

(ii) At least one floor level exit remains open to provide for the deplaning of passengers; and

(iii) The number of flight attendants on board is at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(2) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(3) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

The FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. We specifically invite comments relating to how a reduced number of flight attendants onboard: (1) will provide adequate passenger supervision and safety while the airplane is on the ground and stationary; and (2) will allow for the effective deplaning of passengers should an emergency situation arise.

Before acting on this petition for rulemaking, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay.

Issued in Washington, DC, on October 20, 2003.

**James J. Ballough,**

*Director, Flight Standards Service.*

[FR Doc. 03-27055 Filed 10-22-03; 5:01 pm]

BILLING CODE 4910-13-P

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AF21

#### Reinstatement of Entitlement to Disability Benefits

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Social Security Administration is proposing rules

regarding the Reinstatement of Entitlement (Expedited Reinstatement) provision in section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999. This provision allows former Social Security disability and Supplemental Security Income (SSI) disability or blindness beneficiaries, whose entitlement or eligibility had been terminated due to their work activity, to have their entitlement or eligibility reinstated in a timely fashion if they become unable to do substantial gainful work due to their medical condition. These rules provide beneficiaries an additional incentive to return to work.

**DATES:** To be sure your comments are considered we must receive them no later than December 26, 2003.

**ADDRESSES:** You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at <http://www.socialsecurity.gov/regulations/>; by e-mail to [regulations@socialsecurity.gov](mailto:regulations@socialsecurity.gov); by telefax to (410) 966-2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, Social Security Online at [socialsecurity.gov](http://socialsecurity.gov) for your review, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

*Electronic version:* The electronic file of this document is available on the date of publication in the **Federal Register** at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). It is also available on the Internet site for SSA (*i.e.*, Social Security Online): [socialsecurity.gov](http://socialsecurity.gov).

**FOR FURTHER INFORMATION CONTACT:** John Nelson, Team Leader, Employment Policy Team, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Room 107 Altmeyer Building, Baltimore, Maryland 21235-6401, (410) 966-5114 or TTY 410-966-5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1-(800) 772-1213 or TTY 1-(800) 325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov/regulations/>.

**SUPPLEMENTARY INFORMATION:**

## Background

The expedited reinstatement provision, along with other work incentives and the Ticket to Work program contained in the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170) is intended to expand your options as a Social Security disability beneficiary or a disabled or blind Supplemental Security Income recipient. We expect that the expedited reinstatement provision along with other provisions in the Ticket to Work and Work Incentives Improvement Act of 1999 will remove some of the disincentives that may discourage you from either attempting to work or increasing your work activity. If more beneficiaries with disabilities engage in self-supporting work, the net result will be a reduction in the Social Security and Supplemental Security Income disability rolls and savings to the Social Security Trust Fund and general revenues.

### General Goals of the Expedited Reinstatement Provision

The expedited reinstatement provision is intended to relieve some concerns you may have about returning to work. If we terminate your entitlement or eligibility for benefits due to your work activity, this provision provides you an easier way to have your entitlement or eligibility reinstated and to be placed back into payment status. This process should ease some concerns you may have about what will happen if your attempt to return to work is unsuccessful.

### Advice of the Ticket to Work and Work Incentives Advisory Panel

During the preparation of these proposed rules, we consulted with the Ticket to Work and Work Incentives Advisory Panel.

### Section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999

Congress indicated that the purpose of section 112 of the Ticket to Work and Work Incentives Improvement Act of 1999 (the expedited reinstatement provision) was to encourage disability beneficiaries to return to work by reassuring them that benefits would be restored in a timely fashion should they become unable to continue working and continue to meet disability standards set by SSA.

Section 112 of Public Law 106-170 amended §§ 223 and 1631 of the Social Security Act (the Act). Section 112(a) added subsection (i) to § 223 of the Act and re-designated the prior subsection

(i) as subsection (j). Section 112(b)(1) added paragraph (p) to § 1631 of the Act. The expedited reinstatement provision provides a method for you to have your disability benefits reinstated without filing an application if you have had your entitlement to, or eligibility for, benefits terminated due to your work activity during the previous 5 years, and you can no longer do substantial gainful activity.

#### **Effect of the Expedited Reinstatement Provision**

The expedited reinstatement provision provides you another option for regaining entitlement to benefits under title II and eligibility under title XVI of the Act after we have terminated your entitlement to or eligibility for disability benefits due to your work activity. If you file a request for expedited reinstatement you can still file a new application for benefits under existing initial claim rules.

Prior to the effective date of this provision, when we terminated your entitlement or eligibility due to work activity, you were required to file a new application to become entitled to or eligible for benefits again. We processed your application under rules that required a new disability determination using our initial claim medical requirements. You generally were entitled to receive benefits only after we processed your entitlement or eligibility determination. If we determined that you again qualified for benefits, you became eligible for work incentives such as the trial work period, the reentitlement period, and special SSI eligibility status under your new period of disability.

