 411.625, and 411.630.)

Recommendation 15: Timelines for dispute resolution should be as follows:

- Employment networks should have fifteen working days to resolve a complaint filed by a beneficiary. If not resolved satisfactory, the beneficiary should be permitted to request a review by the Program Manager.
- The request for review, with the submission of all supporting documentation by both parties, should be submitted within ten (10) working days after the beneficiary receives the employment network's decision.
- The Program Manager should complete its review and render a decision within fifteen working days, unless the parties agree to mediation.
- If the parties agree to mediation, mediation should commence within ten (10) working days after the Program Manager receives the parties' request for mediation and should be completed within twenty (20) working days after it is scheduled.
- The Social Security Administration should have no more than twenty (20) working days to resolve individual appeals.
- All disputes involving Employment Networks, State vocational rehabilitation agencies, and the Program Manager must be resolved within sixty (60) working days, including Social Security Administration review and issuance of a decision.

Recommendation 16: During the appeals process, services and supports to the beneficiary should be continued at the same level; that is, services and supports should not be reduced or suspended by the Employment Network without the beneficiary's consent.

Recommendation 17: All parties in a dispute should have access to all information that is being considered and used to render a decision in the dispute.

EMPLOYMENT NETWORK PAYMENT

Issue 18: How can the milestone payment system be structured to encourage providers to serve all eligible individuals, including those who are harder to serve?

Summary of Input: As proposed, the milestone payment system allows two milestone payments to be made before the first outcome payment. These milestones recognize that those currently on either SSDI or SSI benefits who are provided job related services and return to work do not immediately reach a level of employment that makes them ineligible for cash benefits and their employment network eligible for outcome payments.

For the most part, there was consensus among commenters and the experts consulted that the milestone payment method proposed in the notice of proposed rulemaking (NPRM) is not feasible. They encouraged the Panel to recommend to the Commissioner a payment design that addresses provider choice and capitalization. As proposed, the milestone payment structure is not attractive to potential employment networks since it yields a smaller total payment than the outcome payment system. It places the majority of burden/risk on the EN and, it requires an unrealistic up-front investment by the EN. Alternative proposals were presented that add additional milestones, spread the milestone payments over 5 years, and reduce the 15% penalty incurred by ENs who choose milestone payments to 5%.

Discussion: A milestone payment system that has more payments earlier on in the employment process will attract more providers to the program and thus afford consumers more choice in service provision. A system that pays a greater overall percentage of the outcome-only payment option would be more appealing to ENs than that proposed and one that provides for individualized milestones could increase the likelihood that individuals with significant disabilities would be served by ENs. Also, allowing for individualized milestones for individuals who are more difficult to serve better matches the current work and payment rules and would provide incentives and supports necessary for ENs to serve these individuals.

Recommendation 18: SSA Ticket implementation staff should re-evaluate the proposed payment structure to determine the feasibility of adopting a system that pays at least four milestone payments: (1) at the signing of the IWP; (2) at 3 months of SGA; (3) at 7 months of SGA; (4) at 12 months of SGA. A second-tier of the milestone system would be a system in which milestones would be individualized for beneficiaries who need significantly more supports.

Specifically the system would:

(a) Pay a minimal milestone when a beneficiary and employment network signs an IWP;

(b) Pay an additional milestone payment equal to the first two proposed (i.e., 3 and 7 months of SGA) at the end of 12 months of SGA;

(c) Amortize the milestone payments over the entire 60-month outcome-only payment period rather than the 12 months proposed;

(d) Pay a greater overall percentage of the outcome-only payment option under the milestone/outcome payment option than the proposed 85%;

(e) Equalize the monthly outcome payments under the milestone/outcome payment period rather than the graduated method proposed in the NPRM;

(f) Provide individualized milestones for individuals with a need for on-going support services, individuals who need high-cost accommodations, individuals who earn a sub minimum wage, and individuals who work and receive partial cash benefits along the lines of systems already in use in Massachusetts, Oklahoma and other states. (These systems use the individualized planning process to determine if and when a different set of milestones is necessary, and establish a plan for payments and accountability for the payments.)

Issue 19: How can SSA restructure the milestone-outcome payment system for SSI beneficiaries in order to account for existing work incentives?

Summary of Input: Among the various suggestions to restructure the milestone system, the Panel received comments on specific models that would allow a distinctly different payment systems for SSI beneficiaries and SSDI beneficiaries (See EN Payment Models in Appendix C.)

Discussion: The milestone system was devised as a method of sharing risk between SSA and providers. Under the proposed system, most of the risk is with the

provider and requires that a person not be receiving ANY cash benefits before an outcome payment is made. SSI beneficiaries are disadvantaged because of the current $1-for-$2 cash offset in SSI work incentives. This would require SSI recipients to earn more ($360 a month more) than those on SSDI before an outcome payment is paid to an EN. As a result, ENs will be discouraged from serving the SSI population, a group that has a lower education level and a much weaker work history than the SSDI beneficiaries. This would leave SSI recipients at a distinct disadvantage in the Ticket program.

Recommendation 19: Because the Title II and Title XVI programs are distinctly different from each other with differing processes and timelines, SSA should develop two milestone payment systems; one for SSI beneficiaries and another for SSDI beneficiaries, that take into account the differences between the two programs. (See attachment C—Seifert and O'Brien models.)

Issues 20–21: How can the financial incentives to serve beneficiaries be structured to be more equitable?

Summary of Input: The Panel received briefings and documents from senior SSA officials on various return to work programs and studies undertaken by the agency, e.g., Gallup poll of potential employment networks. The results indicated that there is real interest in the program from potential providers but that certain beneficiaries, by virtue of their group affiliation (e.g., blind DI beneficiary)—may not be served as readily as others. One reason is the length of time from the beginning of service provision to the point when payments to the EN can start is distinctly longer for some groups. The Panel received extensive public comment on this issue and most advocated for a common earnings level threshold for outcome payments for all beneficiaries. Also, commenters encouraged the Panel to recommend a payment system with financial incentives to serve individuals who are harder to serve (i.e., individuals with a need for ongoing support and services, individuals who need high-cost accommodations, individuals who earn a sub minimum wage, and individuals who work and receive partial cash benefits.) Further, the Panel heard that it would be prudent of SSA to develop a payment system that includes all beneficiaries with disabilities to heighten the likelihood of savings to the programs.

Discussion: Of particular concern to the Panel are the inequities in the financial incentives structure to serve certain beneficiaries, e.g., SSI beneficiaries and the harder to serve population. As proposed, the payment systems discourage ENs from serving SSI beneficiaries because the EN would receive a smaller return for similar effort and it could take considerably longer for SSI beneficiaries to reach the point in employment when ENs can be paid. The Panel is also interested in the development of an effective milestone/outcome payment structure that would address the barriers to service provision for individuals who are harder to serve. A consistent outcome-payment threshold for all Ticket users could level the playing field, making all Ticket users equally attractive to ENs in the context of when a payment can be made.

Recommendation 20: SSA should consider applying the same earnings level ($740 monthly) for all Ticket users as the threshold for outcome payments to employment networks.

Recommendation 21: SSA should commission a full cost benefits study to evaluate the ticket program. Such a study should begin with a more complete view of the direct savings to the SSA trust fund, but should also consider savings to the Federal treasury and increased productivity to the nation as a whole. Such a study would at a minimum consider the impact of increased FICA contributions by working beneficiaries, reduced use of Medicare, cash trust fund savings by beneficiaries who work but who only receive partial cash benefits and estimated trust fund savings beyond 60 months. The study should also consider reduced use of all other government transfers and increased taxes paid. It should consider the addition to net national product of increased work. It should evaluate costs and benefits from SSA's point of view, from the view of the Federal government, from the view of the beneficiary and from society as a whole.

Issue 22: There is an internal conflict in the NPRM between the language in Section 411.510(c) and the language in Section 411.390 regarding the State Vocational Rehabilitation agency's (VR) choice of payment methods for beneficiaries who are already clients of VR.

Summary of Input: There was no public input on this issue.

Discussion: Section 411.390 of the proposed regulations says that the State VR agency may only seek payment under the cost reimbursement payment system for beneficiaries already receiving services under an IPE. This rule is in direct conflict with Section 411.510(C) that states that the state VR agency will notify the Program Manager of the payment system election for each such beneficiary. The Panel

had no opinion about either of the rules but felt that the regulatory provisions should be consistent throughout.

Recommendation 22: SSA should resolve the conflict between Sections 411.510 and 411.390 regarding VR's choice of payment systems for beneficiaries who are already clients of VR.

APPENDIX A

The Ticket to Work and Work Incentives Advisory Panel

Establishment of the Panel

The Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170, established the Ticket to Work and Work Incentives Advisory Panel (the Panel) within the Social Security Administration on December 17, 1999. Members were appointed by the President, the House of Representatives and the Senate during May and June of 2000. The Commissioner of the Social Security Administration, Kenneth S. Apfel, swore in the Panel on July 24, 2000.

Panel duties include advising the Commissioner of Social Security and reporting to the President and Congress on issues related to work incentives programs, planning, and assistance for individuals with disabilities and the Ticket to Work and Self-Sufficiency Program established under the Ticket to Work and Work Incentives Improvement Act (TWWIIA).

The Panel is composed of 12 members. The President, the Senate and the House of Representatives each appointed four. Appointments are for four-year terms. Of the members first appointed, one-half are appointed for a term of two years and the remaining are appointed for four years.

The Chair of the Panel is appointed by the President for a 4-year term.

Members of the Panel

Sarah Wiggins Mitchell, J.D. Chair

Sarah Wiggins Mitchell, is the President and Executive Director of the New Jersey Protection and Advocacy, Inc., the designated protection and advocacy system for the State. She was appointed by President Clinton to chair the Panel for a four-year term. She is a member of the New Jersey and Pennsylvania Bars and has a background in nursing and social work.

Richard V. Burkhauser, Ph.D.

Dr. Richard V. Burkhauser serves as the Professor of Policy Analysis and Chair, Department of Policy Analysis and Management at Cornell University, Ithaca, NY. He is also active as a consultant, writer and researcher, focusing on various economic and social issues relating to persons with disabilities.

Thomas P. Golden

Mr. Golden, is a faculty member of Cornell University's Program on Employment and Disability in the School of Industrial and Labor Relations in Ithaca, NY. He is currently project director for numerous efforts focusing on training and activities relating to work incentives for people with disabilities.

Kristin E. Flaten

Ms. Flaten is an Employment Consultant for Lifetrack Resources, Inc., St. Paul, MN. She started her own small business, INITIATIVES, dedicated to enhancing the lives of persons with mental illnesses by providing educational and support services, advocacy, benefits analysis, and work incentive plans.

Frances Gracechild

Frances Gracechild is the Executive Director, Resources for Independent Living, Inc., Sacramento, CA and an instructor at California State University at Sacramento. She is also president of Health Access of California and served as a commissioner for the Commission on Disability, appointed by the former Attorney General of California.

Christine M. Griffin, J.D.

Christine M. Griffin is the Executive Director, Disability Law Center, Boston, MA. She is a Trustee for the Paralyzed Veterans of America Spinal Cord Research Foundation and is a member of the Massachusetts and the Washington, DC Bar.

Larry D. Henderson

Mr. Henderson is the Executive Director of Independent Resources, Inc., Wilmington, DE and chair of the Developmental Disabilities Planning Council of Delaware. Prior to his current position he was associated with the Salvation Army's Family Service Department.

Jerome Kleckley

Jerome Kleckley, MSW, CSW, is the Director of Hospital Services for the Eastern Paralyzed Veterans Association in Jackson Heights, NY and an advocate for veterans with disabilities. He is a veteran of the U.S. Navy and has been actively involved in veteran's issues.

Stephanie Smith Lee

Stephanie Smith Lee is the Governmental Affairs Representative of the National Down Syndrome Society and resides in Oakton, VA. She has played a key role in the passage of Federal disability legislation and has led successful grass roots advocacy efforts at the local, state and Federal levels.

Bryon R. MacDonald

Mr. MacDonald is employed as a Public Policy Advocate with the World Institute on Disability, Oakland, CA. He is a Board member at large of the National Council on Independent Living and chair of that organization's Social Security Subcommittee. For many years, he has developed employment support and benefits counseling programs and served as a consultant to several advisory committees on employment support for persons with disabilities.

Stephen L. Start

Stephen L. Start is the founder, President and Chief Executive Officer of S.L. Start & Associates, Spokane, WA, a company that provides professional management, rehabilitation, and residential services for people with disabilities, seniors and economically disadvantaged individuals. He is a member of numerous national and regional residential and rehabilitation boards.

Susan Webb

Susan Webb is the President, Webb Transitions, Inc. of Phoenix, AZ. A former Social Security Disability Insurance beneficiary, she used work incentives and vocational rehabilitation services to return to work. She has served on the Board of Directors of the National Council on Independent Living for three consecutive years, serving as its Social Security Subcommittee chair.

Advisory Panel Staff

Marie Parker Strahan, Executive Director; Kristen Breland; Lisa Ekman; Mildred Owens; Gordon Richmond; Ilene Zeitzer; Tamara Allen, Consultant; and Theda Zawaiza, Ph.D., Consultant.

APPENDIX B

Schedule of Panel Meetings and Other Activities

Ticket to Work and Work Incentive

Advisory Panel

1. July 24–25, 2000—2 Day Meeting: 1 hr.
2. September 11, 2000—Teleconference: 45 min.
3. September 26–27, 2000—2 Day Meeting: Briefing.
4. November 8, 2000—Teleconference: 1 hr.
5. November 13–15, 2000—3 Day Meeting: 1 hr.
6. November 27, 2000—Teleconference: 1 hr.
7. December 12, 2000—Teleconference: 1 hr.
8. December 19, 2000—Teleconference: 1 hr.
9. January 3, 2001—Teleconference: 1 hr.
10. January 9–10, 2001—2 Day Meeting: 2 hrs.
11. January 23, 2001—Teleconference: 1 hr.
12. February 6–8, 2001—3 Day Meeting: 3 hrs.

REGIONAL MEETINGS

1. January 22, 2001—Salt Lake City, Utah: 0.
2. January 24, 2001—Minneapolis, Minnesota: 3 hrs.

3. January 25, 2001—West Coast Teleconference: 2 hrs.
4. January 26, 2001—Phoenix, Arizona: 4 hrs.
5. January 29, 2001—Atlanta, Georgia: 4 hrs.
6. February 15, 2001—West Coast Teleconference: 2 hrs.

APPENDIX C

Social Security Administration, Ticket to Work and Work Incentives Advisory Panel, Teleconference, September 11, 2000

List of Commenters

Ron Calhoun, Office of Vocational and Educational Services for Individuals with Disabilities, New York Department of Education
Jenny Kaufmann, National Senior Citizens Law Center, Washington, DC

Social Security Administration, Ticket to Work and Work Incentives Advisory Panel, Teleconference, International Trade Commission, Washington, DC, November 8, 2000

List of Commenters

Marty Ford, Director of Government Affairs, ARC of the United States, Washington, DC
Cheryl Bates Harris, NAPAS, Washington, DC
Linda Landry, Disability Law Center, Boston, MA
Ann Maclaine, Director of the Louisiana Protection and Advocacy Agency, New Orleans, LA
Murray Manus, Equip for Equality, Chicago, IL
Aleisa McKinlay, Public Policy Analyst, Advocacy Service, Lincoln, NE
Gary Richter, Indiana Protection and Advocacy, Indianapolis, IN
Edward Wollman, Disability Community Small Business Development Center, Ann Arbor, MI
Dave Ziskind, Director of the Division of Program Administration, RSA, Vocational Rehabilitation Program, Washington, DC
Dave Zehner, Protection and Advocacy for People with Disabilities, Charleston, SC

Social Security Administration, Ticket to Work and Work Incentives Advisory Panel, Quarterly Meeting, Embassy Suites at Chevy Chase Pavilion, Washington, DC, November 13–15, 2000

List of Commenters

Sue Augustus, SSI Coalition, Chicago, IL
Alan Bergman, President and CEO, Brain Injury Association, Alexandria, VA
Kara Freeburg, American Network of Community Options and Resources (ANCOR), Annandale, VA
Marty Ford, Director of Government Affairs, ARC of the United States, Washington, DC
Charles Harles, Executive Director, International Association of Business, Industry and Rehabilitation (IABIR), Washington, DC
Mitch Jessirich, World Institute on Disability, Oakland, CA
Jenny Kaufmann, National Senior Citizens Law Center, Washington, DC
Mary Kelly, National Association of Developmental Disabilities Council, Washington, DC
Dan O'Brien, Oklahoma Department of Rehabilitation Services, Oklahoma City, OK
Mike O'Brien, Oklahoma Department of Rehabilitation Services, Oklahoma City, OK
Katherine Mario, New York Vocational and Educational Services for Individuals with Disabilities (VESID), Albany, NY
Celane McWhorter, Association for Persons in Supported Employment, Alexandria, VA
Susan Prokop, Paralyzed Veterans of America (PVA), Washington, DC
Andrew Sperling, Director of Public Policy, National Association for the Mentally Ill (NAMI), Arlington, VA
Michael Van Essen, AIDS Assistance Organization, Palm Springs, CA

Social Security Administration, Ticket to Work and Work Incentives Advisory Panel, Meeting, Holiday Inn Capitol, Washington, DC January 9–10, 2001

List of Commenters

Dennis Born, Program Manager, Supported Employment Consultation and Training Center, Anderson, IN
Paul Seifert, IAPSRS, Columbia, MD
Charles Harles, Executive Director of INABER, Washington, DC
Damon Hicks, Supported Employment Consultation and Training Center, Anderson, IN
Mike O'Brien, DRS, Oklahoma City, OK

APPENDIX D

Two En Milestone Payment Models for SSI

Prepared by: Paul J. Seifert, Intl'l. Assoc. of Psychosocial Rehabilitation Services.
[APPENDIX D IS IDENTICAL TO THE ATTACHMENT SUPPLIED BY PAUL SEIFERT'S TESTIMONY.]

Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman. Again, I appreciate the fact that you are holding this hearing.

Ms. Gracechild, I want to ask you a series of questions and I will try to be reasonably brief, because we do have time constraints with all of the members here. I think, from my perspective at this moment anyway, the most significant issue is the MIEs, and that is Medical Improvement Expected. I am hearing all of these acronyms now, and I want to make sure that I understand them.

Ms. GRACECHILD. Yes.

Mr. MATSUI. You were talking about the people that fall under this universe are those that have mental or emotional problems, by and large.

Ms. GRACECHILD. Disproportionately.

Mr. MATSUI. Disproportionately, right.

Ms. GRACECHILD. There are about 43,000 folks with that designation on the rolls right now at SSA.

Mr. MATSUI. Right. While they are going through a review process, you know, before they become eligible, they don't receive benefits. That is the problem. And it is my understanding that, what, 84 percent of them eventually are eligible for benefits. Could you please discuss that and describe exactly what the regulations would do and perhaps could be altered to try to alleviate ordeal with this problem, if I have it right.

Ms. GRACECHILD. Well, I am not so sure I can give you the exact expert answer you need on that, so I might defer on that. But basically what it means is I think they are receiving benefits during that time period, but they are not eligible to participate in the Ticket program until their first CDR, and the time space on that I am not quite sure on, but I am sure it is probably a couple of months or several months at least, which could delay, you know, timely progress for them to move on in their lives.

But the main issue is, out of that 43,000 people that have that designation, only about 16 percent of them, 16 percent of that 43,000, leaving—I did the calculations on my calculator. That left

37,000 people that weren't going to medically improve who had every right to join the program right away and get started. That was a huge amount of people, and that is the group we are concerned about.

I think that you are going to hear from Mr. Paul Seifert who is an expert on this particular population and how they might be negatively impacted; and, if I might, I would defer my comments on that to him until later.

Mr. MATSUI. Okay.

Ms. GRACECHILD. Unless somebody else——

Mr. MATSUI. Did you have something to add to that, Mr. Start?

Mr. START. Well, one of the things, not from the Panel but from the research that we participated in several years ago from Social Security, we found the group that received the highest placement rates back to work were those with Medical Improvement Expected, much, much higher than other categories, so it was a very productive group to work with.

Mr. MATSUI. Okay. And essentially then, you would like to see the regulations changed to allow them to get the Ticket——

Ms. GRACECHILD. I would like to see that exclusion——

Mr. MATSUI. To participate in these programs, which obviously moves independence much quicker, particularly since 84 percent of them eventually qualify anyway.

Ms. GRACECHILD. Exactly. We would like to see that exclusion omitted from the final regulation.

Mr. MATSUI. Right. I guess later we will hear some other time from the administration, or from those who have put this together, but do you know the reason why those people would be excluded from participating in the program when 84 percent of them become eligible? What was the rationale?

Ms. GRACECHILD. Probably because—I mean, the rationale, which doesn't really hold up, but there was a reason why somebody thought that that would be reasonable, probably because they thought if they were going to medically improve then they would be ineligible for the program, but that is not in fact what we are finding is happening. And Steve just told me something that I didn't know before, that they have the best placement rate.

[The following was subsequently received:]

Ms. Gracechild is not able to answer the question on behalf of the Panel because the Panel has not received an answer to that particular question from the Social Security Administration agency. We have asked for more information about the rationale for the exclusion. The agency has promised a response in the near future.

Mr. START. There was one other issue raised and that was that it might attract people to the program, and it was called the woodworking effect, I think, was one of the issues that was mentioned, also. But from a rehab point of view of what the research is really clear about is the sooner you get people headed back to work, the chances of them returning to work are geometrically greater than waiting, so all things considered it is a better bet I think that the trust fund—to allow that.

Mr. MATSUI. I would hope that this would be one area that all of us would look at, because it sounds to me that we are actually

better off moving people at least toward the independence that we are all seeking quicker rather than delaying it, given the fact that, as you say, 84 percent of them ultimately qualify for the ticket. So I appreciate that.

One last question, Mr. Chairman, if I may. The issue of the dispute and how that is dealt with and resolved, could you discuss very briefly the regulations and what changes you would like to see and perhaps why you would like to see the changes in that area?

Ms. GRACECHILD. Well, we want to make sure that protection and advocacy services, which are going to be provided in dispute situations, are available to all of the beneficiaries and that they have adequate awareness of how to use those. So we want to make sure that at specific junctures, you know, when they first sign their Individual Work Plan, when they maybe want to make an amendment to it or change it, or when there are significant changes, that they will be then be reinformed that they can use protection and advocacy services. Or if they would like to take their Ticket and put it in a different employment network, if they are unsatisfied with the progress that they are making with one provider, that they have options to do that, and if those options are denied to them that they have an appeals process.

So we went through and did some very, very careful work in our work groups. Sarah Wiggins Mitchell, who is very familiar with protection and advocacy as an advocate, worked on that subgroup and her recommendations come—they are very good recommendations, and if she was here today I know she could give you even more information than I can. I don't know if Steve has more he would like to add.

Mr. START. There was one other point that was paramount and that was the current regulations propose using the existing administrative process in terms of the conflict resolution or dispute resolution, and it is incredibly backed up. You hear all kinds of horror stories about 2, 3, and 4 year waits. I don't know what the actual average is. SSA does. But that is just way too long to interrupt an employment process.

So part of the thought was, if mediation was made available, it could quickly be made available to resolve the problem and get back to the plan so that the person can get on with their training or their employment or whatever.

Ms. GRACECHILD. We didn't want mediation to be mandatory but optional, but we also wanted judicial review to be the end process of any appeals, so that that—so that an external review and judicial review, if necessary, was possible.

Mr. MATSUI. Thank you both very much. I appreciate it.

Chairman SHAW. Mr. Brady.

Mr. BRADY. Mr. Brady?

Chairman SHAW. I think that is who you are.

Mr. BRADY. Caught me by surprise, Mr. Chairman.

I love this program, the goal of it. But in all of our programs, I don't know about you, but you find yourself asking, does it have to be this complicated? And I guess my question is, as we set this up, from the Advisory Panel's standpoint, have we done all we can to streamline the paperwork burden and the process that goes with this so that we are, one, getting as much service as possible to the

participant, that we are attracting as many private providers to this as we potentially can? And did you have a chance to look at if the agency has created a paperless or a near paperless option for companies that want to transmit information and comply in a good, streamlined technology approach?

So the question is, have we done all we can to reduce the administrative burden to attract the best resources we have, private and otherwise, out there so that we can train and find jobs for folks who truly want them?

Ms. GRACECHILD. Well, I wish that I was qualified to say, absolutely, you bet, we did it. But, quite frankly, I would have to get back to you specifically on that. But I can tell you one thing, that is the goal. Because when you are working with people with severe disabilities and trying to get them into the mainstream of the work force, the more that we complicate the problem for them to apply, or for the providers to provide, or for the program manager to ensure and evaluate and administrate the program, then we complicate it for them. So you can bet that myself and all of the members of the Advisory Panel, especially Mr. Start who, you know, comes from the provider community and he doesn't want a lot of meaningless paperwork that gets filed in triplicate and catches dust—so, yes, we are.