The expedited reinstatement provision provides you the option of requesting that your prior entitlement to or eligibility for disability benefits be reinstated, rather than filing a new application for a new period of entitlement or eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must have stopped doing substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard (MIRS) that we use in our continuing disability review process. The advantage of using MIRS is that we will generally find that you are disabled unless your impairment has improved so that you

are able to work or unless an exception under the MIRS process applies.

When you request reinstatement you can be paid up to 6 months of provisional benefits, and may be entitled to Medicare benefits and/or Medicaid, while we are deciding whether you qualify for reinstatement. Provisional benefits, or payments, are cash benefits that can be paid to you on a temporary basis when you were previously a Social Security (title II) disability beneficiary or a disabled or blind Supplemental Security Income (title XVI) recipient and you are now requesting reinstatement. The period during which you can receive provisional benefits is your provisional benefit period. This period begins with the first month you can receive provisional benefits and can never extend beyond six consecutive months. Your provisional benefit period will end earlier than the sixth consecutive month if we make our determination on your request for reinstatement before that month. Your title II provisional benefit period will also end if you attain retirement age or if you do substantial gainful work activity.

You can receive title II provisional benefits beginning with the month you file your request for reinstatement. We will base your provisional benefit amount, the amount of the monthly cash benefit you receive during the provisional benefit period, on the prior benefit amount that was actually payable to you under title II. We will terminate your title II provisional benefits when your provisional benefit period ends, such as if you do substantial gainful activity. You can receive title XVI provisional payments beginning with the month after you file your request for reinstatement. We will base your title XVI provisional benefit amount, the amount of the monthly cash payment you receive during the provisional benefit period, on the federal Supplemental Security Income benefit that is actually payable to you, depending on your income. We will terminate your title XVI provisional payments when your provisional benefit period ends.

We are proposing to amend §§ 404.903 and 416.1403 to indicate that a determination we make regarding your right to receive provisional benefits is not an initial determination and it is, therefore, not subject to administrative review under §§ 404.900ff and 416.1400ff.

If we deny your request for reinstatement, we generally will not consider the provisional benefits you received as an overpayment. If your reinstatement request is denied, we will

treat that request as your intent to file an initial application for benefits. If your request for reinstatement is approved, we will reinstate your prior disability entitlement or eligibility and reestablish your Medicare/Medicaid entitlement, as appropriate, if you are not already entitled to Medicare/Medicaid. We will pay you reinstated benefits under title XVI beginning with the month after the month you filed your request. We will pay you reinstated benefits for title II beginning no later than the month you filed your request. We can pay you title II reinstated benefits for any of the 12 months preceding your request for reinstatement if you would have met all of the requirements for reinstatement if your request for reinstatement had been timely filed for the claimed month. We will reduce reinstated benefits payable for a month by the amount of any provisional benefits already received for that month.

When we reinstate your entitlement under this provision you are then entitled to a 24-month initial reinstatement period. Your 24-month initial reinstatement period begins with the month your benefits are reinstated and ends with the 24th month that you have a benefit payable. For title II purposes, we consider a benefit to be payable in a month when you do not do substantial gainful activity and the non-payment provisions in § 404.401ff do not apply. For title XVI purposes, we consider a benefit to be payable in a month when, using normal payment calculation procedures in § 416.101ff, we determine you are due a monthly payment. After the 24-month initial reinstatement period is completed you are eligible for additional work incentives under title II (such as a trial work period and a reentitlement period), as well as possible future reinstatement through the expedited reinstatement provision under title II and title XVI.

#### **Proposed Regulations**

We are proposing to amend our rules to provide the rules for expedited reinstatement. These proposed rules add §§ 404.1592b through 404.1592g to part 404 and §§ 416.999 through 416.999e to part 416.

#### **Part 404**

Proposed § 404.1592b provides a general overview of expedited reinstatement and summarizes the basic requirements for expedited reinstatement, as discussed in §§ 404.1592c through 404.1592g.

Proposed § 404.1592c describes the requirements for reinstatement to title II

benefits. Section 223(i)(1) of the Act lists the requirements you must meet to be reinstated through the authority of the title II expedited reinstatement provision. These proposed rules explain that you must have previously been entitled as a disabled insured individual, a disabled child, a disabled widow or widower, or a disabled Medicare qualified government employee. We must have terminated your prior entitlement due to your doing substantial gainful activity. You must have become unable to continue doing substantial gainful activity due to your medical condition. Your current impairment must be the same as or related to the impairment on which we based your prior period of disability, and you must currently be disabled. Section 223(i)(3) of the Act requires us to use the medical improvement review standard in Section 223(f) of the Act when we determine if you are disabled for the purposes of this provision. We are proposing that we will not reinstate your entitlement under the expedited reinstatement provision if you previously requested expedited reinstatement, or we conducted a continuing disability review on a title II disability or Medicare entitlement, and we determined you were not disabled under the medical improvement review standard. We will also not reinstate your entitlement under this provision if you previously requested expedited reinstatement for a benefit and we determined you did not have a current impairment(s) that was the same as or related to the impairment that was the basis for your prior entitlement to that benefit. If you are reinstated, an auxiliary beneficiary who was previously entitled on your record can also be reinstated. The auxiliary beneficiary must apply for reinstatement and must meet the current entitlement factors for the benefit.