One of our very specific recommendations, I will just highlight for you that I recommended, was that the program manager be able to make their program reports in their annual report. What section was that under? That was under—I can find it for you in a minute. But everywhere we go, we are trying to look where one job will take care of two requirements. I think that answers your question. That we are not just going to create a lot of bureaucratic jobs for people for filing paper in file drawers. Is that what you are worried about?

[The following was subsequently received:]

Ms. Gracechild is not able to answer this question on behalf of the Panel either. The question is really one that must be asked of the Social Security Administration itself and not the Panel. The agency has the authority to develop the administrative processes for the program, which would include a paperless system, not the Panel. However, the Panel has recommended that more efficient and less burdensome processes be developed.

Mr. BRADY. Yes, but, more importantly, have we tried to streamline this so that we attract the most resources from the private sector and that, again, every dollar we don't spend there obviously we can apply to services?

Ms. GRACECHILD. I think it is a goal, but I think it is in progress as a goal. I think it is a grand experiment, and as we roll out these first 13 States that is the goal.

Steve, do you want to say a little more on this?

Mr. START. Yes. In terms of what we have seen in the regulations, they certainly are more onerous than we ever thought they would be, those of us that worked on the legislation, more voluminous. It is an issue that the Committee is watching very, very closely and is very concerned about. A lot of that work that you are actually talking about is in progress, as I understand it, and

MAXIMUS is putting together those systems as we speak and they will be brought in for review before the panel later on.

Mr. BRADY. If you would just keep your eye on that area, because I really think it makes things harder sometimes than they need to be for our folks.

Mr. START. Yes. It came out with 35 pages of rules about expedited reentry into the program. I found it interesting, that it took 35 pages to describe the process for that. But it is a complicated process.

Mr. BRADY. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman.

I want to thank the panel for very interesting testimony. I am new on the Subcommittee, and really this is the first exposure to a very complicated program, trying to advance a very important goal of getting people back to work.

I want to pursue a line of questions asked by Mr. Matsui relative to the MIE designation. Basically, the additional test was initially advanced in these regulations ostensibly for the purpose of making certain that people were not benefiting from this graduated entry, the Ticket to Work program, that could otherwise just be apparently in the work force without additional disability. Is that what the purpose of it was?

Ms. GRACECHILD. Let me—you want to understand how people get the MIE designation? I just want to understand your question.

Mr. POMEROY. What was the purpose of it? What was the purpose of the——

Ms. GRACECHILD. For the exclusion?

Mr. POMEROY. Yes.

Ms. GRACECHILD. I think Steve alluded to it previously when he said they were afraid—what, that it would attract too many people to the program?

Mr. START. It has been called the woodworking effect. It may attract people on to the rolls that don't really need it, you are right, so they just get on Social Security so that they can get the advantages of the services provided.

Again, as I understand it, Social Security would go into more debt with the administration itself. But another concern was in fact that people who weren't really eligible for services would be getting kind of a free service. So it was to protect the trust fund from abuse.

Mr. POMEROY. Do you believe that that designation and the additional review then that requires—so once you get—if you do have the MIE designation, then you are subject to an additional CDR, that is, a Continuing Disability Review?

Ms. GRACECHILD. Yes.

Mr. POMEROY. Do you believe the prospect of the additional CDR has stopped people that might be in that category from trying to access to Ticket to Work?

Ms. GRACECHILD. Yes. Because, once again, if I refer you to the 43,000 I alluded to that have that designation currently on the rolls and that only 16 percent of them, which is, you know—in other words, 37,000 of them are going to go on with their disability designation and be eligible for the program, and in order—and of

the 16,000 that aren't, you are sort of holding back a whole group of worthy participants who need to get on with the program and have a right to get on the program.

Mr. POMEROY. The group that might be most capable of using this Ticket to Work program to its ultimate success?

Ms. GRACECHILD. Right. As Steve testified, they have one of the better placement records when he works with them.

Mr. POMEROY. So we have excluded a group from participating that we most really want to participate in terms of outcome?

Ms. GRACECHILD. Yes.

Mr. POMEROY. And some track record now to demonstrate that the 16 percent—there are two sides to this issue, both of them have some legitimacy, but we have some track record now to review and 16 percent doesn't make a lot of sense.

Ms. GRACECHILD. Sure.

Mr. POMEROY. You indicate, and here again, this is just a reflection of my lack of background, the difference between SSI and SSDI in your testimony and that there ought to be separate milestone programs created. Would you explain—help me understand the basis of that?

Mr. START. Well, SSI generally stated and, again, Social Security can give you the real in-depth on it, but SSI is based more on supporting individuals with disabilities that are impoverished or have a low income level. SSDI is primarily an insurance program for those that have been employed. Now, it pays a whole lot higher rate, SSDI, in terms of monthly stipend and has different sets of benefits, et cetera, than the SSI program which pays significantly lower, like in our area, $465 a month I think is what people would get. There are specific incentives in the SSI program that when you put it together with the Return to Work program here make it more—make it disadvantaged for networks to serve them.

For example, the way the program is set up, providers under the outcome payment system don't get paid until a person is off the rolls. There is no money going out to that person from SSI any more. Then the provider gets a percentage of the savings to general revenues fund, which is a very good concept and it is fundamental to this bill.

The problem is, the people on SSI, because there is an offset that says, look, for every $2 you make, you only have to pay back $1 to general revenues fund, it takes as a practical matter much longer for them to get to a point where nothing is being paid by SSA.

Mr. POMEROY. Essentially we are dealing with individuals that perhaps have more issues to deal with before they——

Mr. START. Almost on average, for certain. I mean, on average——

Mr. POMEROY. So is it harder—on the more challenging cases, a greater risk that we don't ultimately hit the benchmarks, that risk is borne by the employer and, in any event, the standard is higher.

Mr. START. Right.

Mr. POMEROY. That is totally irrational.

Mr. START. It is backward. It is not an intentional thing. It is one of those unintended consequences that happens. Mr. Seifert and Marty Ford are both here representing two of the major popu-

lations in that group and that is those with mental health issues and those with developmental disabilities. They are probably the most severely impacted by that, and there are some suggestions that were brought forward about how to deal with it. That is why we recommend a separate milestone system which, frankly, parallels what Mr. Seifert will talk about today.

Mr. POMEROY. That makes sense. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Ryan, do you have any questions?

Mr. RYAN. Sure. Thank you, Mr. Chairman. It is a pleasure to be here for the first hearing that I have been able to participate in.

Chairman SHAW. You were welcomed before you got here.

Mr. RYAN. Thank you.

I am very proud of the fact that Wisconsin has one of the 13 pilot programs, and we call it in Wisconsin Pathways to Independence in Wisconsin, so we are really eager to see this implemented and see how it works, so it is exciting.

I just wanted to ask you, Ms. Gracechild—did I get your name right?

Ms. GRACECHILD. That is right.

Mr. RYAN. You mentioned in your testimony that people weren't fully aware of the program and they may not take advantage of it. I just have a few questions on that note.

One, what can SSA do to more effectively reach out to educate Americans with disabilities about Ticket to Work? Two, what should we be telling beneficiaries about the program and what role do the advocates and State vocational rehab programs play in getting the word out? Specifically, when you mentioned that, that hit home. We are just beginning to do this in Wisconsin, and I wonder what are we going to do to get the word out to people in Wisconsin? Are we going to miss people? How do we address that?

Ms. GRACECHILD. Right. Well, thank you for that question. It gives me a chance to highlight part of my testimony again.

Well, first of all, let me just tell you that I work in an independent living center in Sacramento and we serve about 1,200 very severely disabled people each year in services to keep them in their home and, if possible, at work, and that 95 percent of them are on SSI. And people who live on SSI, Steve said it earlier in his testimony, that they have not—many of them have no previous experience in the work force. They are very disadvantaged.

Some of them may even have problems reading the kind of bureaucratese that comes out in memo forms when they get eligibility notices. Oftentimes they bring those notices to our office so advocates can read them and explain what the jargon, the acronyms, the time frames, the expectations mean.

So there is really a class of people on SSI that are part of the underclass in America. In addition to their disability, they are severely impoverished in addition to being disabled and may have had maybe unequal opportunities in the educational system, before we had ADA and IDEA. So we are working with very unsophisticated consumers sometimes; and getting the word out to them, it has to be told many times in many different ways. Maybe people have recommended here that perhaps we reopen that 60-day comment period and then during the first 30 days have an education

outreach blitz that includes TV spots, things in the newspaper, maybe signs on the buses, all of the different ways that sophisticated information experts get the word out.

So that is what many people think we need, but also time for some of these independent living centers, protection and advocacy agencies, ARC, other community-based providers in the community that are closest to the consumers have a chance to tell them about the Ticket to Work program and take away some of their fears. Because the greatest fear that our consumers sometimes have when they hear from the big agencies is that, one, they are going to lose their eligibility status and, two, that the check is not going to come or the health care won't be there. So we don't want to send scary shock waves through the consumer community.

Did that answer your question?

Mr. RYAN. Yes. Well, let me just go on to an extension of that. Short of having access to advocates, if you are living in an area where you just don't have those advocates, how do you get the State programs, the State agencies to work with SSA to get out there and get the word out? I mean, in our area, I worry about this problem; and if there are aren't any advocates in the area, how do you get a person who would otherwise be eligible that does not know about it, who can't read the jargon that you are talking about—can SSA—is there a proposal out there for SSA to work with State vocational rehabilitation agencies to simplify and make it easier and more digestible since there is no advocate out there?

Ms. GRACECHILD. There is not a clear one that I am aware of at this time.

Mr. RYAN. Okay. Thank you.

Chairman SHAW. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

The panel has recommended that disputes among employment networks and beneficiaries and program managers should have the option of having an external review either by the Social Security Administration review process—are you suggesting that the SSA administrative law judge hear these disputes?

Ms. GRACECHILD. Well, that is probably part of the process, although these big agencies have internal review appeal processes for recipients that are unsatisfied.

Mr. COLLINS. But my question is, are you saying that the administrative law judges of the Social Security Administration should hear these disputes? I mean, they are already backed up with a backlog of work.

Ms. GRACECHILD. That is why we are recommending mediation as an alternative to expedite resolving disputes whatever possible, though we are saying it should not be mandatory. It is hard to make people mediate and waive rights to external judicial review.

Mr. COLLINS. And who would do the mediation?

Ms. GRACECHILD. Well, we talked about that alot in work group. That was not my work group. I was on the who-gets-the-ticket and how you use them to qualify networks, but, as I recall, they were saying that in many different local communities there are fee-for-service providers that do mediation services. I know in Sacramento we have skilled professional, certified mediators that can be pur-

chased and that that fee would be paid for by the administration in rolling out the program and administering it.

Mr. COLLINS. And who would review the mediation process?

Ms. GRACECHILD. I don't—you know, I feel like I am probably not able to satisfactorily answer that question for you today. I could get it back to you tomorrow. I could go get some answers from staff, my executive staff on the panel and get that back to you. Would you like that?

[The following was subsequently received:]

Ms. Gracechild is not able to answer this question on behalf of the Panel because the Panel had not discussed the possibility of the external review being done by the SSA administrative law judges. This issue, along with other issues related to the proposed program regulations, will be discussed at the Panel's next meeting in Phoenix next week, March 26–28, 2001. We will forward the Panel's response to you after their meeting in Phoenix.

Mr. COLLINS. We would. Thank you.

Ms. GRACECHILD. All right.

Mr. COLLINS. Thank you, Mr. Chairman.

Chairman SHAW. Thank you.

Mr. Start, in your testimony you came up with some ideas or suggestions on ways to fix the milestones. Have you run any cost analysis on this?

Mr. START. On the ones that were specifically recommended, we haven't at the panel level. They very closely parallel the cost that we used in promoting the original legislation itself. I mean, it is very close to the numbers that were used. We had a $300 evaluation payment, I remember. We had one at 60 days. We had one—there might be one shorter. We had one at SGA, I remember.

So they very closely paralleled what has now turned out to be the panel's recommendations, and those were returning cost-benefit ratios of like $10 to $1 invested or put at risk by SSA in a very, very conservative—with a very conservative set of assumptions being used. So I feel—I mean, they are very safe numbers that the panel has recommended in terms of cost-benefit.

I have not seen such a detailed cost-benefit from SSA, and we have requested that they do that. Looking realistically at how many people stay in the program at each level, how many come in, how many actually complete their plans, how many get jobs, keep jobs, we have some basic data on that that could be used for that kind of modeling.

Chairman SHAW. Also, you indicate that the draft rules appear to favor State vocational rehabilitational programs over the private programs, or private providers. Can you tell us why and what changes need to be made in order to reverse that?

Mr. START. Well, there are a couple of provisions that are of concern. One is, essentially says, paraphrased, that any individual that uses State agency services, their ticket will automatically be transferred to the State agency. Some argue that, well, they still have choice, so I guess they can take it back. But under the current Federal law, the State agency is required to provide services outside of Social Security funding to all of these individuals.

So what the Panel is concerned about is, we have actually set up a discriminatory situation that says, because you are on Social Security the vocational rehab agency will not have to work with you if you don't give them your ticket. So it is a de facto kind of way of eliminating choice. So that is a concern to folks.

There is also a concern about the use of the certification process. The way the regulations are written, in some States the vocational rehab agency actually takes the responsibility of certifying who can provide vocational rehab services, so they can very conceivably use their certification process to block all of the competition, so to speak, and to narrow the range of service providers.

One of the primary drivers for the advocates behind this whole bill was to get a much broader opportunity of choice but also to get nontraditional providers, not just regular folks like my service but employers that would become networks and circles of support, and there is a whole variety of different ideas about how people can get jobs in a more informal way. And they work, by the way. All of those would be excluded by that kind of exclusionary certification language, and one facet of it is that the VR system would be in charge of its piece of it. In reality, there is a sense of competition, unfortunately, between the State agencies and the private sector. So there is an inherent conflict of interest in that, we feel, and are concerned about.

Chairman SHAW. Is the problem in the regulations or the statute, or can you answer that?

Mr. START. I think more in the regulations. Yes. I think the statute is written to reasonably provide a level playing field, reasonably.

Chairman SHAW. Well, we will have to look into that further.

Mr. Matsui.

Mr. MATSUI. No questions.

Chairman SHAW. No further questions. Thank you all very much. We appreciate not only you being here, but the fine work that you have done.

Mr. MATSUI. Mr. Chairman, may I mention to the next panel, I think the next panel is coming up, that many of us, if you just saw Mr. Pomeroy leave, there is a 3 o'clock meeting that some of us must attend, and I really apologize that we have to do that. This meeting was called this morning, so we are kind of stuck. So I just want to apologize to the people here. You, too, Mr. Chairman, because we are going to have to take off.

Chairman SHAW. Well, I wasn't invited to whatever meeting that is.

Mr. MATSUI. Mr. Chairman, you are invited to any meeting you want to come to. We would be happy to have you come to our meeting. Thank you.

Chairman SHAW. The next panel, if you would come to the table.

We have Susan Prokop, Associate Advocacy Director of the Paralyzed Veterans of America on behalf of the Consortium for Citizens with Disabilities; Mr. William Harles, who is Executive Director of the Inter-National Association of Business, Industry and Rehabilitation; Ms. Marty Ford, Director of Legal Advocacy, the ARC of the United States; and Paul Seifert, who is the Director of Government

Affairs of the International Association of Psychological Rehabilitation Services from Columbia, Maryland.

As the previous panel, we have your full statements that will be made a part of the record, and you may summarize them as you see fit.

[Questions submitted from Chairman Shaw to the panel, and their responses follow:]

TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL
April 5, 2001

The Hon. E. Clay Shaw
Chairman, Subcommittee on Social Security
U.S. House of Representatives
Committee on Ways and Means
B316 Rayburn House Office Building
Washington, DC 20515

DEAR REPRESENTATIVE SHAW:

The Ticket to Work and Work Incentives Advisory Panel appreciates the recent opportunity for the two of us to give testimony before the Subcommittee regarding the Social Security Administration's proposal to implement portions of the Ticket to Work and Work Incentives Improvement Act.

We have received your follow up questions and, in the interest of time, the following represents our individual responses to your questions as only two of the twelve members of the Panel. Where possible the answers reflect specific recommendations in the Panel's reports and discussions on the general topics relevant to your questions. These responses do not reflect the deliberations of the Panel as a whole. In some cases, we are unable to answer the question at this point because it is too soon in the process or we have not yet had an opportunity to gather the data needed, or the Panel has not reached a decision on the issue. However, in order for the hearing record to be complete, we are submitting them for your consideration at this time with the understanding that this is an evolving process.

To aid in clarity of this response, we have separated the parts of the four questions into thirteen (13) individual questions as follows:

1. When will the provider expect to receive payment for services?

The answer to this question will vary tremendously based upon the individual case. The typical best case scenario for providers who are utilizing the outcome payment system would be to expect initial payment to occur in one year to 14 months after the beginning service to the individual. If, when the provider took the ticket, the individual was participating in Substantial Gainful Activity (SGA) level activity (which may happen in a very small percent of cases) the timeline could be shorter than 12 to 14 months.

For a more average case that requires some level of training and job placement it would be reasonable to expect 2 to 3 years of involvement with the client until the provider would actually receive an outcome based payment.

For the harder to serve, it would be likely that a small percentage (probably under 40%) would ever reach full SGA. For those requiring a long training period in such actives as supported employment it could easily require 3 to 5 years.

The most impacted number however, comes from the fact that based on current estimates compiled from research and demonstration projects, Project Network, and state vocational rehabilitation agency, it is estimated that approximately 56% of the individuals served overall will not reach a level of SGA sufficient to leave the rolls.

2. How long have services been rendered over time?

Included in question 1.

3. At what cost to the provider?

Cost, like timing, will vary dramatically from case to case. It costs less to place individuals that require little or no training, supplies or equipment. On average the experience of our national Projects With Industry (PWI) and some SSA research and demonstration projects, it is prudent to predict an average cost of $2,000 to $3,000 per person during the training and placement period. Based on the experience of the state VR agencies, costs for some individuals could exceed $10,000 and in a small percentage of cases go to $20,000 plus per case. Such expenditures would, in all likelihood, discourage Employment Networks (Ens) from serving such clients unless there was supplemental funding from other sources. Again, keep in mind that

on the average, over 50% of the individuals will not reach the SGA level necessary to leave the rolls; therefore, the cost borne by the provider is essentially doubled.

4. How serious a problem is the milestone payment structure?

100% of the provider organizations that testified before the panel said that the current milestone system is simply unworkable. Anecdotal reports from providers across the country indicate a very low interest in participating in the system as proposed in the Notice of Proposed Rule Making (NPRM). Many say they will sign up to be EN's, but will wait until the rates are properly adjusted before actively pursuing clients. This is the same strategy that many used in the alternative provider program where hundreds of providers signed up, but in the end only a very few, under 20 individuals, actually obtained SGA.

5. Will private providers decline to participate in the program?

From the comments the Panel and SSA have received, we would say yes. Based on feedback from testimony and field contact, a significantly smaller number of providers will actively participate than originally intended to when the legislation was being developed. The Panel has heard that even providers who helped develop the legislation are now very skeptical.

6. Has the "risk" in the milestone payment been heaped upon the EN's by SSA?

From a provider perspective, SSA has shifted a substantial percentage of the risk to the provider. The total amount of payment coupled with small milestones and the schedule for payback makes the milestone system very unattractive. The milestones have created little incentive for EN's to participate, as was the original intent of Congress. Based on what we have heard, it has essentially become financially punishing to utilize the milestone option.

7. Is this assumption of risk statutory?

There was no reference in the statute requiring this level of risk sharing. In fact, the statute indicates that the milestone system is intended to encourage small providers to be able to financially participate and to encourage serving more difficult to serve individuals. The current milestone system seems to accomplish neither of these objectives.

8. Why did SSA choose to set up the milestone payment program so they are spared the risk?

The Panel has asked SSA that question on several occasions and asked for detailed cost analysis of the risk involved to social security with this milestone system and alternates proposed by the Panel. To date, no such analysis has been received.

9. How does the resource commitment for EN's differ for the HTS population?

Resources for this population will be affected in several different ways. 1. It is highly likely that this population will by definition require more supports or equipment and training during the initial training and rehabilitation phase. Some of these costs were addressed earlier in this memo. 2. Given the episodic or cyclical nature of many of the conditions in this category, it is highly likely that it will be much longer before the EN's will receive outcome-based payments for this group. 3. The two-for-one offset model utilized by SSI beneficiaries will substantially increase the number of months required for the individual to leave the roles, thus delaying payment of outcome payments. 4. While it is not completely clear at this time, it appears that offsets created by Plans for Self-Support (PASS) and Impairment-Related Work Expenses (IRWEs) will further delay payment.

10. What is needed, more money, different timelines, risk sharing?

The Panel has recommended that there be an overall increase in the amount of funds available in the milestone method. It also recommended increasing the amount of milestone payments by adding a payment at the signing of the individual work plan (IWP) and another upon leaving the rolls. These recommendations will effectively improve the timeliness of payments, giving providers more financial capital to work with sooner.

Original proposals developed for the first Ticket to Work bill included some provisions whereby SSA would set aside funds to assist individuals who have high upfront costs for such items as: power wheelchairs; prostheses; and perhaps, initial down payments toward specialized transportation vehicles.

The Panel has recommended some strategies to share the risk. These strategies involve a tiered system that has a separate payment methodology for the SSI popu-

lation and allows for partial payment for individuals that may not have left the rolls, but have generated some savings.

11. Are the majority of 16–18 year old SSA beneficiaries on SSI?

Yes, almost all beneficiaries in that age group who are receiving disability benefits are on SSI benefits. Specifically, according to the biannual report of December 2000 on SSI children, from the Office of Research, Evaluation and Statistics, SSA, the following numbers of SSI youth are on the rolls: 54,930 16-year olds and 51,960 17-year olds.

As the law specifies that a redetermination must be done upon attainment of age 18, the vast majority of 18-year olds who are receiving benefits are adults.

12. Do they receive a Continuing Disability Review (CDR) at age 18 to determine if they still qualify for benefits?

Upon attainment of age 18, they receive a medical redetermination (rather than a CDR) to see if they still meet the disability requirements. Currently, under the provisions of the Social Security Act, an 18-year old recipient whose redetermination results in a decision to cease benefits is protected and benefits are continued, only if he or she is participating in a vocational rehabilitation program.

13. What percent of them are determined to be no longer eligible?

In 2000, SSA did 51,716 age-18 redeterminations. Of those, 55.8% were continued and 44.2% were ceased. However, it should be kept in mind that that cessation rate is for the initial age-18 redetermination, the continuance rate goes up with appeals.

We greatly appreciate your interest in the Panel's views on the implementation of the Ticket Program. We look forward to a continued involvement with the Subcommittee on Social Security. We and the Panel as a whole are committed to increasing employment opportunities and choices for American citizens with disability who receive Social Security benefits. Thank you again for this opportunity. If you need any further information or clarification, please contact Ilene Zeitzer of our staff at 202–358–6436.

Sincerely,

STEVEN L. START
Member
FRANCES GRACECHILD
Member

Chairman SHAW. Ms. Prokop.

STATEMENT OF SUSAN PROKOP, ASSOCIATE ADVOCACY DIRECTOR, PARALYZED VETERANS OF AMERICA, ON BEHALF OF CONSORTIUM FOR CITIZENS WITH DISABILITIES, TASK FORCES ON WORK INCENTIVES IMPLEMENTATION, SOCIAL SECURITY, AND EMPLOYMENT AND TRAINING

Ms. PROKOP. Mr. Chairman, members of the Subcommittee, I do thank you for providing this opportunity for comment on the proposed regulations for the Ticket to Work program.

My name is Susan Prokop, and I am representing the Consortium for Citizens With Disabilities Task Force on Work Incentives Implementation. We deeply appreciate the time, attention and support you and your colleagues gave to the creation of this law. However, we feel the proposed rule falls short of the positive impact that you meant for this law to have for beneficiaries.

I am just going to highlight a few of these issues in my oral comments. You have our more extensive written statement.

Two areas of great concern, as you have already heard, have to do with the eligibility criteria for the Ticket to Work program. The regulations would deny tickets to beneficiaries categorized as Medical Improvement Expected and who have not yet had their first Continuing Disability Review. Denying tickets to people simply be-

cause their condition might improve ignores a large part of the population who could benefit early from this program. Forcing people to wait months or even years before gaining access to a Ticket seems contrary to a growing body of evidence that supports early vocational intervention after a disabling event.

I think somebody had asked how long does it take between the MIE designation and the first CDR, and we have heard anywhere from 18 months to 3 years before that first CDR takes place.