Proposed § 404.1592d describes what you must do to request reinstatement of benefits under the expedited reinstatement provision. Your request must be made in writing. Section 223(i)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that your prior entitlement to disability benefits terminated due to the performance of substantial gainful activity. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-

month time period. Your request must state that you are disabled, that your current impairment is the same as or related to the impairment that was used as the basis for your prior disability entitlement, and that you cannot do substantial gainful activity because of your medical condition. The request must also include the information we need to help us determine whether you meet the non-medical factors of entitlement and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001.

Proposed § 404.1592e describes how we will determine whether you are unable to do substantial gainful activity because of your medical condition. We are proposing that you must meet one of two requirements. The first requirement is that you are unable to continue working, or you reduce your work and earnings below the substantial gainful activity level, because of your impairment. The second requirement is that you were forced to stop work due to the removal of special circumstances that had permitted you to work despite your impairment. Under our proposed rules if you stop work for reasons beyond your control, such as your employer having terminated you due to a general downsizing, and there were special circumstances that allowed you to work at that job despite your impairment, we will consider you to meet this requirement. For the purposes of this section we consider special circumstances to be those in which you have special conditions, subsidy, or have some other special need that must be met in order for you to be able to work despite your impairment, such as the availability of special transportation.

Proposed § 404.1592f provides information on when your title II provisional benefits start, how they are computed, when they are paid, and when they end. Section 223(i)(7) of the Act lists the requirements for us to pay provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, the proposed rules explain that we can pay you up to 6 months of provisional benefits during your provisional benefit period. In addition, if you are not already entitled to Medicare, we can reestablish your Medicare entitlement during your provisional benefit period. Your entitlement to provisional benefits begins with the month your reinstatement request is filed. We will base your provisional benefit amount on your monthly insurance benefit that was actually payable to you at the time we

terminated your prior entitlement. We will increase your prior benefit amount payable by any intervening cost of living increases that would have been applicable to the prior benefit amount under section 215(i) of the Act. If you are entitled to another title II benefit or another provisional benefit, the maximum benefit amount we will pay you when all benefits are combined will be the amount of your highest computed benefit. If you request reinstatement as a disabled widow or widower or a disabled child we will not adjust your provisional benefit or the benefits of other beneficiaries entitled at that time on the same record when the total benefit amount exceeds the family maximum.

We will not pay you a provisional benefit for a month if you are not entitled to payment for the month under our usual rules, such as if you are a prisoner. We also will not pay you provisional benefits for any month that is after the earliest of the following months: the month we send you notice of our determination on your request for reinstatement; the first month you do substantial gainful activity; the month before you attain retirement age; or the fifth month following the month you filed your request for reinstatement. We will not pay provisional benefits when, prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement, such as, since your prior termination because of work activity we have determined that you are not disabled under the medical improvement review standard, or we determine that you did not file your request for reinstatement timely, or your prior entitlement did not terminate because of your doing substantial gainful activity. Our determinations on provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover a previously existing overpayment from your provisional payments unless you give us permission to do so. If we determine you are not entitled to reinstated benefits, usually we will not consider the provisional benefits you received as an overpayment unless we determine you knew or should have known that you did not qualify for reinstatement and therefore you should not have received the provisional benefits.

Proposed § 404.1592g discusses how we determine your reinstated benefits consistent with the requirements regarding paying reinstated benefits in section 223(i). The proposed rules explain that if we have determined we can reinstate you in the month you filed

your reinstatement request, we will then consider whether we can pay you retroactive reinstated benefits. We will reinstate your benefits beginning with the earliest month in the 12-month period immediately preceding the month you requested reinstatement in which you would have met all of the reinstatement requirements if you had filed your request for reinstatement in that month. We will also reinstate your Medicare entitlement. Your entitlement to title II disability benefits and Medicare, under the expedited reinstatement provision, cannot be reinstated for a month prior to January 2001.

We will determine and pay your reinstated monthly benefits under our normal payment provisions of title II of the Act, with some exceptions. We will withhold from your reinstated benefits due for a month the amount of any provisional payments we already paid for that month. If the provisional benefits we paid you for a month exceed the amount of reinstated benefits due you for that month, we will consider the difference as an overpayment. We will use the same date of onset to calculate your new primary insurance amount as a reinstated individual that we used in your most recent period of disability. When you are reinstated, you are entitled to a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We propose to consider a month a payable month when you do not do substantial gainful activity and the non-payment provisions in § 404.401ff do not apply. During the initial reinstatement period, in addition to normal non-payment events, a benefit is not payable for any month in which you do substantial gainful activity. We will not use our unsuccessful work attempt or averaging of earnings provisions when we determine if you have done substantial gainful activity in a month during your initial reinstatement period. After you complete your initial reinstatement period, we will consider your future work under the work incentive provisions of title II of the Act. Your trial work period begins the month after you complete your initial reinstatement period. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month we terminate your benefits for another reason, the month you reach retirement age, or the month you die.