The proposed rule would also limit beneficiaries to one Ticket per period of disability. Disabilities can be sporadic and/or recurring. In combination with other Social Security policies that allow an individual back on to the benefit rolls under their original disability designation, the one Ticket limit seems to preclude eligibility for new tickets in the future.

The law protects beneficiaries using a Ticket from Continuing Disability Reviews (CDRs). The Social Security Administration has established certain time lines for work effort that determine what "using a Ticket" means. Unfortunately, their approach devalues any work that a beneficiary may do in the first 24 months of his or her ticket and ignores the difficulties that people with disabilities may have in keeping to precise time frames for progress. Our written statement identifies some alternative ways for beneficiaries to demonstrate timely progress toward an employment goal.

The Ticket to Work program is supposed to offer beneficiaries wider choice of vocational rehabilitation services beyond the traditional models formerly used. Our task force has numerous reservations about the regulatory and administrative burdens placed by the proposed rule on employment networks as well as the inadequacy of the proposed payment system to attract prospective providers.

The fundamental problems with the payment system are too extensive to enumerate in this short time. Suffice it to say that the payment system SSA has established will not work in either the total amount of payment available or payout schedule for milestones and outcomes; and it will be particularly harmful to those beneficiaries deemed the hardest to serve, those on SSI.

If providers determine that the ticket payment systems are insufficient, that the requirements to serve as an employment network are too complex and expensive, or if Social Security Administration and the program manager just fail to recruit enough employment networks, beneficiaries are not going to have the choice that the law was meant to give them.

Other impediments to consumer choice are the proposals for automatic assignment of a Ticket to a State's vocational rehabilitation agency when a beneficiary seeks services under Title I of the Rehab Act and a cancellation of a Ticket whenever services are rendered by VR to a beneficiary. At a minimum, beneficiaries seeking services from a State vocational rehab agency should be informed before they sign any agreement with the vocational rehab agency about the impact that this will have on his or her ability to use a Ticket in the future.

Our task force has identified other issues in the proposed rule that could affect beneficiaries' ability to take full advantage of the Ticket program. These include the need for enhanced due process

protections in resolving disputes with employment networks as well as the critical need for SSA to address its inability to track wages and adjust benefit levels when working beneficiaries report their earnings. We would also draw your attention to our comments about the 2 for 1 demonstration program and the issues surrounding disabled adult children as these too will have a significant impact on the success of Public Law 106–170.

I appreciate your time and attention and interest in the implementation of the law, and I will be happy to try and answer questions at such time.

Chairman SHAW. Thank you.

[The prepared statement of Ms. Prokop follows:]

Statement of Susan Prokop, Associate Advocacy Director, Paralyzed Veterans Association, on behalf of Consortium of Citizens With Disabilities, Task Forces on Work Incentives Implementation, Social Security, and Employment and Training

Mr. Chairman and members of the Subcommittee, thank you for providing this opportunity for comment on the proposed regulations for the Ticket to Work Program under Public Law 106–170. We, the undersigned members of the Consortium for Citizens with Disabilities Task Forces on Work Incentives Implementation, Social Security and Employment and Training, are pleased to share with you our observations concerning the proposed regulations for the Ticket to Work program published in the Federal Register on December 28, 2000.

Our task forces deeply appreciate the time, attention and support that you and your colleagues gave to the creation of the Ticket to Work and Work Incentives Improvement Act. Like you and all the advocates for this legislation, we believe that the objectives of the new Ticket program include: encouraging people to work or attempt to work without fear of permanently losing needed supports; encouraging providers to serve people with Tickets; and expanding the pool of potential providers of rehabilitation services, including non-traditional providers.

While we recognize the time pressure under which the Social Security Administration operated to produce these proposed regulations, we are nevertheless concerned that there are a number of issues contained in the regulations that would prevent fulfillment of one or more of the important purposes of the program.

(1) Impact of Medical Improvement Expected [MIE] Designation on Eligibility

The Ticket to Work regulations in Section 411.125 would provide tickets to all beneficiaries with disabilities, except for those people who are categorized as "medical improvement expected" (MIE) and who have not yet had their first continuing disability review (CDR) finding them still disabled. We find this inappropriate for several reasons.

Studies overwhelmingly demonstrate the value of returning someone to the workforce as soon as possible following a disabling event. This was confirmed in a very recent GAO report, *SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts,* GAO–01–153 (Jan. 2001). In addition, Congressional interest in providing early intervention was expressed at a House Ways and Means Subcommittee on Social Security hearing which was held on July 13, 2000, *Challenges Facing Social Security Disability Programs in the 21st Century.*

To deny tickets to people simply because improvement in their condition is "expected" ignores a large part of the population who could benefit from the ticket program. This approach is inconsistent with the intent of Congress to allow people to get to work as soon as possible. The initial draft regulations distributed at the November 2000 Work Incentives Advisory Panel meeting contained no such exclusion of MIE designees from the Ticket program. We are mystified by SSA's decision to include this policy in the proposed rule.

A Work Incentives Advisory Panel working group paper distributed at the Panel's February 2001 meeting cited disability determination service files showing that approximately 43,000 individuals are designated MIE each year. Approximately 6,900 of those beneficiaries are ultimately dropped from the benefit rolls for medical improvement reasons. This means that over *36,000* beneficiaries remain on the rolls after their first CDR. SSA seems intent on denying over *36,000* beneficiaries the opportunity to access the Ticket program quickly in order to avoid the possibility that

6,900 beneficiaries might get off the rolls anyway. Adding to the inequity of this policy is the fact that many of those 6,900 terminated after their first CDR will nevertheless return to the disability rolls at a later date and thus qualify for the Ticket program, albeit under circumstances that may make it more difficult for them to find employment.

Furthermore, just because an individual has been designated MIE does not mean that he/she can do without the assistance of rehabilitation providers to maximize work capacity. The approach ignores the rehabilitation benefits that the individual may receive from appropriate services. These services may assist the individual to acquire work skills and job placement that will be more successful over the long run, thus preventing a later return to the disability program.

Finally, under current law, the designation of MIE has no legal implications regarding the granting of benefits to or withholding of benefits from an individual. The MIE designation merely triggers the timing of a CDR. Indeed, a state agency disability examiner has great discretion in scheduling that first CDR, which could occur many years after the designation.

If the MIE designation is going to be used to deny a benefit such as the Ticket, further rulemaking will be necessary to better define the category and set standards for designation. Otherwise, this rather loosely defined and arbitrarily applied standard would have a significant effect on the beneficiary regarding whether the right to take advantage of the ticket provisions. Additional regulatory changes would be required to provide for due process and the right to appeal adverse decisions. The MIE designation should be considered an "initial determination" that is subject to administrative and judicial review. This would require a change to existing regulations.

(2) Ticket Eligibility for Beneficiaries Under Age 18

The proposed rule would limit eligibility for Tickets to beneficiaries age 18 and older. Numerous questions have been raised about statutory redeterminations for 18 year old beneficiaries entering the adult SSI system. However, we understand that SSA is evaluating the process used by state disability determination services for conducting these required redeterminations. This project is being done with the American Association of University Affiliated Programs and, until SSA has had an opportunity to assess the outcome of the project, we believe it may be premature to lower the age of eligibility for tickets. Therefore, we believe that, at this time, the ticket eligibility age should remain at 18 pending the results of the AAUAP project.

(3) One Ticket Per Period of Disability

No limits should be placed on the number of Tickets a person can receive over the course of a lifetime, as long as a person is not using more than one at a time. People eligible for SSDI have very severe disabilities preventing them from working consistently or for long periods of time the first time they attempt to work. Limiting the number of Tickets as proposed in Section 411.125[b] ignores the fact that disabilities can be sporadic, episodic, and lifelong. It also overlooks the fact that some people will need additional job training and placement assistance when unexpected events occur outside their control, such as the bankruptcy of an employer, loss of a job through lay-off or restructuring, or family re-location.

The proposed rule appears to allow one ticket during any one period of disability. Unfortunately, when this is combined with SSI's 1619[b] program and the provision for expedited reinstatement of benefits that became effective January 1, 2001, it seems to preclude eligibility for new tickets in the future since the individual is "reinstated" to the benefit rolls under the original disability designation. To ensure that this limitation is not read to mean one ticket per individual's lifetime, clarification is needed from the Social Security Administration (SSA).

Another troubling aspect of the limitation of one ticket per period of disability relates to individuals who have used a substantial portion of a ticket and then must return to the disability program. We believe there should be, after a reasonable time period, an opportunity for a beneficiary to get a fresh start with a new ticket to try again to enter the workforce. Otherwise, people with very severe disabilities will have only one chance for success, a result we believe is contrary to Congressional intent.

(4) "Timely Progress" and Continuing Disability Reviews

The law states that, "beneficiaries shall not be subject to Continuing Disability Reviews as long as they are using (as defined by the Commissioner) a Ticket-to-Work." Under the proposed rule [Section 411.191], SSA has established a timeline that determines what "using a Ticket" means. Once they assign their ticket, beneficiaries have up to 2 years to prepare for employment and must show they are "ac-

tively participating in their Individual Work Plan (IWP) or Individual Plan for Employment (IPE) i.e., engaging in activities outlined in one's work plan on a regular and timely basis. After 2 years, beneficiaries are required to demonstrate increasingly greater levels of employment to be considered "using a ticket" in order to receive protection from CDRs.

As even SSA acknowledges, progress toward self-sufficiency is not always continuous and that for some, self-sufficiency may not be attained. Many beneficiaries have disabilities that have cycles of relapse and remission. The requirements for only 3 months work at SGA out of 12 in the third year and 6 months out of 12 in succeeding years recognizes that some beneficiaries may not be able to work on a continuous basis.

Many beneficiaries have episodic and intermittent disabilities. Some people may take longer to enter the workforce while others may be able to work sooner but may experience difficulties later. It is unfair to discount work efforts by those who can work earlier. In addition, the proposed rule fails to take into account individuals who may work at increasing levels of income or hours, but take longer to reach the SGA earnings threshold.

The Task Force believes SSA should allow beneficiaries to "bank" months of work that may take place in the first 24 months to count towards the work requirements in later years. In year 5 and thereafter, we also support allowing work beyond the required six-months to count toward the next year's requirement. Finally, we recommend that increasing amounts of work or earnings, even if below SGA, be evaluated as meeting the definition of "progressively higher levels of employment" in order for a person to keep their CDR protection.

(5) Employment Networks

Employment network [EN] qualifications set out in the law are fairly general. Those of us who helped to develop the legislation were determined not to impose any arbitrary barriers to entities wishing to serve an individual who wants to go to work. A major objective of the Ticket to Work program was to get away from the heavy reliance on state vocational rehabilitation agencies and traditional rehabilitation models which, in fact, did not work for many people. It was particularly important that ENs not be limited by licensing or certification criteria unrelated to their mission.

Section 411.315, which sets out EN minimum qualifications, has a number of troubling aspects as currently constituted. The language seems to imply that employment networks must provide health and medical services and includes stipulations that an EN must have "applicable certificates, licenses or other credentials if such documentation is required by state laws . . ." Where a profession requires licensing or credentialing under state law, such a requirement is certainly reasonable. However, SSA should avoid giving the impression that all employees or contractors of ENs have to be licensed or credentialed. Also reasonable would be any business licensing or regulatory requirements ordinarily imposed on an entity that seeks to become an EN. For example, proper guidelines regarding proof of the business as a taxpaying, registered entity under federal and state law would obviously be appropriate.

SSA should avoid the interpretation that *only* state certification or licensing will qualify an entity as an EN. Instead, SSA should make it clear that there are any number of avenues by which a provider can qualify as an EN: certification or licensing under applicable state law; credentialling under other nationally recognized standards; or education or experience in successful employment of people with disabilities. What must remain the key criteria is whether the entity is capable of successfully providing the service agreed to by the EN and the beneficiary.

Questions have arisen in various discussions about ENs whether families or personal support networks could serve as an EN. If the family or group of friends can meet the requirements of an EN, then they should be able to serve as an EN. However, we suspect that a beneficiary's family or friends would be in a better position to associate themselves with or subcontract with an EN to provide services to an individual, particularly if the extent of their services are limited to that individual. We believe that such arrangements should be allowed through individual arrangements with an EN.

Our task force has several reservations about the payment, regulatory and administrative burdens placed by the proposed rule on prospective ENs that point to an overarching concern about the overall adequacy of employment networks available to serve consumers. If potential providers determine that the Ticket payment systems are insufficient, that the requirements to serve as an EN are too complex and expensive or if SSA and the PM simply fail to recruit enough providers, beneficiaries will not have the choices that the Ticket program was meant to give them. The very

first charge given to the program manager by PL 106–170 is "recruitment of employment networks." We believe that, in addition to the program manager evaluation criteria listed in Section 411.250 of the proposed rule, SSA should add "recruiting sufficient employment networks to serve a broad spectrum of beneficiaries in each state in which the Ticket is operative." Clearly, assuring choice of services to beneficiaries is a key responsibility of the PM and it should be judged on its success in that arena. Furthermore, the proposed rule vests authority for this review of the PM solely with a few officials at SSA. We recommend that the Work Incentives Advisory Panel be given a specific role in evaluation of the PM.

Section 411.321 of the proposed regulations lists conditions under which SSA will terminate an agreement with an EN due to inadequate performance. Under the terms of this section, an agreement between SSA and an EN may be terminated if the EN fails to fulfill its responsibilities outlined under Section 411.320, including achievement of "minimum performance standards relating to beneficiaries achieving self-supporting employment and leaving the benefit rolls" or if the EN does not comply with the reporting requirements of Section 411.325. One component missing from this list is customer satisfaction. SSA should ensure that the views of consumers, through its evaluation process, are considered as part of a termination decision.

Section 411.330 describes how an EN's performance is to be evaluated. SSA says it will "periodically review" an EN's work "to ensure effective quality assurance in the provision of services" and that it will "solicit and consider the views of the consumers the EN serves and the PM which monitors the EN." We believe that SSA should elaborate on those quality measures that will be used to assess an EN's provision of services and should, instead of "periodically reviewing" EN work, do so on a specific schedule. Furthermore, we believe that SSA should make an effort not only to solicit and consider the views of beneficiaries served by the EN but also those rejected by the EN for service.

(6) Vocational Rehabilitation Issues

SSA proposes under Section 411.385 that, when a beneficiary signs an individual plan for employment or IPE with a state vocational rehabilitation agency [VRA] under the Rehabilitation Act, his or her Ticket will be considered "assigned" to that agency. SSA further proposes at 411.585 that payment for services by a VRA under Title I precludes payment for services provided by an EN and that payments to an EN cancel out the ability of a beneficiary to have the state VRA pay for services needed by that individual.

The Ticket to Work Program is intended to enhance consumer choice and many of our members' are concerned that forcing a beneficiary to assign his/her Ticket to a state VRA or prohibiting payments to VRAs or ENs when a beneficiary seeks services from either negates that choice. In addition, this policy directly conflicts with the voluntary nature of the Ticket program stated in Section 411.135. If a beneficiary is truly "free to choose when and whether to assign" the Ticket, as stated early in the proposed regulation, the later sections regarding automatic assignment of the Ticket when a beneficiary goes to a state VRA seem inconsistent with that principle.

At a minimum, state vocational rehabilitation agencies should be required to inform a beneficiary seeking services from the VRA, prior to any signing of an IPE, about the impact that this will have on his/her ability to use a Ticket in the future. Moreover, beneficiaries should be informed that they are entitled to 60 months of services under the Ticket whereas VRAs need only provide 9 months of services under the cost reimbursement system. This situation, of course, could be alleviated by revising the policy governing one Ticket per period of disability.

In addition, SSA would have agreements between ENs and state VRAs state "the terms and procedures under which the EN will pay the State VR agency for providing services." We disagree with this proposal and have urged its removal from the final rule. As written, SSA is assuming that ENs will always pay a state VRA for its services when, in fact, many VRAs pay contractors for services. In addition, SSA seems to assume that the Ticket to Work Program and VRAs pay for identical services. This is not the case. As noted above, the Ticket is meant to pay for long term supports to help a beneficiary maintain productive employment over the course of 60 months. VR considers a case successfully closed after 90 days of employment and collects payment under the cost reimbursement system after nine months of employment at or above SGA. SSA should not dilute the impact of the Ticket by continuing this policy.

(7) Payment Systems

The proposed regulations under Subpart H offer two methods, as required by the law, to compensate providers for an individual's success at employment by paying them a portion of cash benefits that would no longer be paid to the individual. The first method is the outcome payment system which pays a provider for months in which benefits are not paid to the beneficiary because he/she is earning above the substantial gainful activity level [SGA]. A milestone-outcome payment system was added to the original Ticket program by Congressional authors to encourage providers to serve the "harder-to-serve" population.

There are numerous fundamental problems with the payment system proposed by SSA in its draft rule. First is the very large difference in the total payment value of the Ticket between the outcome payment method and the milestone-outcome payment method. This differential is best illustrated by comparing the overall outcome payment for DI beneficiaries at $16,000 and the overall outcome-milestone payment for SSI beneficiaries set below $10,000.

Second, SSA would require that the funds paid out as milestones be paid back by the EN within the first 12 outcome payments. Backloading the outcome payments in the milestone system means that monthly outcome payments in the first year are three times lower than those in the fifth year. One result is that, if someone leaves an EN after 45 months, for example, the EN may lose the bulk of reimbursement from SSA. This will discourage smaller, less well-capitalized providers from participating. The outcome payments in the milestone system should be spread evenly over the five-year period.

Third, the milestone payments for both SSI and SSDI beneficiaries under the milestone-outcome system are far too low. Milestone payments were to be set at a total amount below the outcome payment system in order to control cost estimates of the legislation as it proceeded through Congress. Those of us who participated in the development of the Ticket program expected the milestone-outcome payment to be set as close as possible to the outcome payment amount. Advocates, and, we believe, Congressional drafters, expected the milestone-outcome payment to be established as close as possible to the outcome payment amount. Since the outcome payment system is initially limited to 40 percent of the average disability benefit, the milestone-outcome payment limit should have been set at a level reflecting only a minor reduction in order to comply with the law. Specifically, the milestone-outcome payment would be set at 99 percent of the overall outcome payment, not at the 85 percent level set in the proposed regulations (Sec. 411.525(b)). (Translated to the average benefit level, with the current outcome payment set at 40 percent of the average benefit, the milestone-outcome payment should be set no lower than 39 percent of the average benefit, not the approximately 34 percent level established in the proposed regulations.) We have recommended to SSA that the milestone-outcome payments be set at a level equal to 99 percent of the outcome payment level.

Both the number and the amount of dollars in the milestones are inadequate to attract employment Networks. The first milestone comes too late in the process. A more effective arrangement would be a milestone after a beneficiary is placed in a job followed with milestones based on continuous employment. The milestone payments should be of sufficient amount to enable ENs which are not major organizations or corporations to bear the risk.

Additionally, both milestone-outcome and outcome payment systems treat SSI and SSDI beneficiaries the same, despite the fact that benefits are paid in completely different ways under the two programs. SSA makes no accommodation for the fact that SSI benefits can be partially offset by earnings. Consequently, SSI beneficiaries are disadvantaged by the proposed rule.

The payment system SSA has established will not work in either the total amount of payment available or payout schedule for milestones and outcomes. Therefore, we recommend that SSA consult with experienced milestone payment providers and redesign the milestone-outcome payment system. This system must be flexible enough to meet the needs of a diverse group of people with differing disabilities. We further recommend that SSA consider offering not only a structured milestone approach but also allow for individualized milestones approved by the Program Manager for individuals for whom the structured milestones do not work. SSA must design the milestones in a manner that will attract providers to serve people with more severe disabilities and in need of greater supports. We have urged SSA to test and experiment in this early phase of the Ticket program to determine if the milestones are serving their intended purpose.

(8) Outcome Payments Under SSI

We especially wish to highlight the problem involving the outcome payments (including milestone-outcome payments) system as it affects SSI beneficiaries. The av-

erage federal SSI benefit is substantially lower than the average federal SSDI benefit. As referenced in the preceding section, the milestone-outcome payments and the outcome payments for SSI beneficiaries will be much lower than those for Title II beneficiaries. Employment networks may be disinclined to serve SSI beneficiaries if SSA does not address this problem in the regulations. For example, SSA could use its demonstration authority to test a variety of approaches including making the milestone and outcome payments "richer" for SSI beneficiaries and/or encouraging states to contribute a portion of the state share of SSI to the payment.

SSA should also undertake, as soon as possible, the research necessary for the Report on the Adequacy of Incentives. Our task force has identified this report as a key initiative to assure that certain people with severe disabilities are able to participate fully in the ticket program. The four groups of people identified in the law whose circumstances must be addressed in this report include: people with a need for ongoing supports and services; people with a need for high-cost accommodation; people who earn a sub-minimum wage; and people who work and receive partial cash benefits.

The information needed for this study must be collected in the initial implementation of the Ticket program. By doing so, the final report will include valid and reliable data upon which to identify ways to adjust payment rates which will offer the desired and necessary incentives to providers to serve all individuals eligible for the ticket program. For example, SSA could ask the Program Manager to collect information from ENs about ticket holders they decline to serve, including why the service was declined. If this information reveals certain trends in ticket experience of the four groups of individuals to be studied, it may help frame constructive solutions to any problems identified.

(9) Overpayment Issues

For the ticket program and all other work incentives to succeed, SSA must do something about its current inability to track wages and adjust benefit levels when working beneficiaries report earnings. As the system now operates, chronic overpayments to beneficiaries represent a major threat to the Ticket program. Beneficiaries are so fearful of overpayments and the notices from SSA that go with them that the ticket program could fail unless SSA can establish a reliable, efficient, beneficiary-friendly method of collecting and recording in a timely manner information regarding a worker's earnings.

Under section 411.575, the proposed rule imposes a number of reporting requirements on employment networks in order for these providers to be paid. These requirements serve to highlight the longstanding inability of the agency to track earnings properly and quickly and to adjust benefits accordingly. This section offers an opportunity to instill greater responsibility on SSA to improve its own administrative processes with regard to information concerning beneficiary earnings information. Specifically, we believe that provider reports sent to the PM on beneficiary income and earnings should have to be forwarded by the PM to SSA within 30 days. Once the agency receives a request for payment to an EN from the program manager, SSA should have no more than 60 days to adjust a Ticketholders benefits check and, if called for, make payment to the EN. If the agency fails to stop benefits within that timeframe, it cannot hold the beneficiary liable for overpayment and it should have to pay the EN as though the beneficiary was off the rolls.

(10) ENs Ability to Submit Evidence Against Beneficiary

We find two issues contained within the section on what an EN can do if the EN disagrees with a decision by SSA on a payment request very troubling. Section 411.590(d) reads: "If an appeal by a beneficiary regarding entitlement or eligibility for disability benefits results in a revised determination, *our revised determination could affect the EN's payment or result in an adjustment to payments already made to the EN*. While the EN cannot appeal our determination about a beneficiary's right to benefits, *the EN may furnish any evidence the EN has which may support a change in our determination on the beneficiary's appeal*." (emphasis added)

First, this indicates that ENs may be subject to overpayments and may have to reimburse SSA for payments that were improperly made. As we discussed above, unless SSA addresses the serious problems with its own deficient income reporting and recording systems, continued overpayments to beneficiaries will continue to be a serious disincentive to work. Overpayments to ENs may likewise serve as a disincentive for providers to serve as ENs.

However, even more distressing is the encouragement given by SSA to ENs to turn against beneficiaries if the ENs are unsuccessful in disputes with SSA over whether payments are due to the EN. Should an EN lose its dispute with SSA, the only alternative SSA offers is for the EN to submit evidence against the beneficiary

in the beneficiary's claim for cash benefits. 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. Needless to say, beneficiaries and ENs should be expected to present truthful information and evidence to SSA at all times and ENs should be prepared to submit accurate information whenever requested by SSA. However, inclusion of this suggested approach in a section regarding ENs' options in case of an unfavorable decision by SSA creates an adversarial tone and establishes a fissure in the contractual relationship between beneficiaries and ENs at the outset.

(11) Dispute Resolution

We are concerned that the proposed dispute resolution provisions do not adequately protect the due process rights of Ticket-users. The provisions give no clear guidance to EN's on what constitutes an acceptable or even model grievance procedure. It appears that development of a grievance procedure is left to the sole discretion of the EN, opening the door for a great deal of variance between EN's. This would result in disparate treatment of Ticket-users and require the PM to understand and track compliance with potentially thousands of different procedures throughout the country. Provision of a model grievance procedure that ENs could adopt or adapt [within a framework of minimum requirements such as opportunities for face-to-face meetings between a beneficiary and EN representative] would ensure consistency for Ticket-users. Such a model should be developed bearing in mind its use by small ENs.