We are proposing that determinations we make regarding your title II reinstated benefits will be initial determinations subject to administrative and judicial review. If we determine you are not entitled to reinstated benefits, we will consider your request for reinstatement as your intent to file a new initial claim for the benefit.

#### Part 416

Proposed § 416.999 provides a general overview of expedited reinstatement and a summary of the basic requirements for expedited reinstatement, as discussed in §§ 416.999a through 416.999e.

Proposed § 416.999a describes the requirements for reinstatement to title XVI benefits. Section 1631(p)(1) of the Act lists the requirements to be reinstated through the authority of the expedited reinstatement provision. The proposed rules explain that you must have previously been eligible based on disability or blindness. We must have terminated your prior eligibility due to earned income or a combination of earned and unearned income. You must have become unable to do substantial gainful activity due to your medical condition. Your current impairment must be the same as or related to the impairment on which we based your prior eligibility. Also, you must currently be disabled. Section 1631(p)(3) of the Act requires we use the medical improvement review standard in section 1614(a)(4) of the Act when we determine if you are disabled for the purposes of this provision. We are proposing that we will not reinstate your eligibility under this provision if you previously requested expedited reinstatement, or we conducted a continuing disability review for title XVI eligibility, and we determined you were not disabled under the medical improvement review standard. We will also not reinstate your eligibility under this provision if you previously requested expedited reinstatement of your title XVI eligibility and we determined you did not have a current impairment that was the same as or related to the impairment that was the basis for your prior eligibility. When you are reinstated, your spouse can be reinstated if your spouse was previously eligible, your spouse meets the current eligibility factors for title XVI benefits, and your spouse requests reinstatement.

Proposed § 416.999b describes how to request reinstatement of benefits under the expedited reinstatement provision. Your request must be in writing. Section 1631(p)(2)(A) of the Act lists what you must include in your request for reinstatement and authorizes us to

determine the form of the request and the information it must contain. You must file your request within the consecutive 60-month period that begins with the month that we terminated your prior eligibility to title XVI disability benefits. However, we may extend this time period if we determine that you had good cause for failing to file your request within the 60-month period. Your request must include your statement that you are disabled, that your current impairment is the same as or related to the impairment that we used as the basis for your prior disability eligibility, that you cannot do substantial gainful activity because of your medical condition, and that you meet all of the non-medical requirements for eligibility. Your request must also include the information we need to determine whether you meet the non-medical factors of eligibility for the benefit and the information we need to make the medical determination. Your request for reinstatement must be filed on or after January 1, 2001.

Proposed § 416.999c describes how we will determine whether you are unable to do substantial gainful activity because of your medical condition. We are proposing that you must meet one of two requirements. The first requirement is that you are unable to continue working, or you reduced your work and earnings below the substantial gainful activity level, because of your impairment. The second requirement is that you were forced to stop work due to the removal of special circumstances that had permitted you to work despite your impairment. Under our proposed rules if you stop work for reasons beyond your control, such as your employer having terminated you due to a general downsizing, and there were special circumstances that allowed you to work at that job despite your impairment, we will consider you to meet this requirement. For the purposes of this section we consider special circumstances to be those when you have been provided special conditions or subsidy, or have some other special need that must be met in order for you to be able to work despite your impairment, such as the availability of special transportation.

Proposed § 416.999d provides information on when your title XVI provisional benefits start, how they are computed, when they are paid, and when they end. Section 1631(p)(7) of the Act lists the requirements for us to pay you provisional benefits while we are determining whether to approve your request for reinstatement. Consistent with the law, the proposed

rules explain that we can pay you up to six months of provisional benefits during the provisional benefit period. Your provisional benefits will begin with the month after you request reinstatement. We will base your provisional benefit amount on normal computational methods for an individual receiving SSI benefits under title XVI of the Act with the same amounts and kind of income. If your spouse also requests reinstatement, we can pay provisional payments to your spouse. Your spouse must meet SSI eligibility requirements, except those relating to the filing of an application, before we can pay provisional payments. We will use the same computation method used for you and your spouse's provisional benefit that we would use to figure an eligible individual and eligible spouse receiving non-provisional benefits under title XVI of the Act with the same kind and amount of income. As required by section 1631(p)(8) of the Act, you are not eligible for state supplementary payments during the provisional benefit period.

We will not pay provisional benefits for any month where a suspension or terminating event occurs under our usual rules, such as when you are in an institution or if you die. We also will not pay provisional benefits for any month after the earliest month either of the following events occur: the month we send you our notice of our determination on your request for reinstatement or the sixth month following the month you filed your request for reinstatement. We will not pay provisional benefits when, prior to starting your provisional benefits, we determine you do not meet the requirements for reinstatement, such as, since your prior termination due to your earned income we have determined that you are not disabled under the medical improvement review standard, or we determine that you did not file your request for reinstatement timely, or we determine that your prior eligibility terminated for a reason unrelated to income. Our determinations on your provisional benefit amounts, when they are payable, and when they terminate, are final and are not subject to formal administrative review. We will not recover previously existing

overpayments from your provisional payments unless you give us permission to do so. If we determine that you are not eligible for reinstated benefits, usually we will not consider the provisional payments you received as an overpayment unless you knew or should have known that you did not qualify for reinstatement and you should not have received provisional payments.