We applaud the requirement that EN's provide beneficiaries with a copy of the internal grievance procedure initially and when there is a dispute (§ 411.605). In addition to requiring the EN to inform beneficiaries of the availability of assistance from the state P&A in resolving disputes, the EN should be required to provide the beneficiary with a list of other representation that may also be available to them. SSA field offices routinely keep a list of representatives that are available in the local community and could easily provide their local EN's with this information.

The provisions related to the PM or SSA review in a dispute are extremely worrisome because of the limited interaction with the beneficiary. The proposed rules (§§ 411.615 and 411.655) merely require either the PM or SSA to obtain records from the EN or PM and do not require either to directly contact the beneficiary for input. The EN and PM are merely required to provide a summary of the positions. The EN provides a summary to the PM of a beneficiary's position in the dispute. Given that a dispute between the EN and beneficiary already exists, a conflict of interest arises in asking the EN to present the beneficiary's position. Unlike attorneys and other authorized representatives who practice before SSA, not all ENs are subject to ethical or professional responsibility rules. Sections 411.615 and 411.655 should require the PM and SSA to contact the beneficiary for a statement of his/her position in the dispute and provide the beneficiary and his/her representative an opportunity to review the information submitted by the EN and to dispute it.

In addition, § 411.625(b)(3) should require the PM to provide all evidence submitted by the EN and the beneficiary to SSA. The PM should not be given the discretion to decide what evidence is relevant or what is not. That decision should be left with the final decision maker.

Other concerns we have with the proposed regulations are listed below.

- There is no requirement that a beneficiary be provided with a face-to-face meeting with the PM or SSA to resolve any disputes. Face-to-face meetings can be more meaningful than a paper review of an administrative record. Such meetings provide all parties with an opportunity to correct any misunderstandings or miscommunication that may have arisen and provides a beneficiary with due process provisions. While it may be difficult for the PM to provide an opportunity for a face-to-face meeting, one could be provided by SSA at the local field office, similar to what is provided for overpayments.
- Insufficient time is provided in § 411.625 for a beneficiary to file a request for review by SSA with the PM. It may be extremely difficult for a beneficiary, especially those with mental impairments or developmental disabilities, to request review within 15 working days or to find representation within such a short period of time. The shortened time period for filing a request for review is inconsistent with the time standards (60 calendar days) normally used by SSA. To avoid beneficiary confusion, the time period for an EN or beneficiary to request review should be 60 days. Disputes over the date of receipt will arise and this is not addressed by the regulations. Given that the PM is located in McLean, Virginia and has not firmly announced plans to outstation TTWWIIA specialists in offices across the country to handle these disputes, a standard seven-day for receipt of mail should be assumed.

(The U.S. Postal Service on average, takes five to seven days to deliver mail from the east coast to the west coast, excluding Hawaii and Alaska.)

• The time periods imposed by SSA on actions taken by the EN and PM should be retained and should go further in requiring SSA to render its final decision within 60 days. (§ 411.630)

Two other matters we would like to raise with the Subcommittee are not directly related to the Ticket regulations. However, they will have a significant impact on the success of P.L. 106–170. These are the so-called 1 for 2 demonstration and the status of disabled adult children or DACs under this law.

(12) $1 for $2 Demonstration

The task force considers this demonstration a critical part of the law. For many SSDI beneficiaries, the cash cliff in Title II remains a real barrier to work. The demonstration must begin soon if it is to provide useful data to help Congress decide whether the sliding scale offset should be made available to all Title II beneficiaries with disabilities who want to work. There has been some discussion that SSA might test the value of starting the $1 for $2 offset below the SGA level. If so, we urge that such offset be offered to the beneficiary on a voluntary basis. There may be people with disabilities who would voluntarily accept the reduction beginning below SGA as a trade-off for the security of knowing that their benefits would continue and would fluctuate to complement their fluctuating earnings. Otherwise, SSA would be reducing benefits to which people are otherwise entitled under the current law.

We hope SSA will move expeditiously to design and implement this demonstration program. In addition, we have urged SSA to consult with experts in the various disability populations to ensure that the demonstration has the capacity to work for the people intended to be served.

(13) Disabled Adult Children

This task force has discussed with SSA on a number of occasions several issues involving "disabled adult children" or (DACs) must be addressed if the Ticket program is to be successful. A "disabled adult child" who leaves the Title II program as a result of earning above SGA after the extended period of eligibility (EPE) has expired loses "disabled adult child" status for life. The benefits earned by the parent for the disabled adult child (severely disabled since childhood) are permanently lost. There is no re-entry to DAC status under SSA's current policy and interpretations. We believe that this must be corrected. TTWWIIA clearly meant for disabled adult children to move in and out of the program just as other people with disabilities would be allowed to do so. Statutory language for disabled adult children is reflected throughout TTWWIIA. SSA needs to ensure that its policies support that goal.

We also understand that SSA's interpretation regarding the value to be placed on a worker's work effort (regarding whether it exceeds SGA or not) is different for people in supported employment depending upon whether the individual is supported directly by an employer or whether the individual is supported by services from an outside source, such as a state-funded supported employment agency. As a result, an individual's work effort could be found to exceed SGA when the support is from a third party while that same work effort could be found not to exceed SGA when the support is from the employer. From the perspective of the individual, this is an arbitrary distinction. Further, there may be additional complications in that the nature and scope of the support provided to the individual may be misunderstood when making the valuation of work effort. For instance, while the individual may be performing the actual task (bagging groceries, assembling a package, etc.), it may be that the individual would be unable to perform the task without the help of the job coach in ensuring that the individual arrives at work on time properly attired, that he/she interacts appropriately with customers and co-workers, and that he/she remains focused on the assigned job tasks, among other things. We believe that this is an area that also needs further examination if work incentives are to work as intended by TTWWIIA.

Again, on behalf of the CCD Task Forces on Work Incentives Implementation, Social Security and Employment and Training, we thank you for providing this opportunity for us to comment on the Ticket to Work regulations. We look forward to working with this subcommittee in the future on efforts to strengthen Social Security and its disability insurance programs.

American Association of University Affiliated Programs
American Congress of Community Supports and Employment Services [ACCSES]
American Foundation for the Blind
American Network of Community Options and Resources [ANCOR]
American Occupational Therapy Association

Association for Persons in Supported Employment
Brain Injury Association
Easter Seals
Helen Keller National Center
International Association of Business and Industry [I-NABIR]
International Association of Psychosocial Rehabilitation Services
National Alliance for the Mentally Ill
National Association of Developmental Disabilities Councils
National Association of the Deaf
National Association of Protection and Advocacy Systems
National Council for Community Behavioral Health Care
National DeafBlind Coalition
National Mental Health Association
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
National Senior Citizens Law Center
NISH
Paralyzed Veterans of America
The Arc of the United States
The Epilepsy Foundation
United Cerebral Palsy Associations

Chairman SHAW. Mr. Harles.

STATEMENT OF CHARLES WM. HARLES, EXECUTIVE DIRECTOR, INTER-NATIONAL ASSOCIATION OF BUSINESS, INDUSTRY AND REHABILITATION

Mr. HARLES. Good afternoon, Mr. Chairman. My name is Charles Harles; and I am the executive director of the Inter-National Association of Business, Industry and Rehabilitation. I–NABIR is made up of about 109 organizations around the country that provide training and placement services to persons with disabilities, and our members are quite diverse in their nature. We have community colleges, we have more traditional rehab providers, we have unions, we have employers among our membership, and you may have even noticed on our stationery we list some of the thousands of businesses who serve on our Business Advisory Councils and have actually hired the persons from our programs.

The Ticket to Work and Work Incentives Improvement Act was written to remove the most serious disincentives to work and give beneficiaries who wanted to work access to the services that will help them go to work.

I guess the real question is, we are—already, 14 months after the passage of the bill that you and members of this Subcommittee in particular worked so hard to help us achieve, we are concerned that the law is really yet to be implemented and that there are serious problems that we think have to be overcome before the congressional intent of the law can be realized. We are hopeful that the Advisory Panel's recommendations will be utilized by Social Security Administration and that that will, hopefully, go far in meeting those needs.

A couple of the particular issues that we are concerned about, though, is the fact that there need to be Qualified Employment Networks in place before the Tickets are distributed to the beneficiaries; and, number two, as you have heard from a couple people

already, the milestone/outcome payment must be adjusted to meet, again, the original congressional intent.

It is our understanding that the Social Security Administration plans to issue over 2.3 million Tickets to beneficiaries over the next several months in the 13 start-up States, even though there really is not a way for organizations, other than a relatively few alternative participants who had qualified under an earlier program and the State rehabilitation programs, to become an Employment Network. If the tickets are to be distributed now or in the next few weeks, only the State vocational rehabilitation agency and that small number of alternative participants would be able to accept the tickets. We think that to issue tickets without sufficient employment networks will only frustrate the successful implementation of the Act.

Even if the Social Security Administration were to begin processing the approval of Employment Networks soon, we still have concerns about the qualifications that they would require. There is clear congressional intent that the universe of service providers be expanded and that nontraditional providers be included so that all beneficiaries could be given maximum choice in who they will go to to get services that will help them go to work. What we see in the proposed regulations and in a draft request for proposals from Social Security concerns us.

The proposed regulations would seem to restrict eligibility for the Employment Networks to those that meet State certification and licensure requirements. The proposed rules would tend to restrict Employment Networks to State VR agencies and their contractors. State licensure and credentials should only be required where such credentialing and/or licensure is required to provide specific services to any individual in the State. The regulations should differentiate between being certified to provide services to those through a State agency for licensure from those that would be required for any provider.

The specific education requirements noted in the proposed regulations might not be appropriate, for instance, where an organization such as many of our members are what we call Projects With Industries that are funded by the Department of Labor and the Department of Education, and they tend to use personnel from the business community, not people that necessarily have rehabilitation backgrounds, to be their job developers and their job coaches and other really important positions. Many of these PWIs have a strong track record in successfully placing these persons with severe and multiple disabilities. So we want to make sure that these organizations that have proven track records but may not be, if you will, traditional rehabilitation providers can fully participate in the program.

The milestone payment system as proposed by the Social Security Administration just really isn't acceptable. I think you have heard that from several people here. The payment calculation base that they start from we think is too low. It is certainly lower than what we had anticipated when we were testifying on this legislation over the past several years.

The fact that they cut it back to 85 percent of the outcome-only system, where the law only required that it be less than the out-

come payment, we think that that went much further than necessary in cutting back the potential payback to the Employment Networks who participate in the program. And the number of milestones is inadequate in that the amounts payable and the fact that you have to repay them during the first 12 months—even if you get this advance, of these milestones, you have to pay them back within 12 months, so you get extremely little payment for that first year of outcome payments under the scheme that the Social Security Administration has proposed at this point.

We see State vocational rehabilitation agencies as an important player in the Ticket to Work program but not at the expense of other organizations which beneficiaries may want to use in providing services to help them go to work. Social Security is proposing that when the beneficiary signs a plan as defined under the Rehab Act, the beneficiary has automatically assigned the Ticket to the State VR agency.

Again, the hallmark to the Ticket to Work legislation was consumer choice, and we think that it is important that people that are going to vocational rehabilitation realize that there are options out there beyond just the State vocational rehabilitation agency and that they be made aware of that early on.

There is also the situation that I think was referred to earlier where they might be eligible for a variety of services from State Vocational Rehabilitation, just as a service of the Rehabilitation Act, and they shouldn't be forced to use their Ticket for those services necessarily when they may be wanting to hold their Ticket for some other services from another provider.

We have provided the staff with a copy of our full comments to the Social Security Administration on the proposed rules, and we would be glad to answer any questions you might have.

Chairman SHAW. Thank you.

[The prepared statement of Mr. Harles follows:]

Statement of Charles Wm. Harles, Executive Director, Inter-National Association of Business, Industry and Rehabilitation

Good afternoon, Mr. Chairman. My name is Charles Harles. I am executive director of the Inter-National Association of Business, Industry and Rehabilitation. I-NABIR is made up of 109 organization members that provide placement and training services for persons with disabilities. They include major international corporations, local rehabilitation service organizations, state and regional programs, national and local labor organizations, state rehabilitation agencies, national trade associations, school transition programs, disability specific organizations, and mental health centers. Members run the gamut of organizations providing employment related services to persons with disabilities, but the business and labor communities are active members as well. You may notice that our stationery lists some of the thousands of businesses that serve on our members Business Advisory Councils or who have hired persons from our member programs.

I–NABIR was an early proponent of the Ticket to Work provisions that became law in December 1999. The Congressional intent was "right on." People with disabilities on Supplemental Security Income (SSI) and Social Security Disability Income (SSDI) were not getting services that could help them go to work, disincentives outweighed incentives in the law, and beneficiaries did not have access to providers. Thanks to you, other members of this subcommittee and the rest of the House of Representatives and the Senate we have a law that can address the problems I just mentioned.

The Ticket to Work and Work Incentives and Improvement Act (TWWIIA) was written to remove the most serious disincentives to work and to give beneficiaries who want to work access to services that will help them go to work.

Where are we fourteen months after the Act was signed into law?

We are concerned that the law has yet to be implemented and there are serious problems that must be overcome before the Congressional intent of the law can be met.

(1) Qualified Employment Networks (EN) must be in place before "Tickets" are distributed to SSDI and SSI beneficiaries, and

(2) The milestone/outcome payment system must be adjusted to meet the original Congressional intent.

It is our understanding that the Social Security Administration plans to issue "Tickets" to over 2.3 million beneficiaries over the next several months in the 13 start-up states even though there is still no way organizations (other than a relatively small number of "alternative participants") can currently become an EN. If "Tickets" were to be distributed now or in the next few weeks only the state vocational rehabilitation agency and the very small number of alternative participants would be available to accept the ticket and provide services. The primary reason for the "Ticket to Work" part of the TWWIIA law was that the existing system which used only state vocational rehabilitation agencies had not been effective in helping beneficiaries go to work. To issue tickets without sufficient employment networks will only frustrate successful implementation of the Act.

Even if the Social Security Administration were to begin processing the approval of EN's soon we still have concerns as to what qualifications they will require. There was clear Congressional intent that the universe of service providers be expanded and that non-traditional providers be included so that beneficiaries be given maximum choice in who they will go to get services that will help them go to work. What we see in the proposed regulations and in a draft of a "request for proposals" from the Social Security Administration concerns us. The proposed regulations would seem to restrict eligibility to be an Employment Network to those that meet state certification and licensure requirements. The proposed rules would tend to restrict EN's to state VR agencies and their contractors. State licensure and credentials should only be required where such credentialing or licensure is required to provide the specific services to individuals in the state. The regulations should differentiate being certified to provide services to or through a state agency from licensure to provide such services to anybody in the state. In addition, the mandate that ENs provide medical and health related services is overly burdensome. SSA should limit this provision to those entities that choose to provide such benefits.

Where credentialing or licensure is not an absolute requirement in a state, entities should be able to be approved as EN's based on their experience and track record. The specific education requirements noted in the proposed regulations might not be appropriate for instance where an organization such as a Projects with Industry (PWI) program which utilizes job developers and placement specialists whose background may be from the business sector rather than traditional rehabilitation professions. Many PWI's have a strong track record in successfully placing persons with multiple and/or severe disabilities into employment. Because they have had federal funding from the US Department of Education or Labor, and not as a contractor to a state vocational rehabilitation agency, they may not have had to have state licensure or credentials.

The Milestone/Outcome payment system as proposed by the Social Security Administration is not acceptable. The purpose of having Milestone/Outcome payments was to insure that small providers and specialized providers who may not have the capital funding to underwrite the initial costs of services would still be able to participate in the Ticket to Work program. These are also the programs that are likely to try and serve the more difficult cases. The proposed regulations negate the Congressional intent in several respects:

(1) The payment calculation base has been set artificially low. This will reduce the potential payment to employment networks and further reduce the acceptance of beneficiaries who will be harder to serve or who will need higher cost services.

(2) The Milestone/Outcome payments will only be 85% of the outcome only payment system. This reduction further reduces the likelihood that small or specialized providers will be able to participate in the program.

(3) The number of milestones is inadequate, the amount payable for the milestones is inadequate, and the required repayment in the first 12 months of outcome payments is punitive. SSA should allow several milestone alternatives in the first few years of the program to see which will result in the most favorable outcomes. The amount of the outcome payments should be substantially higher and the "payback" should be amortized over the remaining years of outcome payments. Milestone payments were intended to spread the risk to some extent for employment networks. As proposed they will focus the risk on employment networks. We, and others, have made suggestions to SSA on alternative milestone models. We hope that SSA will reconsider the approach taken in the proposed regulations.

We see state vocational rehabilitation agencies as an important player in the Ticket to Work program, but not at the expense of other organizations which beneficiaries may want to use in providing services to help them go to work. SSA is proposing that when a beneficiary signs a plan as defined under Rehab Act (IPE), the beneficiary has automatically assigned their Ticket to the state VR agency. This section should be struck. The hallmark of the Ticket-to-Work is consumer choice. Having a beneficiary's ticket assigned to the vocational rehabilitation state agency without the beneficiary being fully informed negates that choice. Further, a beneficiary may be eligible for VR benefits without having to assign their Ticket and, in fact, the Rehabilitation Act as amended in 1998 states that SSI and SSDI beneficiaries are "presumptively eligible" for VR benefits. Making a beneficiary use their Ticket when VR might be required under the Rehabilitation Act to serve that individual anyway denies the use of the Ticket to beneficiary at a later date. SSA should insure that beneficiaries have information about the various employment networks, including state vocational rehabilitation agencies, that might be able to provide them with services and then allow the beneficiary to make an informed. That informed choice should also include those who are currently receiving services from state vocational rehabilitation.

These are our primary concerns. We are providing the Subcommittee members and staff with a copy of the comments we submitted to SSA last week. They provide more detail of our areas of concern.

Thank you for this opportunity to share our thoughts with you.

[ATTACHMENTS ARE BEING RETAINED IN THE COMMITTEE FILES.]

Chairman SHAW. Ms. Ford.

STATEMENT OF MARTY FORD, DIRECTOR OF LEGAL ADVOCACY, ARC OF THE UNITED STATES

Ms. FORD. Thank you Chairman Shaw and members of the Subcommittee. Thank you for this opportunity to testify on the proposed regulations to the Ticket to Work program.

The ARC greatly appreciates the efforts of this Subcommittee and the full Ways and Means Committee for its work on the Ticket to Work and Work Incentives Improvement Act. We also appreciate SSA's efforts to develop and publish these rules quickly.

The Act supported the work incentive efforts on behalf of people with mental retardation, which is a severe, lifelong disability, who wanted to work but were prevented from doing so by barriers that existed in the Title II and SSI programs and Medicare and Medicaid. However, we believe that certain significant changes must be made to the proposed regulations if the purposes of the program are to be fulfilled. We urge that speedy implementation not come at the expense of ensuring that it works for the intended purpose.

I will focus on just a few of the major concerns that we have identified.

First, we believe there should be no limits on the number of Tickets a person can receive over the course of a lifetime. People eligible for the program have very severe disabilities that may not allow them to work consistently or for long periods of time. Often people will need additional job training and placement assistance when unexpected events occur such as the bankruptcy of an employer, loss of a job or loss of transportation support, or family relocation.

We also question the limitation of one Ticket per period of disability. If an individual has used part of a Ticket and then, for whatever reason, must return to the disability program, SSA

should establish a reasonable time period, possibly 12 months, after which the person can get a fresh start with a new Ticket to try again. Otherwise, people with very severe disabilities seem to be allowed only one chance for success, a result we believe is contrary to congressional intent.

The measures for timely progress may be appropriate for a majority of people and could serve as a useful, easy to administer standard. However, SSA should allow a reasonable modification of the specific criteria for those people whose progress does not exactly fit the established standard. The modification could allow the individual's progress to be deemed equivalent to the required number of months of work at the SGA level.

For example, in the third year of ticket use, a beneficiary must earn at SGA for 3 months. We can envision individuals in supported employment who may begin their work efforts at subminimum wages and who gradually and steadily increase their earnings over a 4- to 5-year period before going off the rolls. While not earning at the SGA level for those specified 3 months, the individual's overall monthly earnings clearly show continued progress and increases from the previous year. The program manager should be authorized to deem those work efforts to meet the timely progress requirement.

The chronic problem of overpayments to beneficiaries is a major threat to the Ticket program. If not addressed, beneficiaries will continue to be fearful of working. SSA must address its current inability to track wages and adjust benefit levels when working beneficiaries report their earnings; and SSA must establish a reliable, efficient, beneficiary-friendly method of collecting and recording a worker's earnings and adjusting those benefits in a timely manner.

The outcome and milestone payment systems we believe must be redesigned. I will skip over my comments on those issues because they have been addressed extensively by other witnesses.

I believe that SSA must begin to gather information for the report on the adequacy of incentives. This report is critical for those people considered harder to serve. They are folks with a need for ongoing supports and services, people with a need for high-cost accommodations, people who earn a subminimum wage, and people who work and receive partial cash benefits.

We also believe that several issues must be addressed specifically for disabled adult children if the Ticket program is to be successful. The regulations should allow disabled adult children to move on and off the program to the same extent that other people with disabilities can do so. Otherwise, the purpose of the program will be thwarted for those who qualify as disabled adult children.

Finally, we believe that the $1 for $2 demonstration is a critical part of the law, particularly for those whose earnings will remain low, and that it should be implemented as soon as possible.

In closing, the Arc urges the Subcommittee to continue its oversight and consider amending the law, if necessary, to ensure that the purposes of the law are fulfilled. Again, we appreciate the opportunity to testify and look forward to working further with you on this and other components of the program. I look forward to answering questions.

Chairman SHAW. Thank you, Ms. Ford.

[The prepared statement of Ms. Ford follows:]

Statement of Marty Ford, Director of Legal Advocacy, Arc of the United States

Chairman Shaw, Rep. Matsui, and Members of the Subcommittee, thank you for this opportunity to discuss the proposed regulations for the Ticket to Work and Self-Sufficiency Program published December 28, 2000 in the Federal Register. The Ticket to Work program is one of the major components of the (TTWWIIA), P.L. 106–170.

I am Marty Ford, Director of Legal Advocacy for The Arc of the United States. The Arc of the United States is a membership organization made up of people with mental retardation, their families, friends, interested citizens, and professionals in the disability field. Together they form approximately 1,000 state and local chapters of The Arc and the largest voluntary organization in the United States devoted solely to working on behalf of people with mental retardation and related developmental disabilities and their families. The Arc works through education, research, and advocacy to improve the quality of life for children and adults with mental retardation and their families and works to prevent both the causes and effects of mental retardation. Many members of The Arc and/or their family members are beneficiaries of the Title II Old Age, Survivors, and Disability Insurance programs and the Supplemental Security Income program and look forward to using the Ticket program.

The Arc sincerely appreciates the efforts of this Subcommittee and the full Ways and Means Committee in passage of the Ticket to Work and Work Incentives Improvement Act of 1999. This Subcommittee carefully addressed numerous issues over several years to develop a comprehensive bill designed to reduce barriers and to increase opportunities. The result was a bipartisan bill broadly supported by advocates, Congress, and the Administration.

The Arc supported the work incentives efforts on behalf of people with severe, lifelong disabilities who wanted to work but were prevented from doing so by the barriers that existed in the Title II and SSI programs and Medicare and Medicaid. For many, the supports provided by these four programs would continue to be necessary due to their significant impairments. We believe that the purpose of the bill was to ensure that people with severe disabilities would not permanently lose the supports they need if they attempted to work and to expand the opportunities for them to make those attempts.

We appreciate the efforts of the Social Security Administration to develop and publish these proposed regulations as close to the statutory deadlines as possible. We also appreciate SSA's efforts to solicit public input about broad issues prior to publication of the regulations and to communicate with advocates regularly regarding the timeframe of development of the proposed regulations. We believe that SSA has shown openness and good faith in attempting to balance all of the competing issues that arise in an effort of this magnitude. However, we believe that certain significant changes must be made to the proposed regulations if the purposes of the program are to be fulfilled. We urge that speedy implementation not come at the expense of ensuring that it works for the intended purpose.

The Arc believes that the purposes of the new Ticket program include: encouraging people to work or attempt to work without fear of permanently losing needed supports (individual eligibility); encouraging providers to serve people with Tickets (payment methods); and expanding the pool of potential providers of rehabilitation services, including non-traditional providers (employment network eligibility criteria). In addition, there are necessary infrastructures that must be in place to ensure that the system runs smoothly for those it is intended to benefit.

MAJOR ISSUES WITHIN THE PROPOSED REGULATIONS

Following are the major concerns that The Arc of the United States has identified in the proposed regulations for the Ticket to Work and Self-Sufficiency program. We believe that failure to address these issues in a significant way will undermine the potential success of the program.

Individual Eligibility

More Than One Ticket per Life/Period of Disability

There should be no limit on the number of Tickets a person can receive over the course of a lifetime, as long as a person is not using more than one at a time. People eligible for the program have very severe disabilities that may not allow them to work consistently or for long periods of time the first time they attempt to work. Limiting the number of Tickets would ignore the reality that disability can be a spo-

radic, episodic, lifelong event. It would also ignore that some people will need additional job training and placement assistance when unexpected events occur, such as the bankruptcy of an employer, loss of a job through lay-off or restructuring, loss of transportation, or family relocation.

Technically, the rules appear to be written to ensure only one ticket during any one period of eligibility (Sec. 411.125(b)). However, when this is combined with the newly effective (January 1, 2001) statutory provision for expedited reinstatement (which requires that the individual show that the impairment is the same impairment or is related to the original impairment), then it appears to block the use of new tickets in the future because the individual is "reinstated" to the program based on his/her original disability. To ensure that this limitation is not read to mean one ticket for life, then, at a minimum, we have urged SSA to clarify this section.

Further, The Arc questions the limitation of one ticket per period of disability. We have recommended that, if an individual has used a substantial portion of a ticket and then finds it necessary to return to the disability program, SSA should establish a reasonable time period, such as 12 months, after which the individual can get a fresh start with a new ticket to try again. Otherwise, people with very severe disabilities seem to be allowed only one chance for success, a result we believe is contrary to Congressional intent.

Continuing Disability Reviews—"Timely Progress"

SSA has established a complex measure for determining whether an individual is making "timely progress" toward accomplishing the goals of his/her individual work plan (IWP) (Sec. 411.180(b) and subsequent related sections). Beneficiaries who are found to be making timely progress on the IWP are exempt from medical continuing disability reviews (CDRs). The timely progress standard is intended to be an objective measure which looks at numbers of months with earnings at or above the substantial gainful activity (SGA) level. The measures for timely progress may, in fact, be appropriate for a majority of people who use a ticket, and, therefore, may be a useful, easy-to-administer, standard for determining timely progress.

However, The Arc has recommended that SSA also include a provision allowing a reasonable modification of the specific criteria constituting timely progress for those people who are, in fact, making progress toward their goals, but whose progress does not squarely fit the established objective standard. This modification could be approved by the program manager (PM) at the request of the employment network (EN). The modification could allow the individual's progress to be "deemed" equivalent to the required number of months of work at the SGA level. This approach would also serve to somewhat reduce the complexity of the timely progress standard for people who are making the expected progress outlined in their IWP.

For example, in the third year of ticket use, an individual must earn at or above SGA for three months of the year to show timely progress. This may not work for some people in supported employment settings where they are supported on the job by a job coach. Approximately one-third of supported workers begin their supported employment at sub-minimum wages, under a certificate authorized by the Department of Labor. We can envision individuals in supported employment who may begin their work effort with very low earnings and who gradually and steadily increase their earnings over a 4 to 5 year period before going off the rolls. In some cases, the individual may not earn at the SGA level for the specified 3 months in the third year, but his/her overall monthly earnings clearly show continued progress and increases from the previous year. At the EN's request, the PM should be authorized to deem this individual's work efforts to meet the timely progress requirement. Otherwise, those individuals who are considered harder to serve will be disadvantaged by the specific standard that SSA has devised and ENs will be discouraged from serving them.

Also, in Sec. 411.195 (24-month progress review), the PM will be looking at whether the plan calls for 3 months work at the SGA level during the next 12 months. We recommended that this section and any others similar to it be revised to allow for reasonable modifications based on the individual's needs and skills.

Ticket Eligibility—Medical Improvement Expected

The Ticket to Work regulations would provide tickets to all beneficiaries with disabilities, except for those people who are categorized as "medical improvement expected" (MIE) and who have not yet had a continuing disability review (CDR) finding them still disabled (Sec. 411.125(a)(3)). The Arc believes that this is inappropriate for several reasons and recommended that the limitation be removed.

Studies overwhelmingly show that the best time to get someone "back" into the workforce is as soon as possible following the disabling event. To refuse tickets to people who are expected to improve is to ignore a large part of the population who

could benefit from the ticket program. The Arc believes that this approach does not fit with Congress's intent to allow people to get to work as soon as possible.

Furthermore, just because an individual has been designated MIE does not mean that he/she can do without the assistance of rehabilitation providers to maximize work capacity. The approach ignores the rehabilitation benefits that the individual may receive from appropriate services. These services may assist the individual to acquire work skills and job placement that will be more successful over the long run, thus preventing a later return to the disability program.

Finally, under current law, the designation of MIE has no legal implications regarding the granting of benefits to or withholding of benefits from an individual. The MIE designation merely triggers the timing of a continuing disability review (CDR). If, however, the MIE designation is going to be used to deny a benefit such as the Ticket, further rulemaking will be necessary and we urged SSA to better define the category, set standards for designation, and provide for due process, including a fair hearing, for adverse decisions. Otherwise, this rather loosely defined and arbitrarily applied standard would have a significant effect on the beneficiary regarding whether the individual could take advantage of the ticket provisions.

In addition, if the MIE limitation is retained, we have urged that every beneficiary be informed of the designation assigned to the individual. Further, for the sake of fairness, we urged SSA to impose deadlines on the state Disability Determination Services (DDS) so that scheduled CDRs are conducted in a timely manner to allow the individual the earliest opportunity to take advantage of the Ticket program.

Overpayment Issues

For the success of the ticket program and all other work incentives to be realized, SSA must address its current inability to track wages and adjust benefit levels when working beneficiaries report earnings. As the system stands now, the chronic problem of overpayments to beneficiaries is a major threat to the Ticket program. Overpayments are such a nightmare to many people that the program could fail unless SSA can establish a reliable, efficient, beneficiary-friendly method of collecting and recording information regarding a worker's earnings in a timely manner. The Arc recommended that SSA develop and establish a reliable, efficient, beneficiary-friendly method of collecting and recording information regarding a beneficiary's earnings and adjusting benefits appropriately in a timely manner. The system should stop punishing the beneficiary for SSA's errors or failures.

Under Age 18

Numerous questions have been raised about the results of the statutory redeterminations for 18-year olds entering the adult SSI program. Currently, SSA is conducting an assessment of the process that is used by state DDSs for conducting those required redeterminations (as well as the process used for assessments of children of all ages). The multi-disciplinary assessment project is being conducted through the American Association of University Affiliated Programs and, until SSA has analyzed the results of the project, it may be premature to lower the age of eligibility for tickets (Sec. 411.125(a)(2)(ii)(B)). Therefore, The Arc has recommended that SSA not lower the age of eligibility for a Ticket at this time.

Payment Methods

Design of Outcome and Milestone Payment Methods

The law and the proposed regulations set forth two different methods of paying providers for an individual's success, measured by cash benefits that would no longer be paid to the individual. The first is the outcome payment system, designed to reward the provider by paying for months where benefits are not paid. Congress added the milestone-outcome payment system to the original design of the Ticket to Work program as one of the ways to try to address the issue of attracting providers to serve the "harder-to-serve" population.

The milestone-outcome payment limit was set at a total amount below the outcome payment system in order to ensure that the cost estimates of the bill did not rise. Advocates, and, we believe, Congressional drafters, expected the Administration to set the milestone-outcome payment as close as possible to the outcome payment amount. Since the outcome payment system is initially limited to 40 percent of the average benefit, our expectation was that the milestone-outcome payment limit would be set at a level reflecting only a minor reduction in order to comply with the law. This would mean that the milestone-outcome payment would be set at 99 percent of the overall outcome payment, not at the 85 percent level set in the proposed regulations (Sec. 411.525(b)). (Translated to the average benefit level, with the current outcome payment set at 40 percent of the average benefit, the milestone-

outcome payment should be set no lower than 39 percent of the average benefit, not the approximately 34 percent level established in the proposed regulations.) The Arc recommended that SSA set the milestone-outcome payments at a level equal to 99 percent of the outcome payment level.

It is critical that SSA design the milestones with a view to the intent of attracting providers to serve harder-to-serve people and to ensure that the overall payment is not substantially different. It is also critical that SSA allow testing and experimentation in the early years of implementation to ensure that milestones serve their intended purpose. We must avoid past errors in rehabilitation programs created through a "creaming" trap. We would like these issues to be resolved at the outset of the program.

Numerous experts in milestone payment systems across the country have come forward to indicate that the system established by SSA will not work in either the total amount available or in the schedule for payout of milestones and outcomes. The Arc is concerned that if the system itself is not workable for providers, then many people with mental retardation will not be able to benefit from the ticket program. Therefore, we recommended that SSA consult with experienced milestone payment providers and re-design the milestone-outcome payment system to be flexible enough to meet the needs of a wide group of people with differing disabilities. We also urged SSA to create a structured milestone approach AND also allow for individualized "customized" milestones approved by the Program Manager for individuals for whom the structured milestones are inappropriate. This could include the use of reasonable modifications by the PM to allow milestone payments to exceed the established amount.

Sec. 411.515(c) indicates that ENs can change their elected payment system (from outcome to milestone-outcome or vice versa) only every 18 months. Coupled with the substantially reduced payment in the milestone-outcome system, this is likely to further discourage any ENs from electing the milestone/outcome payment system. The Arc urged SSA to allow the EN to change its election at least quarterly.

Outcome Payments Under SSI

There is an additional problem built into the outcome payments (including milestone-outcome payments) system. Because the average federal SSI benefit is substantially lower than the average federal SSDI benefit, the milestone payments and the outcome payments for SSI beneficiaries will be much lower than for Title II beneficiaries. SSI beneficiaries are at risk of being bypassed by employment networks if SSA does not address this problem in the regulations. The Arc recommended that SSA use its demonstration authority to test a variety of scenarios that level the playing field for the SSI population. These could include making the milestone and outcome payments "richer" for SSI beneficiaries and/or encouraging states to contribute a portion of the state share of SSI to the payment. We also recommended that SSA consider paying for "partial" outcomes where the beneficiary has exceeded the SGA level but has not reached the break-even point. This would help level the playing field and make it more possible for ENs to serve SSI beneficiaries.

Further, The Arc recommended that SSA begin, as soon as possible, to undertake the research and information gathering necessary for the Report on the Adequacy of Incentives. This report is critical to assuring that certain people are able to fully participate in the ticket program. The act identifies the following four groups of people who must be addressed: people with a need for ongoing supports and services; people with a need for high-cost accommodation; people who earn a sub-minimum wage; and people who work and receive partial cash benefits.

The Arc recommended that SSA track necessary information for this study during the early implementation of the program so that the final report will include valid and reliable data upon which to properly identify a method or methods to adjust payment rates which will have the desired and necessary impact of incentivizing providers to serve all individuals eligible for the ticket program. For instance, ENs could be asked to report to Program Managers regarding ticket holders whom they decline to serve, including why the service was declined. Such information should also track the types of disabilities experienced by such individuals. This could provide very useful information regarding the ticket experience of the four groups of individuals set to be studied and assist in framing a constructive solution to any problems identified.

Employment Network Eligibility Criteria

Qualifications of Employment Networks

The law does not establish who can and who cannot be an employment network, other than to set general guidelines and requirements for these entities. Advocates

and drafters who worked on the legislation were clear in that there should be no arbitrary barriers to serving an individual who wants to go to work. In addition, part of the purpose of the Ticket to Work program was a clear attempt to get away from sole reliance on the established rehabilitation models which were, in fact, not working for many people. The intent was to ensure that the pool of providers, or ENs, would be larger than the traditional rehabilitation providers, including the ability to go outside the typical providers with accreditation or licensing as rehabilitation providers.

Sections 411.310 and 315 appear to require more than the statute contemplated in the way of licensing, certification, and/or accreditation. It is reasonable to expect that where a profession requires licensing or credentialing under state law, that requirement would be acceptable in that state. However, where such requirements are not necessary, the intent was to allow flexibility and not require unnecessary credentialing. The Arc recommended that SSA clarify the regulations so that they are not read to require credentialing and licensing of all ENs and so that it is clear that such standards must be met only where required for licensed professionals. In addition, we recommended that SSA make it clear that all employees or contractors of ENs do not have to be licensed or credentialed. Further, we urged that SSA clarify the regulations to avoid the interpretation that only state certification or licensing will qualify an entity as an EN. Instead, we urged that SSA make it clear that there are any number of avenues by which a provider can qualify as an EN: certification or licensing under applicable state law; credentialing under other nationally recognized standards; or education or experience in successful employment of people with disabilities. Of course, guidelines regarding proof of the business as a registered entity under federal and state law would be expected. What is key here is whether the entity is capable of successfully providing the service agreed to by the EN and the beneficiary.

Many questions have arisen in the discussions about ENs regarding whether families or a personal support network (including a "circle of friends") could serve as an EN. The Arc believes that where the family/friends can meet the requirements of an EN, then they should be able to serve as an EN. However, we expect that it will be more likely that family/friends will want to associate themselves with or subcontract with an EN to provide services to an individual, particularly if the extent of their services are limited to one individual. The Arc urged SSA to make it clear that such arrangements are allowed through individual arrangements with an EN.

Other Major Issues

Dispute Resolution

The Arc is concerned that the proposed dispute resolution provisions do not adequately protect the due process rights of beneficiaries. The provisions give no clear guidance to ENs on what constitutes an acceptable grievance procedure. It appears that development of a grievance procedure is left to the sole discretion of the EN, opening the door for a great deal of variance between ENs. This would result in disparate treatment of beneficiaries and require the PM to understand and track compliance with potentially thousands of different procedures throughout the country. The Arc urged SSA to publish a model grievance procedure that ENs could adopt or adapt within a framework of minimum requirements such as opportunities for face-to-face meetings between a beneficiary and EN representative. We also urged SSA to ensure that its model could be used by small ENs, as well as larger ENs. This would help to ensure consistency for beneficiaries.

The requirement that ENs provide beneficiaries with a copy of the internal grievance procedure initially and when there is a dispute is good (Sec. 411.605). In addition to requiring the EN to inform beneficiaries of the availability of assistance from the state Protection and Advocacy system in resolving disputes, we urged SSA to require the EN to provide the beneficiary with a list of other representation that may also be available to them. SSA field offices routinely keep a list of representatives that are available in the local community and could easily provide their local EN's with this information.

Several due process questions arise in the provisions regarding dispute resolution between the beneficiary and the ENs or PM. In several places, where the program manager (PM) is reviewing a dispute between the beneficiary and the EN or where the beneficiary wants SSA to review the PM's decision, there is no clear and defined opportunity for the beneficiary to present his/her own side of the issue. For instance, where the PM is asked to review a dispute, the PM would contact the EN for all materials but would not contact the beneficiary (Sec. 411.615). The PM would receive only a summary of the beneficiary's position, prepared by the beneficiary (or representative) but conveyed by the EN. It is also unclear who has the additional

responsibility or opportunity to convey the "reasons the beneficiary rejected each proposed solution" (Sec. 411.615(d)). In addition, if the PM's recommendation to resolve the dispute is referred to SSA (by either the beneficiary or the EN), there is no clear requirement for SSA to consider the beneficiary's (or the EN's) own view of the dispute. It appears that the PM would prepare all materials for SSA's review (Sec. 411.625(b) and 411.655(b)). Finally, SSA's decision is considered final and, therefore, not subject to further review (Sec. 411.630). The Arc recommended that Sections 411.615 and 411.655 be amended to require the PM and SSA to contact the beneficiary for a statement of his/her position in the dispute and provide the beneficiary and his/her representative an opportunity to review the information submitted by the EN or PM and to dispute it. The Arc recommended that, at a minimum, the regulations be clarified to ensure that the beneficiary has the opportunity at all steps to present his/her own version of the dispute, including reasons for rejecting each proposed solution.

EN's Ability to Submit Evidence Against Beneficiary

There are two disturbing issues contained within the section on what an EN can do if the EN disagrees with a decision by SSA on a payment request. Section 411.590(d) reads: "If an appeal by a beneficiary regarding entitlement or eligibility for disability benefits results in a revised determination, *our revised determination could affect the EN's payment or result in an adjustment to payments already made to the EN*. While the EN cannot appeal our determination about a beneficiary's right to benefits, *the EN may furnish any evidence the EN has which may support a change in our determination on the beneficiary's appeal*." (emphasis added)

First, the section reveals that the ENs may be subject to overpayments and have to reimburse SSA for payments that were improperly made. As discussed above, unless SSA addresses the serious problems with its own deficient income reporting and recording systems, continued overpayments to beneficiaries will continue to be a serious disincentive to work. Overpayments to ENs may likewise serve as a disincentive for providers to serve as ENs.

However, even more disturbing is that SSA then encourages ENs to turn against beneficiaries if they are unsuccessful in their disputes with SSA over whether payments are due to the EN. The only alternative SSA puts forward to ENs who lose their dispute with SSA is for the EN to submit evidence against the beneficiary in the beneficiary's claim for cash benefits. 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. Needless to say, beneficiaries and ENs should be expected to present truthful information and evidence to SSA at all times and ENs should be prepared to submit accurate information whenever requested by SSA. However, placement of this statement/approach in a section regarding EN's options in case of an unfavorable decision by SSA sets a very negative tone and establishes a fissure in the contractual relationship between beneficiaries and ENs at the outset. The Arc recommended that Sec. 411.590(d) be stricken from the regulations.

State Vocational Rehabilitation Agencies

We have urged that SSA reconsider the requirement that state vocational rehabilitation agencies should take an individual's ticket when state VR is providing services under the old reimbursement method (Sec. 411.370). Under that method, SSA will pay state VR for services provided to a person who earns SGA for 9 months of work. This 9-month-SGA outcome is very different from the outcome of work that allows an individual to leave the disability program for at least 5 years. We also urged that SSA, at a minimum, require that state VR agencies explain the outcome differences to the individual to ensure informed consent when the individual assigns the ticket to VR.

The concerns that give rise to this issue would be moot, however, if SSA would adopt The Arc's recommendation that individuals be allowed to have more than one ticket in a lifetime and in a period of disability after a reasonable period of time. An individual who has been served under the old reimbursement method by state VR and who is not able to remain in the workforce would have an opportunity to try again. There would not be a problem and a perception that state VR had "taken the person's only ticket." Therefore, we again urged that SSA establish that an individual may use more than one ticket in a lifetime and in a period of disability after a reasonable period of time.

Disabled Adult Children

Several issues must be addressed specifically for "disabled adult children" (DACs) if the Ticket program is to be successful. For a "disabled adult child," leaving the

Title II program as a result of earning above the SGA level after the extended period of eligibility (EPE) has expired means the loss of "disabled adult child" status for life. Our experience under current law indicates that many beneficiaries and their families do not understand that the benefits that the parent has earned for the disabled adult child (severely disabled since childhood) are permanently lost, and there is no re-entry under SSA's current policy and interpretations. We believe that this must be fixed; otherwise, the purpose of the Ticket to Work and Work Incentives Improvement Act will be thwarted for those who qualify as disabled adult children. We believe that the TTWWIIA clearly contemplated the ability of disabled adult children to move on and off the program to the same extent that other people with disabilities will be allowed to do so. TTWWIIA clearly cites the statutory language for disabled adult children throughout. The Arc urged SSA to ensure that its policies support the goal of providing disabled adult children full access to all of the provisions of the Ticket to Work and Work Incentives Improvement Act, including re-entry to the program and to disabled adult child status.

In addition, we understand that SSA's interpretation regarding the value to be placed on a worker's work effort (regarding whether it exceeds SGA or not) is different for people in supported employment depending upon whether the individual is supported directly by an employer or whether the individual is supported by services from an outside source, such as a state-funded supported employment agency. Due to this distinction, an individual's work effort could be found to exceed SGA when the support is from a third party while that same work effort could be found not to exceed SGA when the support is from the employer. From the perspective of the individual, this is an arbitrary distinction because these workers have no control over who provides these supports. Further, there may be additional complications in that the nature and scope of the support provided to the individual may be misunderstood when making the valuation of work effort. For instance, while the individual may be performing the actual task (bagging groceries, assembling a package, etc.), it may be that the individual would be unable to perform the task without the help of the job coach in ensuring that the individual arrives at work on time properly attired, that he/she interacts appropriately with customers and co-workers, and that he/she remains focused on the assigned job tasks, among other things. We urged SSA to clarify and simplify its policies regarding such work so that results that appear arbitrary are eliminated and so that the work incentives function as intended and complement, rather than undermine, TTWWIIA and supported employment.

$1 for $2 Demonstration

The $1 for $2 Demonstration is a very important part of the law, especially for people who will likely earn low wages for long periods of time. For them, the cash cliff in Title II remains a real barrier to work. It is important that the demonstration begin soon and provide useful data to allow Congress to decide whether the program should be made available to all Title II beneficiaries with disabilities who want to work. There has been some discussion that SSA might test the value of starting the $1 for $2 offset below the SGA level. If so, we urge that such offset be offered to the beneficiary on a voluntary basis so that choosing to work does not disadvantage the beneficiary. There may be people with disabilities who would voluntarily accept the reduction beginning below SGA as a trade-off for the security of knowing that their benefits would continue and would fluctuate to complement their fluctuating earnings. Otherwise, SSA would be reducing benefits to which people are otherwise entitled under the current law.

We urged SSA to move expeditiously to design and implement this demonstration program. In addition, we urged SSA to consult with experts in the various disability populations to ensure that the demonstration has the capacity to work for the people intended to be served.

* * * * * * *

In addition to the above comments on major issues, we have also submitted comments to SSA which are related to specific sections in the proposed regulations.

Finally, we have urged SSA to remain open to changes after the first three years of the program. Given that the Ticket program is a wholly new program within SSA, it is important for SSA to schedule a re-assessment as the entire program is implemented and experience begins to inform beneficiaries, ENs, the Program Manager, and SSA about areas that will need adjustment in order to work. In addition, the question of providing Tickets to 16- and 17-year old beneficiaries should be addressed again at that time.

Again, on behalf of The Arc of the United States, we appreciate the opportunity to testify about our concerns today and look forward to working further with you

on this and other components of P.L. 106–170. We urge the Subcommittee to continue to closely monitor implementation of the Ticket to Work and Self-Sufficiency Program and other components of P.L. 106–170. If you have any questions on the above, please do not hesitate to contact me at The Arc Governmental Affairs Office, (202) 785–3388.

Chairman SHAW. Mr. Seifert.

STATEMENT OF PAUL J. SEIFERT, DIRECTOR OF GOVERNMENT AFFAIRS, INTERNATIONAL ASSOCIATION OF PSYCHOSOCIAL REHABILITATION SERVICES, COLUMBIA, MARYLAND

Mr. SEIFERT. Thank you, Mr. Chairman, members of the Subcommittee.

It was roughly 5 years ago that work began on this legislation. It started off with Mr. Bunning and then followed by you and Mr. Matsui; and of course, in the Senate, Mr. Jeffords and Mr. Kennedy added significantly to this legislation. There were high expectations in the disability community and I think among Members of Congress regarding the success of this program, and I think that is reflected by the near unanimous support this legislation received when it passed just about a year ago. Therefore, it is with a great deal of disappointment and concern that we must state that the Ticket program as laid out in the current regulatory scheme developed by the Social Security Administration will fail.

After reviewing the published notice, IAPSRS believes that the proposed rule is so flawed that its implementation should be delayed until after all the comments have been received, major revisions made, and an interim final rule published. If this program starts up in the flawed manner in which it is now proposed under the rules published by the Social Security Administration, it will fail, and it will be viewed by the disability community as just another failed Social Security program. That would be unfortunate.

We have identified no less than 14 major flaws in the Social Security Administration's proposed rule. They are listed in some detail in our testimony and also in our comments that were submitted to the Social Security Administration. They include eligibility issues, payment issues around the Outcome and Milestone/Outcome systems, the CDR protections, and certain provisions around the interaction between providers and the State Vocational Rehabilitation Agencies.

I want to talk in some detail about a couple of those issues, starting with the MIE provision or Medical Improvement Expected provision. The medical improvement categories are a matter of administrative convenience. There is no law, there are no regulations that govern who does or does not get an MIE categorization. There are some subregulatory provisions that field offices can use, but, generally, it is a hit-or-miss thing, depending on the attitude of the disability determination officer who makes that determination.

There are about equal numbers of people on the last figures I have seen of people with schizophrenia and people with lower leg fractures who are determined "Medical Improvement Expected." Now, I don't think it takes a lot of explaining to reveal that there is a great difference between schizophrenia and a lower leg fracture

and that medical improvement between those two groups of people would be vastly different. Schizophrenia is a lifelong illness. It generally lasts most of the adult life of the individual. A lower limb fracture, however, I speculate is, though it may be severe at the time, something that medical improvement and recovery is almost always anticipated within a short period of time.

These medical improvement categories are merely used to determine how frequently a person gets a Continuing Disability Review. The more certain your medical improvement is, the more likely and the more frequent you will get a CDR performed on you by the Social Security Administration to determine whether or not you have medically improved.