Proposed § 416.999e discusses how we determine your reinstated SSI benefits consistent with the requirements in section 1631(p)(4). The proposed rules explain that we will reinstate your eligibility, and your spouse's eligibility, with the month following the month you filed your request for reinstatement. Your eligibility cannot be reinstated for a month prior to February 2001.

We will determine and pay your reinstated benefits under the normal payment provisions of title XVI of the Act, with one exception. We will withhold from your reinstated benefits due in a month the amount of any provisional payments you were already paid for that month. If we pay you a provisional benefit for a month that exceeds the amount of your reinstated benefit due, we will consider the difference an overpayment. When your request for reinstatement is approved, you are eligible for a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin and ends when you have had 24 months of payable benefits. We propose to consider a month a payable month when, considering the normal payment rules, you are due a benefit payment for the month. After you complete the initial reinstatement period, you are again eligible for expedited reinstatement if we terminate your eligibility due to income. Your reinstated benefits end with the earliest month that precedes the third month following the month in which we determine your disability ceases, the month before we terminate your eligibility for another reason, or the month you die.

We are proposing that we will consider determinations we make regarding your title XVI reinstated benefits to be initial determinations

subject to administrative and judicial review. If we determine you are not eligible for reinstated benefits we will consider your request for reinstatement your intent to file a new initial claim for benefits.

**Regulatory Procedures**

*Clarity of These Proposed Rules*

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

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

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

*Regulatory Flexibility Act*

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

*Paperwork Reduction Act*

These proposed rules contain reporting requirements as shown in the following table.

Section	Annual number of responses	Frequency of response	Average burden per response (Mins.)	Estimated total burden (Hrs.)
404.1592c & 404.1592d .....	10,000	One time .....	85	14,167
416.999a & 416.999b .....	100	One time .....	79	132

Section	Annual number of responses	Frequency of response	Average burden per response (Mins.)	Estimated total burden (Hrs.)
Total .....	10,100	.....	.....	14,299

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Office of Management and Budget and to the Social Security Administration at the following addresses/fax numbers: Office of Management and Budget, Attn: Desk Officer for SSA, Room 10235, New Executive Office Bldg., 725 17th St., NW., Washington, DC 20503, Fax No. 202-395-6974. Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, Fax No. 410-965-6400.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410-965-0454.

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

### List of Subjects

#### 20 CFR Part 404

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

#### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 22, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we propose to amend part 404, subparts J and P, and part 416, subparts I and N of title 20 of the Code

of Federal Regulations to read as follows:

### **PART 404—FEDERAL OLD-AGE, SURVIVOR AND DISABILITY INSURANCE (1950—)**

#### **Subpart J—[Amended]**

1. The authority citation for subpart J is revised to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423 (i), 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5 Pub. L. 97-455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98-460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Amend § 404.903 to revise paragraphs (t) and (u) and add paragraph (v) to read as follows:

#### **§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(t) Determining whether we will refer information about your overpayment to a consumer reporting agency (see § 404.527 and § 422.305 of this chapter);

(u) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 404.527 and 422.310 of this chapter); and

(v) Determining whether provisional benefits are payable, the amount of the provisional benefits, and when provisional benefits terminate (see § 404.1592f).

#### **Subpart P—[Amended]**

3. The authority citation for subpart P continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104-193, 110 Stat. 2105, 2189.

4. Add new §§ 404.1592b through 404.1592g to read as follows:

#### **§ 404.1592b What is expedited reinstatement?**

The expedited reinstatement provision provides you another option for regaining entitlement to benefits when we previously terminated your entitlement to disability benefits due to

your work activity. The expedited reinstatement provision provides you the option of requesting that your prior entitlement to disability benefits be reinstated, rather than filing a new application for a new period of entitlement. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must have stopped doing substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard (MIRS) that we use in our continuing disability review process. The advantage of using MIRS is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies. We explain the rules for expedited reinstatement in §§ 404.1592c through 404.1592g.

#### **§ 404.1592c Who is entitled to expedited reinstatement?**

(a) You can have your entitlement to benefits reinstated under expedited reinstatement if—

(1) You were previously entitled to a disability benefit on your own record of earnings as indicated in § 404.315, or as a disabled widow or widower as indicated in § 404.335, or as a disabled child as indicated in § 404.350, or to Medicare entitlement based on disability and Medicare qualified government employment as indicated in 42 CFR 406.15;

(2) Your disability entitlement referred to in paragraph (a)(1) of this section was terminated because you did substantial gainful activity;

(3) You file your request for reinstatement timely under § 404.1592d; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition;

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous entitlement referred to in paragraph (a)(2) of this section; and

(iii) You are disabled, as determined under the medical improvement review standard in §§ 404.1594(a) through 404.1594(f).

(b) You can not be reinstated under paragraph (a) of this section if—

(1) You previously filed a request for expedited reinstatement and we denied that request because we determined that you were not disabled under the medical improvement review standard or that you did not have a current impairment(s) that was the same as or related to the impairment(s) that we used as the basis for your prior entitlement to that benefit; or

(2) We previously determined you were no longer disabled based upon the medical improvement review standard in § 404.1594 because—

(i) We conducted a continuing disability review on a disability entitlement, such as a disability benefit, a disabled child benefit, a disabled widow(er) benefit, or Medicare entitlement based on Medicare qualified government employment, or

(ii) We conducted a medical review on your Medicare entitlement that had previously been continued under 42 CFR 406.12(e).

(c) You are entitled to reinstatement on the record of an insured person who is or has been reinstated if—

(1) You were previously entitled to one of the following benefits on the record of the insured person—

(i) A spouse or divorced spouse benefit under §§ 404.330 and 404.331;

(ii) A child's benefit under § 404.350; or

(iii) A parent's benefit under § 404.370;

(2) You were entitled to benefits on the record when we terminated the insured person's entitlement;

(3) You meet the requirements for entitlement to the benefit described in the applicable paragraph (c)(1)(i) through (c)(1)(iii) of this section; and

(4) You request to be reinstated.

#### **§ 404.1592d How do I request reinstatement?**

(a) You must make your request for reinstatement in writing;

(b) You must have filed your request on or after January 1, 2001; and

(c) You must provide the information we request so that we can determine whether you meet the requirements for reinstatement as indicated in § 404.1592c.

(d) If you request reinstatement under § 404.1592c(a)—

(1) We must receive your request within the consecutive 60-month period that begins with the month in which your entitlement terminated due to

doing substantial gainful activity. If we receive your request after the 60-month period we can grant you an extension if we determine you had good cause under the standards explained in § 404.911 for not filing the request timely; and

(2) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit you are requesting to be reinstated, and that you became unable to continue to do substantial gainful activity because of your medical condition.

#### **§ 404.1592e How do we determine whether you are unable to do substantial gainful activity because of your medical condition?**

(a) You are unable to do substantial gainful activity because of your medical condition when you become unable to continue working, or you reduce your work and earnings below the substantial gainful activity earnings level, due to your impairment or because special circumstances that permitted you to work despite your impairment are removed. We will consider special circumstances that permitted you to work despite your impairment to have been removed, for instance, when your employer terminates you during a general layoff from a job that you performed under special circumstances or you must stop that work due to a natural disaster.

(b) We will not consider you unable to do substantial gainful activity because of your medical condition when you stop work, or reduce your work and earnings below the substantial gainful level, for reasons unrelated to your medical condition. We will not consider you unable to do substantial gainful activity because of your medical condition when, for instance, you are not working because you work in seasonal employment and you are now in the normal off-season or you stop work for personal reasons not related to your medical condition.

(c) *Examples:*

*Example 1.* Mr. K is laid-off from his job because the business owners close the plant where he is working. Mr. K was able to work at this plant because it was located close to the bus line located near his house. Mr. K must work near a bus line because of his medical condition. Mr. K is considered to have stopped work due to his medical condition under paragraph (a) of this section. Mr. K had special transportation accommodations that allowed him to work in that job as indicated in paragraph (d) of this section.

*Example 2.* Mr. L is laid-off from his job because the owners are retooling the plant where he is working. Mr. L had no special circumstances under paragraph (d) of this

section that enabled him to work. Under paragraph (b) of this section, Mr. L is not considered to have stopped work due to his medical condition because he stopped work for reasons unrelated to his medical condition and he had no special circumstances related to his employment.

*Example 3.* Ms. M works as a teacher. Her contract requires her to work from September of one year through June of the next year. Ms. M contacts us in July and indicates she last worked in June. She indicates she is in her normal off-work period and plans to return to work in September when her next contract begins. She indicates the reason she stopped work is her contract is over. She has nothing else preventing her from working in July. Under paragraph (b) of this section, Ms. M is not considered to have stopped work because of her medical condition.

(d) When we consider whether you had special circumstances in your work for purposes of this section, we will consider how well you did your work as discussed in § 404.1573(b), whether your work was done under special conditions as discussed in § 404.1573(c), and whether you were able to work because you had a special need that was being accommodated, such as special transportation requirements.