Given the numbers that we have heard here today, we know a couple of things: Eighty-four percent of the MIE people continue on the rolls after the first CDR. My only question is, how many of the ones who don't continue reapply and are found eligible later on? I think that is probably another number that needs to be revealed by the Social Security Administration. How many of those folks win on appeal?

So I think that the use of the MIE category in the proposed regulation is just too crude a tool, and a slightly more sophisticated approach would ensure that tens of thousands more people become eligible for the Ticket program and go back to work.

I want to talk about overpayments. Currently, the Social Security Administration has no way of tracking work and earnings in the DI program. They have a system in the SSI program, and it works fairly well. But for those on DI, there is no way for Social Security to track your earnings and stop your benefits. Consequently, Social Security continues to pay checks to beneficiaries who should not be getting them because of worker earnings. This is a problem. It is a long-noted problem and Social Security has not done anything to fix it.

Now with the Ticket program and the payments to the providers dependent on those checks stopping, this program's very existence is threatened by the fact that Social Security can't stop checks to beneficiaries who aren't supposed to get them. Beneficiaries will keep getting checks and providers will not get paid, despite the fact that, in the proposed regulations, the Social Security Administration turns the provider into an agent for reporting earnings to the Social Security Administration, something we think is problematic.

So unless a major reform of the benefits'/earnings tracking system is made, and the employment tracking system within the Social Security Administration is made, the Ticket program won't even get off the ground.

Finally, on the CDR provisions, SSA has proposed a time line for "timely progress," as Marty Ford pointed out, that quite frankly is unrealistic for people whose disabilities are long term. No matter how much you work in the first 2 years that you use a Ticket, none of that work counts towards the requirement in the later 3 or 4 years that you have to work. So a beneficiary could work 26 months above SGA, off the rolls, never getting a benefit; you get into that third year of use of your ticket and you don't quite make that 3 months of work, you get a CDR. That, to me, seems a little

unfair, that 26 or 27 months of work wouldn't count for anything for the purposes of this protection.

If beneficiaries could bank their work so that prior work would count towards future protections under the CDR provision, we think that would go a long way to improving this benefit, this provision in the law, and not do a great deal to undermine the purpose of the CDR or the CDR protections in the law.

With that, Mr. Chairman, I would be glad to answer any questions you may have.

Chairman SHAW. Okay.

[The prepared statement of Mr. Seifert follows:]

Statement of Paul J. Seifert, Director of Government Affairs, International Association of Psychosocial Rehabilitation Services

Mr. Chairman, Mr. Matsui, members of the Subcommittee, my name is Paul J. Seifert. I am the Director of Government Affairs for the International Association of Psychosocial Rehabilitation Services (IAPSRS). Our members are individuals, consumers, and community-based programs that provide rehabilitation services for people with severe and persistent mental illnesses.

The goal of our members is to help people with mental illness live better lives in our community and IAPSRS is a recognized leader in the effort to advance employment opportunities for people with mental illness. IAPSRS has been involved in the development of this legislation since 1995 and has on several occasions provided witnesses and written testimony to this subcommittee on the issue of employment and work opportunities for people with mental illness.

With a great deal of support from the disability community and almost near unanimous, bi-partisan support in both the House and Senate, Congress enacted and President Clinton signed into law the Ticket-to-Work and Work Incentives Improvement Act (TWWIIA). This legislation was designed to expand the rehabilitation services and health care coverage for Social Security beneficiaries who want to go back to work. A key component of the TWWIIA legislation is the Ticket-to-Work and Self-Sufficiency Program.

There are high expectations for this legislation in both the disability community and among members of Congress for this new program.

Therefore, it is with a great deal of disappointment and concern that we must state that the Ticket Program, as laid out in the current regulatory scheme developed by SSA, will fail.

On December 28th, 2000, the Social Security Administration published the Notice of Proposed Rulemaking (NPRM). After reviewing the published notice, IAPSRS believes that the proposed rule is so flawed that its implementation should be delayed until after all comments are received, major revisions made, and a final or interim final rule published. Let me be clear, if this program starts up in the flawed manner it is now proposed, it will be viewed by the disability community as "just another failed Social Security program." That cannot be allowed to happen.

IAPSRS has identified no less than 14 major flaws in SSA's proposed rule. They are listed below along with a brief description of how SSA should correct them.

Eligibility Issues

(1) Misuse of the MIE category to determine who gets a Ticket and when they get a Ticket

SSA should examine, on a disability-by-disability basis, which people determined MIE are likely to remain on the roles after the initial CDR and issue those people a Ticket. Further, SSA should examine, on a disability-by-disability basis, which people are likely to come back on the roles even if they are determined to have medically improved in the first CDR, and issue those people a Ticket.

(2) Concerns about the denial of Tickets to those between 16 and 18 years old

Rather than a blanket denial to all those on disability who are under 18, Social Security should determine, on a disability-by-disability basis, which people under 18 are most likely to be eligible for benefits once they turn 18 and issue these individuals a Ticket.

(3) Limiting a person to one Ticket per period of disability

IAPSRS believes a person should be eligible for another Ticket when the cash value of the first Ticket has been exhausted.

Payment System Issues

(4) Too large a disparity in the total payments under the Outcome and Milestone-Outcome payment methods

IAPSRS recommends that the payment disparity between the Outcome and Milestone-Outcome systems be eliminated except for a minor reduction in the Milestone system in order to comply with the law.

(5) Inadequate value and placement for the Milestone payments under the payment method for SSDI

IAPSRS recommends that the value of the milestone payments be increased as follows for SSDI and SSI/SSDI beneficiaries:

$500 the day the person starts work;
$1,000 after three months of work regardless of earnings level;
$1,500 after six months of work, regardless of earnings level;
$2,000 after nine months of work and the person begins their EPE.
Total Milestone Payments: $5,000; 60 months of outcome payments follow.

(6) A completely inadequate payment method for SSI

IAPSRS recommends that SSA restructure the milestone-outcome system for SSI beneficiaries in order to account for the existing work incentives. IAPSRS recommends that SSA allow outcome payments when an SSI beneficiary partially reduces their SSI check because of earnings or income. (See attached comments for more detail.)

CDR Protections

(7) An arbitrary and unnecessarily rigid timeline for determining "timely progress" under the CDR protections

IAPSRS supports allowing beneficiaries to "bank" work months in the first two years to count towards the work requirements in later years. In year 5 and beyond, IAPSRS supports allowing work in excess of the six-month requirement to count toward the next year's requirement. Further, IAPSRS recommends that increasing amounts of work or earnings, even if below SGA, be evaluated as meeting the definition of "progressively higher levels of employment" in order for a person to keep their CDR protection.

Provider Reporting and Qualification Issues

(8) Eligibility criteria for providers (employment networks) that will unnecessarily constrict the array of providers and consequently limit consumer choice

IAPSRS recommends that the broadest discretion be given to ENs regarding how to comply with these requirements. IAPSRS also recommends that state law not become a barrier to participation by ENs by allowing the Commissioner to suggest alternative means of qualifying if an entity cannot or does not meet state requirements. In addition, IAPSRS is concerned about the mandate that ENs provide medical and health related services and suggest limiting this provision to those entities that already provide such benefits.

(9) Reporting requirements on providers that are unnecessarily burdensome and could violate consumer privacy

(10) Provider reporting requirements on beneficiary earnings and work that establish potentially adversarial situations between the provider and the beneficiary

(11) SSA decisions to externalize the overpayment problem, in particular the decision to turn providers into SSA income verification agents; and no guarantee that SSA will handle requests for payments by ENs anymore expeditiously than they handle similar reports by beneficiaries themselves, something SSA doesn't do at all for SSDI beneficiaries and only poorly for SSI beneficiaries

The income reporting requirements externalize a long-standing problem at SSA—mainly the agency's inability to accurately and expeditiously track earnings and adjust benefits. IAPSRS opposes turning ENs and their staff into accountants and employees of the agency. IAPSRS recommends that an EN's report to the PM on a beneficiary's income and earnings be given by the PM to SSA within 30 days, and

if within 60 days of the PM's report to SSA, SSA has failed to appropriately stop or adjust a beneficiary's check, SSA cannot hold the beneficiary liable for overpayments and SSA must make payment to the EN as though the benefit has been adjusted or ceased.

(12) No indication of how providers will be evaluated, or the criteria on which SSA will base that evaluation

Consumer satisfaction measures and the ability to inform Ticket holders of the quality of ENs in their area is critical. Measuring consumer satisfaction through a survey is only one such way to accomplish this goal, but IAPSRS also urges SSA to examine employment outcomes, including types of placements and income levels of the placements. However, since many ENs will serve only one disability population, IAPSRS cautions against comparing ENs across disability groups.

State VR Agency Issues

(13) An automatic assignment of a Ticket to a State VR Agency without any "informed choice" requirements to protect beneficiaries

SSA is proposing that when a beneficiary signs a plan as defined under Rehab Act (IPE), the beneficiary has automatically assigned their Ticket, regardless of whether the VR agency is an employment network. IAPSRS opposes this requirement and recommends that it be struck.

(14) A provision in the State VR–EN agreement provision that slants the arrangement in favor of the State VR Agency

SSA is proposing that as part of the broad agreement between ENs and State VR agencies, that the agreement must stipulate "the terms and procedures under which the EN will pay the State VR Agency for providing services." IAPSRS opposes this requirement and recommends that it be struck.

Certainly, there are many more problems with the proposed rule, however we believe that the flaws mentioned above are both contrary to Congressional intent and doom this program to failure before it even starts.

Mr. Chairman, the comments submitted to SSA on behalf of IAPSRS are included separately, and some have been summarized in this document as part of our testimony.

That concludes my testimony, Mr. Chairman, and I welcome the opportunity to answer any questions that you, Mr. Matsui, and any Subcommittee members may have.

Thank you.

* * * * * * *

Comments of the International Association of Psychosocial Rehabilitation Services On the Proposed Rule for the Ticket-to-Work Program

Eligibility to Receive a Ticket to Work

(1) Proposed Rule—No Ticket for those under 18

The Social Security Administration (SSA) has proposed that those under 18 will not receive a Ticket-to-Work. They cite the fact that those under 18 who are on disability must undergo a Disability Review before becoming eligible for benefits after they turn 18. Issuing Tickets to the under 18-age group would possibly lead to issuing Tickets to people who would not qualify for benefits after they turn 18.

IAPSRS Comment

Rather than a blanket denial to all those on disability who are under 18, Social Security should determine, on a disability-by-disability basis, which people under 18 are most likely to be eligible for benefits once they turn 18 and issue these individuals a Ticket.

Rationale

Evidence points to the fact that earlier rehabilitation interventions result in better return-to-work outcomes for disabled beneficiaries (GAO Report to Congress, Improving Return-to-Work Efforts, GAO–01–153, Jan. 2001, pg 13–24). GAO also criticizes SSA for not incorporating Return-to-Work efforts in the eligibility and assessment process. SSA should allow under-18 individuals access to a Ticket, particularly those whose disabilities are likely to result in them continuing on the rolls.

(2) Proposed Rule—No Ticket for those determined MIE until after their first CDR

Once an individual is determined eligible for SSI or SSDI, the state Disability Determination Service (DDS) assigns the person to one of three categories, Medical Im-

provement Expected (MIE), Medical Improvement Possible (MIP), or Medical Improvement Not Expected (MINE). These categorizations are merely administrative conveniences that determine the frequency of a beneficiary's Continuing Disability Review (CDR). MIEs receive CDRs more frequently than MIPs or MINEs. There are no rules or regulations that determine how a person is assigned to a medical improvement category. The determination is solely based on the discretion of the Disability Determination Service personnel.

SSA has proposed that people on disability who are determined as Medical Improvement Expected (MIE) be denied a Ticket to Work until after their first CDR. SSA cites the fact that those determined as MIE are expected to medically improve within a short period of time and they are subject to CDRs more frequently. SSA argues that to issue a Ticket to these individuals who might be terminated after only a short stay on the roles would: 1) allow these individuals to avoid the CDR and thus allow people who have medically improved to keep benefits they wouldn't ordinarily receive; and 2) allow providers to collect payments from SSA for people who would have returned to work and left the roles anyway.

IAPSRS Comment

SSA should examine, on a disability-by-disability basis, which people determined MIE are likely to remain on the roles after the initial CDR and issue those people a Ticket. Further, SSA should examine, on a disability-by-disability basis, which people are likely to come back on the roles even if they are determined to have medically improved in the first CDR, and issue those people a Ticket.

Rationale

Using the broad brush of the MIE category is too crude a tool to deny beneficiaries immediate access to a Ticket. For example, such a rule does not distinguish between a person who is 25 years old and has schizophrenia and is determined MIE and a person who is 25 years old and has a lower limb fracture and is determined MIE. Almost equal numbers of people with schizophrenia and people with lower limb are determined MIE. Furthermore, because there are no rules or regulations that govern the DDS's determination of medical improvement, the variations in standards will not only differ from office to office, but within the offices. One DDS staffer may place a disproportionately high number of people in the MIE category while another DDS staffer in the same office will place more people in the MIP or MINE category. Consequently, one person with schizophrenia may get an MIE assignment, while another person with the same illness might get an MIP or MINE assignment, all based on who the DDS staffer happens to be.

Also, as pointed out in the previous comment GAO has criticized SSA for not incorporating return-to-work efforts earlier in the determination process. Adopting the above comment would bring a more sophisticated and effective approach to SSA's return-to-work program.

(3) Proposed Rule—One Ticket per Period of Disability

SSA has proposed that a person can receive only one ticket per period of disability. A "Period of Disability" begins when the person is awarded benefits and ends when the person's entitlement to benefits end.

IAPSRS Comment

IAPSRS believes a person should be eligible for another Ticket when the cash value of the first Ticket has been exhausted.

Rationale

The Ticket-to-Work provides payments for up to 60 non-consecutive months of payments to providers for each month during which benefits are not payable to a beneficiary due to earnings. The Ticket-to-Work legislation provides for a 60-month Expedited Reinstatement that follows the termination of benefits due to work.

Expedited Reinstatement allows a beneficiary to be automatically reinstated to benefits pending a CDR after six months. SSA may determine that a person who uses the Expedited Reinstatement provision has "continued" the same period of disability, even though their entitlement to benefits has ceased. For SSDI beneficiaries, the Expedited Re-entry provision allows people to come back on the rolls for up to five years after the EPE under the same "period of disability." This provision will prevent a person from getting a new Ticket after the first one is paid out and could mean a person is eligible for only one Ticket in their lifetime.

SSI beneficiaries retain "eligibility" for benefits under 1619(b) even though they are not receiving any cash benefits. The Ticket could be fully paid out in this situation and the person come back into payment status and not be able to get another Ticket because they are still considered in the same "period of disability."

Finally, people with high upfront rehabilitation costs who are served by the state VR agency will have little chance to fully benefit from a Ticket if VR chooses the "cost-reimbursement" method. Under cost reimbursement, VR can get reimbursed for the full costs of services, even if the cost is higher than the total value of the Ticket, as long as a person achieves nine months of SGA. Since nine months of SGA still leaves a person eligible to receive SSI or SSDI the person will still be on the rolls, still not have achieved full independence, and no longer have access to services because they will not have a Ticket.

Payment System

The Ticket program provides for two payment methods for Employment Networks (ENs), an outcome payment method and a milestone-outcome payment method. According to the law, the outcome payment method shall "provide a schedule of payments to an employment network . . . for each month . . . for which benefits are not payable because of work or earnings." The law says that the milestone-outcome method "shall provide one or more milestones that are directed toward the goal of permanent employment."

(4) Proposed Rule—Outcome and Milestone-Outcome Systems

SSA has proposed the following Outcome Payment structure:

Outcome Payments for SSDI Beneficiaries and Dually Eligible Individuals—

Payment to an EN would begin the month in which benefits are not payable to the beneficiary, meaning the first month in the SSDI Extended Period of Eligibility that beneficiary earned above SGA ($740 in 2001). The amount of that monthly payment would be $277 and for each month during the next 60 (not necessarily consecutive) months an individual did not receive benefits the EN would receive $277. In 2000, the total amount an EN could get under this method is $16,620.

Outcome Payments for SSI Beneficiaries—

Payment would begin the month in which benefits are not payable, meaning the first month earnings completely offset their benefits under the SSI $2-for-$1 cash offset. On average this means an SSI beneficiary would have to earn more than $1,000 a month before any outcome payments would be paid, compared to $740 in earnings for an SSDI beneficiary. In 2000, the total amount an EN could get under this method is $10,560.

SSA has proposed the following Milestone-Outcome Payment structure:

Milestone-Outcome Payments for SSDI Beneficiaries and Dually Eligible Individuals—

Two milestone payments have been proposed, the first payment of $470 when the individual has achieved 3 months of earnings above SGA within a 12-month period, the second milestone payment of $940 is paid when the beneficiary achieves the 7th month of earnings above SGA in a 12-month period. The 3 months from the first milestone can be part of the 7 months used to reach the second milestone. The total milestone payments are $1,410 and the combined total milestone-outcome amount an EN could get under this method in 2000 is $14,127.

Milestone-Outcome Payments for SSI beneficiaries—

The milestones will be reached the same way as with SSDI, the first milestone of $300 is paid after 3 months of earnings above SGA in a 12-month period, the second milestone of $600 is paid after 7 months of earnings above SGA in a 12-month period. The total amount of milestone payments is $900 and the combined milestone-outcome amount an EN could get in 2000 is $8,976.

IAPSRS Comments

IAPSRS recommends that the payment disparity between the Outcome and Milestone-Outcome systems be eliminated except for a minor reduction in the Milestone system in order to comply with the law.

IAPSRS further recommends that the outcome payments in the Milestone system be spread evenly over the five-year period.

Rationale

The huge disparity between the total payments in the Outcome system vs. those in the Milestone-Outcome system will discourage the use of the Milestone system. While the law says the Milestone payment system must be less than the Outcome system, the 15% reduction proposed by SSA is too great to attract smaller providers. Worse, back loading the outcome payments in the milestone system means that monthly outcome payments in the first year are 3 times lower than those in the fifth year. Again, this discourages smaller, less well-capitalized providers from participating.

IAPSRS Comment

IAPSRS recommends that the value of the milestone payments be increased as follows for SSDI and SSI/SSDI beneficiaries:

$500 the day the person starts work;
$1,000 after three months of work regardless of earnings level;
$1,500 after six months of work, regardless of earnings level;
$2,000 after nine months of work and the person begins their EPE.

Total Milestone Payments: $5,000; 60 months of outcome payments follow.

If the person enters their EPE before all the milestones are paid out, the remainder amount of milestones are folded into the outcome payments.

Rationale

The value of the milestone payments is far too low. Several states in SSA's State Partnership Initiative (SPI) Program have run demonstrations on milestones, the most prominent being Oklahoma. In Oklahoma and in the other SPI states, experience tells us that a total milestone system that pays less than $3,500 will not attract providers. Ideally, to attract the maximum number of providers, the total milestone payment should be between $4,000 and $5,000 for SSDI and concurrent SSDI/SSI.

The milestone system was devised as a method risk sharing between SSA and providers. Under SSA's proposal SSA shares no risk, all the risk is on the provider.

Also, requiring an individual work at or above SGA in order for a milestone payment to be paid is an inappropriate standard. If person has used up most or all of their Trial Work Period under the SSDI program before depositing their Ticket, the case will arise where the milestone system has no impact, because as soon the individual earns above SGA the outcome payments will start. In this case, will ENs lose the amount contained in the milestones, or will they be folded into the Outcome payments. Or, will ENs be paid the milestone payments first, a lesser amount than the Outcome payments would have generated under the same circumstances, before receiving the Outcome payments?

IAPSRS Comment

IAPSRS recommends that SSA restructure the milestone-outcome system for SSI beneficiaries in order to account for the existing work incentives. IAPSRS recommends that SSA allow outcome payments when an SSI beneficiary partially reduces their SSI check because of earnings or income. The amount paid would still be based on the maximum of 40% of the portion of the benefit not paid. Such a proposal might pay a $500 milestone in the first month an SSI beneficiary work earned over $125 in gross income. A second milestone would be paid in the next month the SSI beneficiary earned over $325 in gross income. In any month after the second milestone was paid that the SSI beneficiary's income was between $326 and $550, SSA would pay an outcome payment of $53. In any month after the second milestone was paid in which the beneficiary's income was between $551 and $750, SSA would pay an outcome payment of $93. In any month that earnings were between $751 and $1,002, SSA would pay $138. This is calculated using average federal SSI payment as determined by SSA in calculating the payment calculation base for SSI. The amount of the outcome payment would be paid according to the 40% maximum allowed under the law.

Rationale

Again, the milestone system was devised as a method of sharing risk between SSA and providers. Under SSA's proposal SSA shares no risk, all the risk is with the provider.

Further, SSA's proposal is prejudiced against SSI beneficiaries because SSA has interpreted the law to require that a person not be receiving ANY cash benefits before an outcome payment is made. SSI beneficiaries are disadvantaged because the $2-for-$1 cash offset in SSI (a work incentive) requires them to earn more ($360 a month more) than those on SSDI before an outcome payment is paid to an EN. As a result, ENs will be discouraged from serving the SSI population, which typically, but not always, is less well educated and has a much weaker work history than the SSDI population.

The law states that the outcome payment method shall "provide a schedule of payments to an employment network . . . for each month . . . *for which benefits are not payable* because of work or earnings." IAPSRS believes that if a person on SSI earns enough so that their SSI check is partially reduced, this reduction equals "*a benefit that is not payable* because of work or earnings." Further, the law does NOT require a total elimination of ALL cash benefits. Had Congress intended this they would have said something such as: "provide a schedule of payments to an em-

ployment network . . . for each month . . . *for which NO benefits are payable* because of work or earnings." IAPSRS believes that the law is flexible enough to allow an outcome payment when an SSI beneficiary reduces their SSI check because of work.

Continuing Disability Reviews

(5) Proposed Rule—Timely Progress

The law states that, **"beneficiaries shall not be subject to Continuing Disability Reviews as long as they are using** (***as defined by the Commissioner) a Ticket-to-Work.***" SSA has set up a timeline that determines what "using a Ticket" means. After assigning a ticket, beneficiaries are allowed up to 2 years to prepare for employment. They must show they are "actively participating in their Individual Work Plan (IWP) or Individual Plan for Employment (IPE)" i.e., engaging in activities outlined in one's plan on a regular and timely basis.

After 2 years, beneficiaries would be required to meet progressively higher levels of employment to continue to be considered "using a ticket" in order to receive protection regarding non-initiation of continuing disability reviews.

In the **3rd year** of participation in the Ticket to Work program, beneficiaries would be required to work at least 3 (not necessarily consecutive) months in a 12-month period at the Substantial Gainful Activity (SGA) level (currently set at $700 for non-blind beneficiaries).

In the **4th year** of participation in the program, the beneficiary would be required to work at least 6 (not necessarily consecutive) months during a 12-month period at the SGA level.

In the **5th and succeeding years,** in order to be considered to be using a ticket, beneficiaries would be required to work at least 6 (not necessarily consecutive) months in each year and have earnings in each such month that were sufficient to eliminate the payment of SSDI benefits and Federal SSI benefits.

SSA explains that progress toward self-sufficiency is not always continuous and that for some, full self-sufficiency may not be attained. Many beneficiaries have disabilities with cycles of relapse and remission. The requirements for only 3 months out of 12 in the third year and 6 months out of 12 in succeeding years recognizes that some beneficiaries may not be able to work on a continuous basis.

IAPSRS Comment

IAPSRS supports allowing beneficiaries to "bank" work months in the first two years to count towards the work requirements in later years. In year 5 and beyond, IAPSRS supports allowing work in excess of the six-month requirement to count toward the next year's requirement. Further, IAPSRS recommends that increasing amounts of work or earnings, even if below SGA, be evaluated as meeting the definition of "progressively higher levels of employment" in order for a person to keep their CDR protection.

Rationale

Many beneficiaries have disabilities that are episodic and intermittent. While some people may not be able to work right away, others might be able to work sooner but may experience difficulties later. It is not fair to those who can work earlier to penalize them because their work effort did not fall precisely within the stringent timeframe established in the regulation. Further, the rule ignores that many people may work at increasing levels of income or hours, but never reach the SGA earnings threshold.

(6) Proposed Rule—Eligibility Criteria

An entity applies by responding to a Request For Proposal (RFP) issued by SSA. The entity must assure that it is qualified to provide employment services, vocational rehabilitation services, or other support services to disabled beneficiaries either directly or through contract or other arrangement. For example, the entity must assure that it is licensed, certified, accredited or registered to provide these services or is able to arrange for other entities to provide these services.

To serve as an employment network, an entity must meet and maintain compliance with both general and specific selection criteria.

General selection criteria include (but are not limited to) having systems in place to ensure confidentiality of personal information, physical and program accessibility, the existence of nondiscriminatory policies, practices, and procedures (based on beneficiaries age, gender, race, color, creed, or national origin), having adequate resources to perform activities, and implementing fiscal control and fund accounting procedures.

Specific criteria include (but are not limited to) use of qualified staff and providing medical and related health services under the formal supervision of licensed persons.

Any entity must have applicable certificates, licenses, or other credentials if state law requires such documentation.

IAPSRS Comment

IAPSRS recommends that the broadest discretion be given to ENs regarding how to comply with these requirements. IAPSRS also recommends that state law not become a barrier to participation by ENs by allowing the Commissioner to suggest alternative means of qualifying if an entity cannot or does not meet state requirements. In addition, IAPSRS is concerned about the mandate that ENs provide medical and health related services and suggest limiting this provision to those entities that already provide such benefits.

Rationale

IAPSRS is concerned that credentialing requirements could exclude smaller or niche providers that serve specific populations. Any credentialing requirement must be broad enough to ensure the fullest array of providers. IAPSRS is particularly concerned that states could levy requirements intended to give state VR agencies exclusive domain in determining who is and is not an EN. IAPSRS is also concerned that requirement that ENs provide medical and related health services is overly burdensome to smaller providers.

(7) Proposed Rule—Reporting Requirements

The following reporting requirements are placed on entities that wish to participate in the Ticket to Work program as employment networks:

- Report to the Program Manager each time it accepts a ticket for assignment.
- Submit to the Program Manager a copy of each signed individual work plan and copies of amendments thereto.
- Submit to the Program Manager a copy of any agreement the employment network has established with a state VR agency regarding the provision of VR services.
- Report to the Program Manager the specific outcomes achieved consistent with a national model to be prescribed by the SSA.
- Provide a copy of most recent annual report on outcomes to each beneficiary and ensure that copy available to public while ensuring confidentiality of personal information.
- Meet financial reporting requirements, such as demonstrating the percentage of the employment network's budget that was spent on serving beneficiaries with tickets (including the amount spent on beneficiaries who return to work and those who do not return to work).
- Collect and record all data required by SSA.
- Adhere to all statutory and regulatory requirements.

Further, the proposed rule requires ENs to report to the PM regarding a beneficiaries earnings and income in order to be eligible for an outcome payment. This includes submitting documentation such as earnings slips or pay stubs, and the SSA Form 821 that is completed by the beneficiary.

IAPSRS Comment

The income reporting requirements externalize a long-standing problem at SSA—mainly the agency's inability to accurately and expeditiously track earnings and adjust benefits. IAPSRS opposes turning ENs and their staff into accountants and employees of the agency.

Rationale

The income reporting rules require the EN to collect and report information that the EN may not have access to and might violate a beneficiary's privacy if requested by the EN from either the beneficiary or the employer.

Overpayments

Currently, SSA does not have the means to intake and track earnings of beneficiaries who work. Frequently, beneficiaries who work continue to receive disability checks despite the fact that their earnings have made them ineligible for benefits. Further, SSA takes months, usually years, to "catch up" with a beneficiary who should have had their checks stopped. When SSA does catch up with a beneficiary, the person usually owes thousands, and maybe tens of thousands, in overpayments. This creates havoc with a beneficiary who in the course of attempting to work finds themselves financially worse off. SSA ignores this problem despite the impact on individuals. However, with the payment to ENs and the CDR protection now depend-

ent on SSA stopping checks in a timely fashion, this problem has become catastrophic.

(8) Proposed Rule—None

Although SSA has not proposed a rule on this issue, this matter is critical to the success of the Ticket program. SSA must address this issue. IAPSRS Comment IAPSRS recommends that an EN's report to the PM on a beneficiary's income and earnings be given by the PM to SSA within 30 days, and if within 60 days of the PM's report to SSA, SSA has failed to appropriately stop or adjust a beneficiary's check, SSA cannot hold the beneficiary liable for overpayments and SSA must make payment to the EN as though the benefit has been adjusted or ceased.

Rationale

SSA must act immediately to reform and improve income-reporting systems, or not hold beneficiaries and ENs responsible for the failings of the agency. Further, if ENs must report incomes and earnings to the PM, along with the SSA Form 821, then SSA must have an incentive to prioritize these reports.

(9) Proposed Rule—Evaluation of ENs

SSA will periodically review the results of the work of each employment network to ensure effective quality assurance in the provision of services to ticket holders. In conducting these reviews, SSA will solicit and consider the views of the consumers of the employment network and the Program Manager that monitors the employment network. Results of these reviews must be made available to the disabled beneficiaries. *IAPSRS Comment* Consumer satisfaction measures and the ability to inform Ticket holders of the quality of ENs in their area is critical. Measuring consumer satisfaction through a survey is only one such way to accomplish this goal, but IAPSRS also urges SSA to examine employment outcomes, including types of placements and income levels of the placements. However, since many ENs will serve only one disability population, IAPSRS cautions against comparing ENs across disability groups.

State Vocational Rehabilitation Agencies

(10) Proposed Rule—Automatic Assignment of a Ticket to VR

SSA is proposing that when a beneficiary signs a plan as defined under Rehab Act (IPE), the beneficiary has automatically assigned their Ticket, regardless of whether the VR agency is an employment network.

IAPSRS Comment

IAPSRS opposes this requirement and recommends that it be struck.

Rationale

The hallmark of the Ticket-to-Work is consumer choice. Requiring a beneficiary to assign their Ticket to VR, whether they choose to or not, negates that choice. Further, a beneficiary may be eligible for VR benefits without having to assign their Ticket and, in fact the Rehab. Act as amended in 1998 states that SSI and SSDI beneficiaries are "presumptively eligible" for VR benefits. Making a beneficiary use their Ticket when VR might be required under the Rehab. Act to serve that individual anyway denies the use of the Ticket to beneficiary at a later date. If VR chooses the cost reimbursement system for a higher cost individual, this person would find themselves without a Ticket and still on benefits since VR is only requirement to show nine months of work above SGA. That is a far lower employment goal than for other ENs.

(11) Proposed Rule—Agreements between State VR Agencies and ENs

SSA is proposing that as part of the broad agreement between ENs and State VR agencies, that the agreement must stipulate "the terms and procedures under which the EN will pay the State VR Agency for providing services."

IAPSRS Comment

IAPSRS opposes this requirement and recommends that it be struck.

Rationale

SSA should not be establishing the terms of the agreement in the regulations. These agreements should be arrived at openly and freely without one side or the other having the weight of regulation on their side. Stipulating that ENs will be paying VR presumes that this will always be the case. In fact, with many populations it is VR that pays ENs for services. Presuming in the regulation that ENs will be paying VR for services assumes that VR and the Ticket pay for the same services. In fact they do not. VR's standard to achieve a closure is 90 days of em-

ployment, and to collect under the cost reimbursement system is nine months of employment at or above SGA, while ENs under the ticket must wait at least 60 months for their payment. The Ticket is meant to help pay for long-term supports that VR agencies are unable to pay for. Making ENs pay VR out of the Ticket renders useless that critical role of the Ticket. Finally, this language was struck from the final version of the bill before it passed the House in October of 1999. SSA, RSA, Dept. of Education, House Ways and Means Committee staff and disability groups all participated in a 1999 meeting where it was agreed that this language was inappropriate. It should not now be resurrected in the regulations.

SSA's PROPOSED SSI MILESTONE-OUTCOME PAYMENT SYSTEM

Monthly Earnings	Countable Income	Amount of Benefit Offset	SSI Cash Payment	Milestone Payment	Monthly Outcome Payment Amt	SSA Breakeven
$1 to $85	$0	$0	$459		$0	
$100	$15	$7.50	$451.50		$0	
$125	$40	$20	$439		$0	Under this scenario, SSA breaks even at dollar one
$150	$65	$32.50	$426.50		$0	
$175	$90	$45	$414		$0	
$200	$115	$57.50	$401.50		$0	
$225	$140	$70	$389		$0	
$250	$165	$82.50	$376.50		$0	SSA shares no risk under this scenario
$275	$190	$95	$364		$0	
$300	$215	$107.50	$351.50		$0	
$325	$240	$120	$339		$0	
$350	$265	$132.50	$326.50		$0	
$375	$290	$145	$314		$0	
$400	$315	$157.50	$301.50		$0	
$425	$340	$170	$289		$0	
$450	$365	$182.50	$276.50		$0	
$475	$390	$195	$264		$0	
$500	$415	$207.50	$251.50		$0	
$525	$440	$220	$239		$0	
$550	$465	$232.50	$226.50		$0	
$575	$490	$245	$214		$0	
$600	$515	$257.50	$201.50		$0	
$625	$540	$270	$189		$0	
$650	$565	$282.50	$176.50		$0	
$675	$590	$295	$164		$0	
$700	$615	$307.50	$151.50		$0	
$725	$640	$320	$139		$0	
$740	**$655**	**$327.50**	**$131.50**	**$300/3 months $600/7 months**		
$750	$665	$332.50	$126.50		$0	
$775	$690	$345	$114		$0	
$800	$715	$357.50	$101.50		$0	
$825	$740	$370	$89		$0	
$850	$765	$382.50	$76.50		$0	
$875	$790	$395	$64		$0	
$900	$815	$407.50	$51.50		$0	
$925	$840	$420	$39		$0	
$950	$865	$432.50	$26.50		$0	
$975	$890	$445	$14		$0	
$1,000	$915	$457.50	$1.50		$0	
$1,003	$918	$459	$0.00		Year	1 2 3 4 5
						$57 $141 $150 $158 $167

ALTERNATIVE SSI MILESTONE-OUTCOME SYSTEM

Monthly Earnings	Countable Income	Amount of Benefit Offset	SSI Cash Payment	Milestone Payment	Monthly Outcome Payment Amt	SSA Breakeven
$1 to $85	$0	$0	$459		$0	
$100	$15	$7.50	$451.50		$0	
$125	$40	$20	$439	$500	$0	25 months
$150	$65	$32.50	$426.50		$0	
$175	$90	$45	$414		$0	
$200	$115	$57.50	$401.50		$0	
$225	$140	$70	$389		$0	
$250	$165	$82.50	$376.50		$0	
$275	$190	$95	$364		$0	
$300	$215	$107.50	$351.50		$0	
$325	$240	$120	$339	$1,000	$0	13 months
$350	$265	$132.50	$326.50		$53	11 months
$375	$290	$145	$314		$53	
$400	$315	$157.50	$301.50		$53	Total payment
$425	$340	$170	$289		$53	$4,680
$450	$365	$182.50	$276.50		$53	milestone $1,500
$475	$390	$195	$264		$53	outcome $3,180
$500	$415	$207.50	$251.50		$53	
$525	$440	$220	$239		$53	6 months
$550	$465	$232.50	$226.50		$93	10 months
$575	$490	$245	$214		$93	
$600	$515	$257.50	$201.50		$93	Total payment
$625	$540	$270	$189		$93	$7,080
$650	$565	$282.50	$176.50		$93	milestone $1,500
$675	$590	$295	$164		$93	outcome $5,580
$700	$615	$307.50	$151.50		$93	
$725	$640	$320	$139		$93	
$750	$665	$332.50	$126.50		$93	6 months
$775	$690	$345	$114		$138	7 months
$800	$715	$357.50	$101.50		$138	
$825	$740	$370	$89		$138	
$850	$765	$382.50	$76.50		$138	Total payment
$875	$790	$395	$64		$138	$9,780
$900	$815	$407.50	$51.50		$138	milestone $1,500
$925	$840	$420	$39		$138	outcome $8,280
$950	$865	$432.50	$26.50		$138	
$975	$890	$445	$14		$138	
$1,000	$915	$457.50	$1.50		$138	5 months
$1,003	$918	$459	$0.00		$150	5 months
					5 months milestone outcome $1,500 + $9,000	Total payment =$10,500

Chairman SHAW. Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman.

Obviously, there seems to be a consistent request that the timetable be slowed down a bit so that we can do it right. And one of those issues that has been raised by almost everyone is that because the key to finding jobs that people are qualified for and enjoy doing, the key to that is attracting a broad number of providers with different skill levels beyond just the State vocational institute; is that right? And under the current timetable and some certification, licensing proposals, the fear is that it is burdensome, it is

time consuming, that it is going to discourage people from stepping forward. Is that correct as well?

Mr. SEIFERT. Yes.

Mr. BRADY. Can I ask a question of Charles, Mr. Harles? Your members many of them already provide services of some type to clients right now, is that correct?

Mr. HARLES. Yes. We place approximately 10,000 persons with disabilities per year.

Mr. BRADY. I am new to the Committee, so this is naive, but do you have—do your members have a paperless or an electronic option when filing reporting and compliance documents with the Social Security Administration?

Mr. HARLES. Well, currently, one of the problems is none of our members can work with the Social Security Administration because there is no way for them to participate—there is, I guess on paper, if you will, an alternative participant program that only a handful of organizations have been able to get referrals from. So currently our members don't work directly with Social Security. They work primarily with, in our case, quite a few of them, directly with the U.S. Department of Education and the U.S. Department of Labor but also with a variety of State agencies.

Mr. BRADY. Well, I ask this mainly because I am still concerned about us attracting the broadest range of providers, the burdens have—one, we need compliance, we need standards, but we want to streamline the administrative burden, and it seems like in this day and age, as a government, we ought not ever roll out a program that doesn't have an electronic opening, a paperless option that allows companies to comply electronically. Not only does it remove the administrative burden, but it sends a signal that we have thought through this problem and want to make that burden as light as possible, but still requiring the information we need to run the program. So that is where I was headed with that.

Mr. HARLES. I really appreciate that.

At the same time, Social Security and the MAXIMUS organization that will be actually running the program need to focus that the concept here is you pay for outcomes and not for process. A lot of times the paperwork that they are requiring you to do is process oriented and not necessarily outcome oriented.

Mr. BRADY. Agree, it just seems like a concern for many companies. Normally, when they ask can I do this electronically—can we do this electronically, the response is: We are just not set up to do that. It seems like in this day and age, we ought not to have any new programs that are not set up that way to attract good providers, that could mean good jobs for our folks who are our future workers.

That is all. Thank you, Mr. Chairman.

Chairman SHAW. I have a couple of short questions, and these are directed to anyone on the panel that cares to reply to it. It is based on the concerns that each of you have raised in your testimony.

Would you recommend that the acting commissioner hold off implementation until the regulations can be fixed? I know that each one of you have been critical. And elaborate as to the advantages or disadvantages of moving forward.

Ms. PROKOP. Since I am representing the CCD task force, I do not think we have had an opportunity to discuss amongst ourselves how much of a delay or whether one ought to be placed on the implementation of regs.

There are pros and cons to both sides of the argument. Some people say if things are delayed too much, then there are certain reports that have to be made within the time lines of the law that may not be done in a timely fashion. The fear is that the data collection that needs to be done will be ineffective if you don't get the program going. On the other hand, we have all heard today a number of concerns about getting the program going without certain structures in place that are appropriate to make it work effectively.

I would be interested in what my colleagues have to say about this.

Mr. HARLES. Well, I guess my primary comment would be that I am a little afraid of going down the route of seeing when final regulations are published, given how long it has taken not just the Social Security Administration, but a number of Federal agencies, to get final regulations out. I don't want to come back a year from now saying that we still do not have the regulation.

On the other hand, there are some serious concerns about the regulations and maybe there is something in between. Someone used the words "interim final regulations" that we might have by a certain date or something and still leave it open for possible future changes for some of the more difficult problems. But I think our position would be that we do need to move toward implementation but also try to address some of the serious problems that we have identified.

Ms. FORD. Well, from the perspective of the consumer, I think that the disadvantages include massive confusion and eventually distrust of the Social Security Administration if the program is rolled out before some pretty significant changes get made, or at least that we hope get made. And I agree with Charlie that it may not make sense to wait until the actual final regs, because we know how long it took between when those proposed regs were ready last summer and when they were actually published in December.

So perhaps it would be appropriate to roll out the program when it reaches the point of final design of the program; because to go too soon, to go now or in the next 2 months, would imply that some of these serious issues are not being taken into consideration, and I would want to see the changes made or incorporated before the program is rolled out.

Mr. SEIFERT. Well, as I said in my testimony, we think they ought to wait until they have reviewed all the comments and fix the problems with this program.

I think the reason is that there is already a pretty long history of Social Security not doing things very well, overpayments being one, rep payees being another, the alternate provider program being another. If the Ticket program rolls out without these problems fixed and the first splash is, well, it just did not work, sorry, then the rest of the States, the other 30-some-odd States where this has to roll out, the well is going to be poisoned. The word is

going to be out that it did not work in the 13 States. It is not going to work here. Nobody will sign up. Nobody will use a ticket.

And I think then you are coming back and doing a major legislative revamp 3 or 4 years from now. And I think that is a pretty ugly hearing, actually, when somebody from Social Security has to come up here and testify about why this program did not work.

Chairman SHAW. Okay. The second question that I have, I am getting the sense that, in general, SSA has designed a draft rule which tries to fit too many different types of shapes into one round hole. I believe you testified to that. In other words, different disabilities require different supports and different time frames to transition into a work environment. I am hearing that SSA needs to try to individualize its approach to different types of disabilities. How does the agency do that without creating unmanageable administrative burdens?

Ms. FORD. I will start. I think that the Agency could use the system it has designed, with a program manager and the employment networks that work together with the individual to achieve some of that individualization that needs to go on.

I think it makes sense to have a general rule, because you can handle a lot of cases, if not most cases, with a general rule if it works, and then have individualized approaches where it is necessary. And that is why in a couple of places in my testimony we talk about allowing the employment network in concert with the program manager to deem somebody's work effort to be equivalent to the general rule, for example for meeting "timely progress."

There are ways that you could build some of this structure into the individualized work plan process. That plan is basically the contract between the individual and the employment network that has to be approved by the program manager. There are three players there, and SSA can use that structure to help design some of the individualized or customized approaches where the rigid standard does not work for a particular person in particular circumstances.

Ms. PROKOP. The same holds true in the pieces about dispute resolution. We have made the suggestion that a model dispute resolution grievance procedure should be provided to employment networks. Then, if there is a problem, and there was flexibility to tailor that procedure according to the type of employment network involved, at least these would be a foundation so that everybody has a general sense of what rules they are playing with. But, again it should still be flexible enough to allow for differences among beneficiaries and employment networks.

Mr. HARLES. I have another related issue to do with milestone payments. One of the suggestions that we have made is that Social Security could use the ramp-up period the first couple of years to look at utilizing several different models to see which in fact actually, proved to be most helpful kind of thing in that process. Right now they just start off with one program that is virtually untested. I think that they have got an opportunity, if they will take it, to come up with several possible different milestones, maybe even to be used in different States or whatever, to see which systems might work best.

Mr. SEIFERT. I think on the issue of the MIEs, and the CDR timely progress requirements, I don't think that would be a very complicated thing for Social Security to do at all. I mean, clearly we know from the numbers that very few beneficiaries are terminated before their first CDR. I do not see how that dramatically affects the financial situation of the program.

However, on the issue of overpayments, and Social Security's inability to track earnings for the DI population, that is nothing less than a systems problem and will require substantial resources for them to bring that up to par with what they should be able to do under the Ticket program, much less what they should be able to do generally for beneficiaries who work.

What they have done here in this proposed regulation is externalized that problem to the employment network and made them the agent for doing their work, with no real guarantee that if the provider does make the report and does verify the earnings, that once it lands in the SSA field office, that anything will happen to it.

So I think there's a mutter around some of these issues that are just going to require better financing and restructuring of their systems.

Chairman SHAW. I have one further thing. Ms. Ford, in your testimony you talked about—I am pretty sure you are the one—you were talking about the limitation of the tickets and that you think—and did I understand you to say that there should be no limitation?

Ms. FORD. Well, first of all in the way the Arc reads the regulation, it could be read to say you get one ticket per life. In conversations—obviously off-the-record conversations because they don't ultimately count—with folks in the SSA, I understand that that was not necessarily the intent. But then to step backwards, it is clear that they do mean at least only one ticket per period of disability.

And for our folks, people with mental retardation whose impairment is lifelong and quite severe, that also does not make sense because the period of disability is more or less lifetime. And if you do have an individual successfully leaving the program through the use of a ticket, who goes to work, and then something occurs and they have to go back in the system, they may be using the expedited reinstatement, and that reinstates them to their original disability.

So technically, there are some problems here, and in terms of congressional intent, I don't think that it was anticipated that an individual would just get one chance. I think these are folks with very severe disabilities who are going to encounter all sorts of things that happen in life and additional things that do not happen to most people. And they are going to need additional chances. So I think the one ticket per period of disability is also far too limiting.

Chairman SHAW. So you are telling me once they get into the workforce, they drop out of the workforce, and then do it again, that they can't get back in the program?

Ms. FORD. That is how I read it.

Chairman SHAW. Is that what is happening?

Ms. FORD. That is how I read the proposed regulations.

Chairman SHAW. Well, that does require some help from us.

Thank you all very much. We appreciate the work that you have done and the time that you have given us this afternoon. Thank you.

[Whereupon, at 3:40 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Shaw to the panel, and their responses follow:]

CONSORTIUM FOR CITIZENS WITH DISABILITIES
WASHINGTON, DC 20005
March 30, 2001

Hon. E. Clay Shaw, Jr.
Chairman
Subcommittee on Social Security
U.S. House of Representatives
Washington, DC. 20515

DEAR MR. CHAIRMAN:

This is in response to your letter of March 8th seeking additional information on the testimony presented on behalf of the Consortium for Citizens with Disabilities Task Forces on Employment and Training, Social Security and Work Incentives Implementation. Your subcommittee's questions and our responses are presented below.

1. The Advisory Panel testified that feedback received in their regional meetings showed a great deal of confusion in the minds of even sophisticated beneficiaries and their advocates regarding various aspects of the new law, such as health care coverage, and using the ticket in conjunction with other work incentives. Do you agree with this statement? If so, what should be done?

CCD agrees that there is considerable confusion among many beneficiaries and advocates over the work incentives law. Although the Ticket to Work and Work Incentives Improvement Act represented a major advance in giving Social Security disability beneficiaries additional tools to go to work, it was acknowledged from the beginning that this would not necessarily simplify the way the system works. Added to this has been the troubling aspects of the proposed rule.

There is particular concern that individuals with significant disabilities and their families may hold expectations about the new law that may remain unfulfilled due to certain facets of the proposed regulations—e.g. inadequate employment network payments or the CDR protection rules for "timely progress." In addition, many beneficiaries are under the mistaken assumption that they have to participate in the ticket program to take advantage of the health care provisions of PL 106–170.

Under TTWWIIA, benefits-protections for returning to work are sometimes conditional and difficult to explain meaningfully to beneficiaries. For example, beneficiaries in some states will have access to the Medicaid buy-in provisions while others will not. The Medicare extension is available only to those whose extended period of eligibility [EPE] began after June 1997. Long term beneficiaries who viewed TTWWIIA as a long overdue opportunity to leave the benefit rolls with health care protection will be sadly mistaken. In addition, the NPRM suggests that individuals must be in current cash benefits status to take part in the Ticket program. Thus, people who are using the 1619[b] program or who are in their EPE would be ineligible for the vocational and employment guidance offered by ENs that might help them attain greater levels of self-sufficiency.

These circumstances point to the importance of the Benefits Planning Assistance and Outreach [BPAO] program which has provided grants to numerous local advocacy organizations around the country to help beneficiaries navigate the complexities of the new law. SSA's Employment Support Representative [ESR] initiative which is now being pilot tested in a number of SSA offices around the country is another means to educate beneficiaries about TTWWIIA. The BPAO program must be funded at an adequate level and SSA should be encouraged to increase placements of ESRs to assure that these guidance services are widely available to SSI and SSDI recipients. An important technological tool that should be promoted for use by ESRs and BPAO counselors is the WorkWorld software developed by Virginia Commonwealth University. This software can assist beneficiaries in making informed decisions about work and its impact on a range of supports including their eligibility for Social Security, housing, state assistance, and many other benefits.

2. You caution against lowering the age of beneficiaries who may participate in the Ticket program to 16 until the multi-disciplinary assessment project being conducted through the American Association of University Affiliated Programs has been ana-

lyzed by SSA. What is the purpose of this assessment and when will the findings be released? What concerns do you have about lowering the age?

The AAUAP project is part of SSA's efforts to examine whether it is evaluating properly those children who apply for disability benefits or who already receive such benefits. Estimated time for release of preliminary results is slated for the fall 2001 conference sponsored by SSA and the National Academy of Social Insurance.

Many members of CCD with particular involvement in childrens' disability issues believe that lowering the age for Ticket eligibility should be carefully considered in light of large numbers of 18 year olds who are terminated from the rolls once they apply for adult benefits. Many of these terminations involve children with significant disabilities. If 16 year olds are encouraged to work using a Ticket, that work effort could be used to deny them Medicaid and other income supports that they will continue to need after they reach adulthood. CCD does not believe this "Catch 22" was intended but it is a factor that must be taken into account.