#### **§ 404.1592f How do we determine provisional benefits?**

(a) You may receive up to 6 consecutive months of provisional cash benefits and Medicare during the provisional benefit period, while we determine whether we can reinstate your disability benefit entitlement under § 404.1592c—

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your request for reinstatement under § 404.1592c(a);

(2) We will pay you a monthly provisional benefit amount equal to the last monthly benefit payable to you during your prior entitlement, increased by any cost of living increases that would have been applicable to the prior benefit amount under § 404.270. The last monthly benefit payable is the amount of the monthly insurance benefit we determined that was actually paid to you for the month before the month in which your entitlement was terminated, after we applied the reduction, deduction and nonpayment provisions in § 404.401 through § 404.480;

(3) If you are entitled to another monthly benefit payable under the provisions of title II of the Act for the same month you can be paid a provisional benefit, we will pay you an amount equal to the higher of the benefits payable;

(4) If you request reinstatement for more than one benefit entitlement, we will pay you an amount equal to the higher of the provisional benefits payable;

(5) If you are eligible for Supplementary Security Income payments under §§ 416.200 through 416.269 of this chapter, including provisional payments, we will reduce your provisional benefits under § 404.408b if applicable; and

(6) We will not reduce your provisional benefit, or the payable benefit to other individuals entitled on an earnings record, under § 404.403, when your provisional benefit causes the total benefits payable on the earnings record to exceed the family maximum.

(b) We will not pay you a provisional benefit for a month when an applicable nonpayment rule applies. Examples of when we will not pay a benefit include, but are not limited to—

(1) If you are a prisoner under § 404.468;

(2) If you have been removed/deported under § 404.464; or

(3) If you are an alien outside the United States under § 404.460.

(c) We will not pay you a provisional benefit for any month that is after the earliest of the following months—

(1) The month we send you a notice of our determination on your request for reinstatement;

(2) The month you do substantial gainful activity;

(3) The month before the month you attain full retirement age; or

(4) The fifth month following the month you requested expedited reinstatement.

(d) You are not entitled to provisional benefits if, prior to starting your provisional benefits—

(1) We determine that you do not meet the requirements for reinstatement under §§ 404.1592c(a)(1) through 404.1592c(a)(3);

(2) We determine that you are not entitled to reinstatement under § 404.1592c(b); or

(3) We determine that your statements on your request for reinstatement, made under § 404.1592d(d)(2), are false.

(e) Determinations we make regarding your provisional benefits under paragraphs (a) through (d) of this section are final and are not subject to administrative and judicial review under §§ 404.900 through 404.999d.

(f) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission. We can recover Medicare premiums you owe from your provisional benefits.

(g) If we determine you are not entitled to reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (c) of this section, will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 404.1592c.

#### **§ 404.1592g How do we determine reinstated benefits?**

(a) If you meet the requirements for reinstatement under § 404.1592c(a), we will then consider in which month to reinstate your entitlement. We will reinstate your entitlement with the earliest month, in the 12-month period that ends with the month before you filed your request for reinstatement, that you would have met all of the requirements under § 404.1592c(a) if you had filed your request for reinstatement in that month. Otherwise, you will be entitled to reinstated benefits beginning with the month in which you filed your request for such benefits. We cannot reinstate your entitlement for any month prior to January 2001.

(b) When your entitlement is reinstated, you are also entitled to Medicare benefits under the provisions of 42 CFR part 406.

(c) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs of §§ 404.201 through 404.480 with certain exceptions—

(1) We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit, we will treat the difference as an overpayment under §§ 404.501 through 404.527.

(2) If you are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record.

(d) We will not pay you reinstated benefits for any months of substantial gainful activity during your initial reinstatement period. During the initial reinstatement period the trial work period provisions of § 404.1592 and the reentitlement period provisions of § 404.1592a do not apply. The initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month

for the purposes of this paragraph when you do not do substantial gainful activity in that month and the non-payment provisions in § 404.401 through 404.480 also do not apply. When we determine if you have done substantial gainful activity in a month during the initial reinstatement period, we will consider only your work in, or earnings for, that month. We will not apply the unsuccessful work attempt provisions of §§ 404.1574(c) and 404.1575(d) or the averaging of earnings provisions in § 404.1574a.

(e) After you complete the 24-month initial reinstatement period as indicated in paragraph (d) of this section, your subsequent work will be evaluated under the trial work provisions in § 404.1592 and then the reentitlement period in § 404.1592a.

(f) Your entitlement to reinstated benefits ends with the month before the earliest of the following months—

(1) The month an applicable terminating event in § 404.301 through 404.392 occurs;

(2) The month in which you reach retirement age;

(3) The third month following the month in which your disability ceases; or

(4) The month in which you die.

(g) Determinations we make under §§ 404.1592g are initial determinations under § 404.902 and subject to review under §§ 404.900 through 404.999d.

(h) If we determine you are not entitled to reinstated benefits we will consider your request filed under § 404.1592c(a) your intent to claim benefits under § 404.630.

## **PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

### **Subpart I—[Amended]**

5. The authority citation for subpart I of part 416 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

6. Add new §§ 416.999 through 416.999e to read as follows:

#### **§ 416.999 What is expedited reinstatement?**

The expedited reinstatement provision provides you another option for regaining eligibility for benefits when we previously terminated your eligibility to disability benefits due to your work activity. The expedited

reinstatement provision provides you the option of requesting that your prior eligibility for disability benefits be reinstated, rather than filing a new application for a new period of eligibility. Since January 1, 2001, you can request to be reinstated to benefits if you stop doing substantial gainful activity within 60 months of your prior termination. You must have stopped doing substantial gainful activity because of your medical condition. Your current impairment must be the same as or related to your prior impairment and you must be disabled. To determine if you are disabled, we will use our medical improvement review standard (MIRS) that we use in our continuing disability review process. The advantage of using MIRS is that we will generally find that you are disabled unless your impairment has improved so that you are able to work or unless an exception under the MIRS process applies. We explain the rules for expedited reinstatement in §§ 416.999a through 416.999e.