Furthermore, the Individuals with Disabilities Education Act [IDEA] of 1997 calls for increased collaboration between school systems and vocational rehabilitation agencies on transition planning at younger ages. Vocational rehabilitation agencies are supposed to be involved in the development of a child's individual education plan [IEP]. Given the proposed Ticket regulations, this raises the issue whether a child's ticket becomes automatically assigned to the VR agency. If, as the proposed rule suggests, the ticket is automatically assigned to the VRA once that agency enters the picture, might the VRA pressure the student to begin work as quickly as possible so as to collect on the ticket rather than pursuing additional education that might pay off for the student in the long run?

CCD feels that questions such as these surrounding 16 to 18 year old beneficiaries need to be examined before broadening Ticket eligibility to this cohort.

3. In your testimony, you state that no limits should be placed on the number of tickets a person can receive over the course of a lifetime. You give the example that some beneficiaries have conditions, which are sporadic, episodic, and lifelong. Do you know the cost of continued issuance of a ticket for this group of individuals? Do you think that these individuals could benefit from a different program to help them transition to the workforce? What type of program would that be?

One problem with the proposed rule is that the limit of one Ticket "per period of entitlement" in combination with the expedited reentry provisions seems to preclude a beneficiary from getting another Ticket once he/she returns to the rolls after a work attempt. Fixing this anomaly, however, would not preclude SSA from determining that an individual is eligible to receive only one Ticket—period.

Such a limit also fails to account for the fact that some former beneficiaries may need additional job training and/or placement counseling if they lose their jobs because of an employer's bankruptcy or closure or through layoffs or restructuring. While it could be argued that unemployment compensation and displaced worker programs can help under those circumstances, these programs may not offer the kind of assistance that former SSDI and SSI beneficiaries need to maintain their economic independence.

The Social Security Administration may be able to supply data on numbers of SSDI and SSI beneficiaries who return to the rolls after going off cash benefits, what the average benefit of these returnees may be and how long they remain on the disability rolls or how many transfer into the Social Security retirement program. From such figures, a general estimate could be made as to the likely costs of people NOT getting off the rolls. At the very least, the Committee could then consider whether it is better to effect some savings in the trust funds versus no savings in the trust funds.

Before considering another program for individuals who use the Ticket program or other work incentives to enter the workforce and then return to the benefit rolls, efforts should be applied to making PL 106–170 work for them.

4. You stated that family and personal support networks could serve as an employment network should they meet the requirements. You also said that they would also be in a better position to subcontract with an employment network. What type of services could the family or support network provide that an employment network or a state vocational rehabilitation agency could not? If the family or support network subcontracts with an employment network, how would their payment be determined? What safeguards would be put in place to ensure that families and personal support networks were complying with SSA's guidelines for employment networks?

Families or other individual support networks are often in a better position to understand an individual's needs and to work with that individual and service providers to meet those needs. Families and friends are intimately familiar with a beneficiary's strengths and weaknesses, interests and capabilities and would be expected to consider first the beneficiary's vocational wishes rather than trying to

steer the beneficiary in a particular direction out of a desire to complete a case. Few people get 100% unqualified support from vocational programs like they might from family and friends.

If a family subcontracts with an EN, payment issues should be detailed in that contract as well as in the individual work plan [IWP]. As to safeguards, if the EN is accountable for its subcontractors, it should make sure that the family support network abides by whatever rules are needed to assure that accountability. The key principle in this is to promote diversity and innovation of vocational rehabilitation approaches as was intended by the law.

Thank you, again, for giving CCD the opportunity to share its thoughts with you and the members of the subcommittee. Please feel free to contact me if you have additional questions.

Sincerely,

SUSAN PROKOP
Co-Chair, CCD Task Force on
Work Incentives Implementation

INTER-NATIONAL ASSOCIATION OF BUSINESS
INDUSTRY AND REHABILITATION
Washington, DC 20003 March 30, 2001

Hon. E. Clay Shaw, Jr.
Chairman
Subcommittee on Social Security
Ways and Means Committee
U.S. House of Representatives, Rayburn House Office Building
Washington, DC 20515

Attn: Kim Hildred.

DEAR MR. CHAIRMAN:

Following are my answers to the questions you sent me as a followup to my testimony before the Subcommittee. I have repeated the questions and my answers follow.

1. The Advisory Panel testified that feedback received in their regional meetings showed a great deal of confusion in the minds of even sophisticated beneficiaries and their advocates regarding various aspects of the new law, such as health care coverage, and using the ticket in conjunction with other work incentives. Do you agree with this statement? If so, what should be done?

Yes, the new law can be confusing but it's not just the new law. The interaction of Social Security, health insurance and other benefits has always been confusing. The benefits planning and outreach aspects of TWWIIA are intended to address the confusion and give beneficiaries good advice. However, the program is underfunded. Funding should be at least double the amount allocated for FY 2001 and training for all rehabilitation professionals and other interested persons should be made more widely available.

2. You are very concerned that not enough employment networks are available to service ticket holders and that certain groups may get left out due to SSA's rules. Why do you think SSA developed the rule in such a manner when the clear intent of the law is to encourage greater numbers of innovative services? If those new networks are not developed through more innovative services, will there ever be enough services for the kind of success the legislation envisioned?

Far be it for me to try and guess why SSA wrote a proposed rule that we think limits, rather than expands the universe of employment networks. Whether there will be enough EN's is dependent upon SSA and Maximus, the program manager, developing a fair and easy method to become an EN. The more pressing problem is the low 'payment calculation base' that SSA plans to use and the milestone payments. The figures and methods proposed by SSA will severely limit the TWWIIA program.

3. You caution against SSA's plan to issue tickets in 13 States, stating that there are not sufficient employment networks. You indicated a concern as to the qualifications that SSA will require to become an employment network. First, why is there such a shortage of employment networks at this time? What is needed to correct the situation? What qualifications do you believe should be included for an employment network?

The shortage of EN's is due to the fact that over a year after passage of TWWIIA there is still not in place a procedure to qualify as an EN. As for qualifications,

there should be evidence of experience and success in providing training and placement and follow up services to persons with disabilities. SSA is placing too much emphasis on state cerification and educational qualifications. Ticket to Work is supposed to be based on outcomes—not procedures.

4. You state in your testimony that the intent of Congress was that the universe of service providers be expanded and that non-traditional providers be included so that beneficiaries will be given maximum choice in who they will go to get services that will help them go to work. Can you give us examples of non-traditional providers, and whether under the draft rules these types of providers would be expected to participate?

Among our membership some non-traditional organizations include: Union programs such as IAMCARES; Employer foundations such as Marriott Foundation; Community colleges; Project with Industry programs (funded by US Dept of Education); and State associations of rehabilitation providers.

5. You indicate that the mandate that employment networks provide medical and health related services is overly burdensome and should apply only to those entities who choose to provide those services. What will happen if only a few employment networks choose to provide those services? Are employment networks unwilling to subcontract for these services?

People on SSI/SSDI will have Medicaid and/or Medicare coverage to cover most medical services. I don't think Congress intended the TWWIIA program to provide medical services. The level of outcome funding is not adequate to include any meaningful level of medical services that might not be included in Medicaid or Medicare. It would be more appropriate to have EN's refer beneficiaries to appropriate medical providers.

6. One of the other witnesses stated that family and personal support networks could serve as an employment network should they meet the requirements. The witness also stated that the families and personal support networks would be in a better position to subcontract with an employment network. In your opinion, what type of services could the family or support network provide that an employment network or a state vocational rehabilitation agency could not? If the family or support network subcontracts with an employment network, how would their payment be determined? What safeguards would be put in place to ensure that families and personal support networks were complying with SSA's guidelines for employment networks?

Our programs have not been involved in situations involving family and personal support systems. We can see where such supports can be very helpful. Exactly what those services could be and how they could be paid for would have to be a matter of negotiation between a qualified EN and the support system.

I hope these answers have been helpful. Please let me know if there is anything further I can do.

Sincerely,

CHARLES WM. HARLES
Executive Director

THE ARC OF THE UNITED STATES
WASHINGTON, DC 20003
March 30, 2001.

Hon. E. Clay Shaw, Jr.,
Chairman, Subcommittee on Social Security
U.S. House of Representatives
Washington, DC 20515

DEAR CHAIRMAN SHAW:

This is in response to your letter of March 8 requesting additional information on The Arc's testimony regarding the Social Security Administration's proposed regulations to implement portions of the *Ticket to Work and Work Incentives Improvement Act.* You asked for more information in five areas. I will address each question in turn.

1. The Advisory Panel testified that feedback received in their regional meetings showed a great deal of confusion in the minds of even sophisticated beneficiaries and their advocates regarding various aspects of the new law, such as health care coverage, and using the ticket in conjunction with other work incentives. Do you agree with this statement? If so, what should be done?

I agree that there is significant potential for confusion among all beneficiaries, sophisticated or not. While the provisions of the Ticket to Work and Work Incentives Improvement Act are important improvements to work incentives, they were not

necessarily simplifications in the way the Social Security systems and programs work. In fact, adding new work incentives to the already existing ones probably increased the complexity of the programs for many people. An important aspect of the new law which is designed to help beneficiaries through the maze is the grant program for benefits planning and assistance. The disability community supported this program for the very reasons identified in your question. People will need assistance in identifying the work incentives appropriate to their situations and in maneuvering through the various programs, old and new, available to them. In addition, SSA is required to establish within its own ranks a corps of trained, accessible, and responsive work incentives specialists. Technical assistance from the SSA specialists will be important in ensuring that the benefits planning grants are successful. In addition, on-going training and cooperation between the SSA specialists and the benefits planners will be essential. We urge that the benefits planning and assistance program and the SSA Limitation on Administrative Expenses be funded at levels adequate to ensure that beneficiaries receive the assistance they need prior to making important decisions.

2. You caution against lowering the age of beneficiaries who may participate in the Ticket program to 16 until the multi-disciplinary assessment project being conducted through the American Association of University Affiliated Programs has been analyzed by SSA. What is the purpose of this assessment and when will the findings be released? What concerns do you have about lowering the age?

The assessment is part of SSA's ongoing work to ensure that it is appropriately assessing children who apply for the SSI program or already receive disability benefits. For children turning age 18, their eligibility will be redetermined based on the SSI adult program rules. Preliminary information on the first two years of the project has been discussed at joint meetings of SSA and the National Academy of Social Insurance. Preliminary information on the project's third year (18 year olds have only been included in Year 3 thus far) will likely be discussed at the SSA/NASI conference targeted for the fall of 2001.

Our concerns about lowering the age are somewhat related to the high numbers of 18 year olds who have been denied adult SSI benefits at redetermination. While some cessations are likely due to improvements in a child's condition, many advocates are concerned that there are other factors leading to a high percentage of cessations. What those factors are and whether they are appropriate are unknown. We believe that it is premature to encourage these children to use the work incentives if, in fact, work effort before age 18 serves to make them ineligible for needed long term supports through SSI and Medicaid. It is unfortunate that we find it necessary to be so cautious, but it relates to the way in which public policy in this area has evolved. For some children, income supports and Medicaid long term supports will be necessary throughout their lives, even though they may work to their greatest capacity to increase their financial independence and security. For those children, it can be very risky to produce earnings before the redetermination, or initial application, at age 18. This is most likely an unintended consequence of the way the eligibility, redetermination, and work incentives rules interact, but it is a reality that must be considered.

There are some additional considerations, as well, based on the current structure of the proposed regulations. Local education agencies and state vocational rehabilitation agencies are under statutory mandates to work cooperatively on behalf of children in special education in preparing them for the work world. SSA's entry into this cooperative arrangement would be as a bill-payer only. The school systems and state vocational rehabilitation agencies have a very spotty record on assisting children with the transition to work. Given SSA's redetermination record, the school/VR record on transition, and the newness of the Ticket program, we urge a very cautious approach. We also question whether it is a good use of SSA resources to pay for services that a child may be already eligible for from another source, especially when so many advocates read the proposed Ticket rules to allow only one Ticket per period of disability and that state VR will be required to use the Ticket for payment. It seems that a Ticket would be more useful to the person later in their work-life, if they need it, when the school system is no longer available to them.

3. You mention past errors in rehabilitation programs created through a "creaming" trap. What is the "creaming" trap and could you elaborate as to the types of errors you are referring to?

"Creaming" within rehabilitation programs is the practice of serving those individuals with disabilities whose conditions are not severe and who are most likely to successfully complete their rehabilitation and be placed into employment. Such a practice often left unserved those individuals with severe and/or multiple disabilities whose rehabilitation would take longer, cost more, and be more risky in terms of

an employment outcome. We want to avoid such results in the Ticket to Work program and believe that SSA has several mandates to address the needs of those who are harder to serve, more costly to serve, or whose employment outcome is less certain.

4. In your testimony, you are concerned that the agency does a poor job tracking earnings. Would you share with us some of your recommendations how SSA could improve their method of collecting and recording?

In testimony before the Subcommittee on Human Resources on "SSI Fraud and Abuse" (Feb. 3, 1999) on behalf of the Consortium for Citizens with Disabilities Task Force on Social Security, I made several recommendations regarding the need for SSA to address the problems with collection of earnings reports and adjustments of benefits payments. First, CCD noted that SSA has no specific way for earned income reports to be made; they can be made in writing, by calling the 800 number, or by stopping by to report at an SSA field office. There is no particular form to file and no official record for the beneficiary to use to prove the report was made. In addition, there appears to be no effective internal system for recording the income which beneficiaries report. Finally, we noted that the program rules and formulas are so complex that, when an individual reports income and there is no change in the benefit amount, the individual may not be aware that an overpayment is occurring. As a result, the possibility of overpayments is a disincentive for work.

These complaints are not new to SSA. Over the years, advocates have urged SSA to take several steps. One step would be to ensure that recording of earnings becomes one of the work tasks for which SSA staff receive credit in their employee evaluations. Until they are held accountable for this task, it is difficult for staff to place the proper priority on this work task. Another step would be to issue a "receipt" to beneficiaries each time they report earnings. SSA should keep electronic copies of these receipts so that SSA's own records reflect the reports and beneficiaries should be able to use the receipts to prove that they have made proper and timely reports regardless whether SSA has actually adjusted benefits based on the reports. We have also urged that SSA develop a process for allowing beneficiaries to report earnings electronically and to use technology to assist staff in improving the response to earnings reporting.

Ultimately, we believe that it will be necessary to reinforce the importance of this aspect of SSA's duties through legislation which requires SSA to minimize overpayments by notifying beneficiaries of overpayments in a timely manner. A reasonable time period should be allowed for SSA to notify the beneficiary and correct the overpayment. Where there is no suggestion of fraud, overpayments which are not corrected and for which beneficiaries are not notified within the time limits should be waived. I urge the Subcommittee to consider such legislation.

5. You stated that family and personal support networks could serve as an employment network should they meet the requirements. You also said that they would also be in a better position to subcontract with an employment network. What types of services could the family or support network provide that an employment network or a state vocational rehabilitation agency could not? If the family or support network subcontracts with an employment network, how would their payment be determined? What safeguards would be put in place to ensure that families and personal support networks were complying with SSA's guidelines for employment networks?

We believe that family and personal support networks are in a position to assist a person in ways that are more sensitive to the particular needs of the individual. Familiar people can be more attune to the nuances of what is or is not working for a person with significant disabilities and can play an important role in ongoing encouragement and support of the individual. For some people with significant impairments, the ability to trust in familiar people, rather than in strangers, will be the key to success. If a family or personal support network contracts with an employment network, the payment arrangements, as well as the roles and responsibilities of each party, should be spelled out in the contract. Under such contracts, the EN would retain responsibility for complying with SSA's guidelines, as it would with its subcontracts with any other provider. If the personal support network were itself an EN, then it should be expected to comply with SSA's guidelines, as would all ENs.

Thank you for this opportunity to provide additional information. Please let me know if The Arc of the United States can provide any further information or assistance.

Sincerely,

MARTY FORD
Director of Legal Advocacy

INTERNATIONAL ASSOCIATION OF
PSYCHOSOCIAL REHABILITATION SERVICES
Columbia, Maryland 21044–3357 March 30, 2001

Hon. Clay Shaw Jr.
Chairman
House Social Security Subcommittee
Rayburn House Office Building
Washington, DC 20515

DEAR MR. CHAIRMAN:

I appreciate the opportunity to respond to your questions regarding my recent testimony on the Social Security Administration's Proposed Rule on the Ticket-to-Work Program.

1. The Advisory Panel testified that feedback received in their regional meetings showed a great deal of confusion in the minds of even sophisticated beneficiaries and their advocates regarding various aspects of the new law, such as health care coverage, and using the Ticket in conjunction with other work incentives. Do you agree with this statement? If so, what should be done?

Confusion about Social Security work incentives pre-date the Ticket-to-Work legislation. It is for that reason that disability advocates pushed for inclusion of the Benefits Planning, Outreach and Assistance (BPO&A) Program, as well as the cadre of SSA work incentives specialists. There are several things Congress and SSA could do to further assist beneficiaries in understanding work incentives. First Congress should increase the authorization and funding for the BPO&A Program and the cadre of work incentives specialists. The current funding level for BPO&A program is less than adequate to address all the needs of beneficiaries. Second, SSA needs to aggressively promote all aspects the Ticket-to-Work Program, including information on the health care provisions. SSA should be congratulated for the meetings they held earlier to promote the Medicaid buy-in and other parts of the bill. But this effort needs to continue and be stepped up. Third, SSA needs to engage in an aggressive public advertising campaign to promote work generally and work incentives, including the Ticket, specifically. Beneficiaries can't use a program that they don't know about. SSA has developed a brochure to promote the Ticket and this is good first step. More such efforts will be needed.

2. You indicate that a beneficiary should be entitled to another Ticket when the cash value of the first Ticket has been exhausted. How long should taxpayers support the effort of an individual in their attempt to work in your view?

First of all, this recommendation was made in the context of two critical circumstances that justify a beneficiary receiving a second Ticket. The first circumstance is when the beneficiary deposits their Ticket with a State VR Agency and the State VR Agency requests payment under the Cost-reimbursement method rather than the Milestone/Outcome or Outcome method. The Cost-reimbursement method, which only State VR agencies can select, pays VR when a beneficiary achieves nine (9) months of SGA. Once SSA pays under this method the cash value of Ticket would most likely be exhausted. However, in neither the SSDI or the SSI program does nine months of SGA result in a beneficiary leaving the cash benefit roles. Consequently, there is little if any savings to the program because a person in this case would STILL be on benefits, they would not be able to get another Ticket from SSA, and neither State VR nor a private provider will be able serve them because they will not get paid.

The second circumstance under which a beneficiary should be eligible for a second ticket occurs when the beneficiary has gone off the rolls, and the first Ticket has been fully paid out over the 60 months of payments, and yet the person comes back on the rolls using the Expedited Re-entry benefit provided under the Ticket law. SSA's proposed regulation says a person cannot get another Ticket if they are "under the same period of disability." The Expedited Re-entry provision allows a person to apply to come back on the rolls for up to 60 months after benefits are terminated "under the same period of disability" and they continue on the rolls pending a CDR. Unfortunately, under SSA's proposed rule they couldn't get another Ticket. As a result a person with a very successful and recent work effort and who had to come back on benefits would be denied a Ticket and would therefore be unable to access a private provider or State VR. Without access to services though the Ticket they would have little choice but to remain on benefits.

This same situation affects SSI beneficiaries in particular because the existing 1619(a) & (b) provisions allow a person to maintain SSI eligibility even though they may not be receiving SSI cash benefits.

3. In your opinion, the SSA rule favors assignment of individuals to state vocational rehabilitation agencies over private service providers. What would other employment networks provide that state vocational programs do not? What kind of outcomes for the individuals with disabilities can we expect if the only choice is state vocational programs versus other employment networks? Does this mean that the disabled will not be able to access innovative programs?

We did not mean to suggest that private providers would in all cases provide services that VR agencies would not, in fact, VR agencies might be better able to provide the kinds of high cost items, such as specially adapted wheelchairs, modified vans, etc, that a private provider could not pay for under the Ticket alone. What we do object to SSA proposing that when a beneficiary signs a plan as defined under Rehab Act (IPE), the beneficiary has automatically assigned their Ticket, regardless of whether the VR agency is an employment network. The hallmark of the Ticket-to-Work is consumer choice. Requiring a beneficiary to assign their Ticket to VR, whether they choose to or not, negates that choice. Further, a beneficiary may be eligible for VR benefits without having to assign their Ticket and, in fact the Rehab. Act as amended in 1998 states that SSI and SSDI beneficiaries are "presumptively eligible" for VR benefits. Making a beneficiary use their Ticket when VR might be required under the Rehab. Act to serve that individual anyway denies the use of the Ticket to beneficiary at a later date. If VR chooses the cost reimbursement system for a higher cost individual, this person would find themselves without a Ticket and still on benefits since VR is only required to show nine months of work above SGA. That is a far lower employment goal than for private providers.

4. You state that the reporting requirements on providers are unnecessarily burdensome and could violate consumer privacy. Could expand on this, especially how you feel the requirements could violate consumer privacy?

One of our main concerns is that SSA is shifting the burden of tracking income and earnings onto the employment networks. SSA has failed miserably in the task of tracking earnings and adjusting or stopping a person's benefits because of earnings. Now, rather than tackle this assignment, SSA seeks to externalize it to employment networks by making them report a person's earnings in order to get paid. Also, the proposed regulation specifically suggests that an EN not get earnings information from the beneficiary, but instead contact the person's place of employment and request this information. Apparently, employment network will have to do this every two or three months. It is a clear invasion of privacy for an EN to contact a person's employer. Without clear legal authority, employers will be extremely reluctant to divulge this information. Further, if the person has a disability, like a mental illness, that they have not disclosed to employer for fear of being discriminated against, contact by a rehabilitation agency would reveal the existence of a disability, and more than likely, the nature of the disability. If SSA does not fix this problem, Congress should take immediate action to prevent it. In any event, Congress must act to make sure SSA has the resources and systems to track earnings and adjust benefits in a timely fashion. We propose that Congress enact legislation to protect beneficiaries and employment by requiring that an EN's report to the PM on a beneficiary's income and earnings be given by the PM to SSA within 30 days, and if within 60 days of the PM's report to SSA, SSA has failed to appropriately stop or adjust a beneficiary's check, SSA cannot hold the beneficiary liable for overpayments and SSA must make payment to the EN as though the benefit has been adjusted or ceased.

In addition, the proposed rule established several vague and undefined requirements that we assume SSA would provide more detail on in the future, yet seem to be relatively unnecessary. These include financial reporting requirements, such as demonstrating the percentage of the employment network's budget that was spent on serving beneficiaries with tickets (including the amount spent on beneficiaries who return to work and those who do not return to work).

5. In your testimony, you state that there is no indication regarding how providers will be evaluated or what criteria SSA will use to evaluate them. Can you provide the criteria you think should be used to evaluate the success of employment networks in providing services?

We believe that employment outcome evaluations are critical. The type and duration of employment is a key factor in assessing the quality of a provider and bear significantly in person's choice of provider. Obviously general consumer satisfaction is criteria that should be part of this evaluation. In addition, SSA might consider including what other non-employment services are provided, such as housing, which

might affect a person's decision in choosing a provider. In any case, SSA must be careful NOT to compare outcomes across disability types.

6. One of the witnesses stated that family and personal support networks could serve as employment networks should they meet the requirements. The witness also stated that families and personal support networks would be in a better position to subcontract with an employment network. In your opinion, what type of services could the family or support network provide that an employment network or state vocational agency could not? If the family or support network subcontracts with an employment network, how would payment be determined? What safeguards would be put in place to ensure families and personal support networks were complying with SSA guidelines for employment networks?

A family or other support network would provide the kind of intangible, personalized, positive reinforcement for the beneficiary that a third party provider is unlikely to provide in every circumstance. Families and friends are intimately familiar with a beneficiary's strengths and weaknesses, interests and capabilities and would be expected to consider first the beneficiary's vocational wishes rather than trying to steer the beneficiary in a particular direction out of a desire to complete a case. For example, the pressure on state vocational rehabilitation counselors to achieve "26 closures" lead many people with disabilities feeling like the state vocational rehabilitation counselor seemed to give up on them, whereas friends and family can encourage a person to complete college and pursue a career. Few people get 100% unqualified support from vocational programs like they might from family and friends. We would presume that if a family subcontracted with an EN, payment issues would be spelled out in the contract. As to safeguards, if the EN is accountable for its subcontractors, it is going to make sure that the family support network abides by whatever rules are needed to assure accountability.

Again, IAPSRS appreciates the opportunity to comment on this important issue. Feel free to call on us anytime we can be of assistance and we look forward to working with you in the future.

Sincerely,

PAUL J. SEIFERT,
Director of Government Affairs.

○