**§ 416.999a Who is eligible for expedited reinstatement?**

(a) You can have your eligibility to benefits reinstated under expedited reinstatement if—

(1) You were previously eligible for a benefit based on disability or blindness as explained in § 416.202;

(2) Your disability or blindness eligibility referred to in paragraph (a)(1) of this section was terminated because of earned income or a combination of earned and unearned income;

(3) You file your request for reinstatement timely under § 416.999b; and

(4) In the month you file your request for reinstatement—

(i) You are not able to do substantial gainful activity because of your medical condition,

(ii) Your current impairment is the same as or related to the impairment that we used as the basis for your previous eligibility referred to in paragraph (a)(2) of this section,

(iii) You are disabled or blind, as determined under the medical improvement review standard in §§ 416.994 or 416.994a, and

(iv) You meet the non-medical requirements for eligibility as explained in § 416.202.

(b) You cannot be reinstated under paragraph (a) of this section if—

(1) You previously filed a request for expedited reinstatement and we denied that request because we determined that you were not disabled under the medical improvement review standard or that you did not have a current

impairment(s) that was the same as or related to the impairment(s) that we used as the basis for your prior entitlement to that benefit; or

(2) We previously determined you were not disabled or blind based upon the medical improvement review standard in §§ 416.994 or 416.994a.

(c) You are eligible for reinstatement if you are the spouse of an individual who can be reinstated under § 416.999a if—

(1) You were previously an eligible spouse of the individual;

(2) You meet the requirements for eligibility as explained in § 416.202 except the requirement that you must file an application; and

(3) You request reinstatement.

**§ 416.999b How do I request reinstatement?**

(a) You must make your request for reinstatement in writing;

(b) You must have filed your request on or after January 1, 2001;

(c) You must provide the information we request so that we can determine whether you meet the eligibility requirements listed in § 416.999a;

(d) We must receive your request within the consecutive 60-month period that begins with the month in which your eligibility terminated due to earned income, or a combination of earned and unearned income. If we receive your request after the 60-month period, we can grant you an extension if we determine you had good cause, under the standards explained in § 416.1411, for not filing the request timely; and

(e) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the eligibility you are requesting to be reinstated, that you became unable to continue to do substantial gainful activity because of your medical condition, and that you meet the non-medical requirements for eligibility for benefits.

**§ 416.999c How do we determine whether you are unable to do substantial gainful activity because of your medical condition?**

(a) You are unable to do substantial gainful activity because of your medical condition when you become unable to continue working, or you reduce your work and earnings below the substantial gainful activity earnings level, due to your impairment or because special circumstances that permitted you to work despite your impairment are removed. We will consider special circumstances that permitted you to work despite your impairment to have been removed, for instance, when your

employer terminates you during a general layoff from a job that you performed under special circumstances or you must stop that work due to a natural disaster.

(b) We will not consider you unable to do substantial gainful activity because of your medical condition when you stop work, or reduce your work and earnings below the substantial gainful level, for reasons unrelated to your medical condition. We will not consider you unable to do substantial gainful activity because of your medical condition when, for instance, you are not working because you work in seasonal employment and you are now in the normal off-season or you stop work for personal reasons not related to your medical condition.

(c) *Examples:*

*Example 1.* Mr. K is laid-off from his job because the business owners close the plant where he is working. Mr. K was able to work at this plant because it was located close to the bus line located near his house. Mr. K must work near a bus line because of his medical condition. Mr. K is considered to have stopped work due to his medical condition under paragraph (a) of this section. Mr. K had special transportation accommodations that allowed him to work in that job as indicated in paragraph (d) of this section.

*Example 2.* Mr. L is laid-off from his job because the owners are retooling the plant where he is working. Mr. L had no special circumstances under paragraph (d) of this section that enabled him to work. Under paragraphs (a) and (b) of this section, Mr. L is not considered to have stopped work due to his medical condition because he stopped work for reasons unrelated to his medical condition and he had no special circumstances related to his employment.

*Example 3.* Ms. M works as a teacher. Her contract requires her to work from September of one year through June of the next year. Ms. M contacts us in July and indicates she last worked in June. She indicates she is in her normal off-work period and plans to return to work in September when her next contract begins. She indicates the reason she stopped work is her contract is over. She has nothing else preventing her from working in July. Under paragraph (b) of this section, Ms. M is not considered to have stopped work because of her medical condition.

(d) When we consider whether you had special circumstances in your work for purposes of this section, we will consider how well you did your work as discussed in § 416.973(b), whether your work was done under special conditions as discussed in § 416.973(c), and whether you were able to work because you had a special need that was being accommodated, such as special transportation requirements.

**§ 416.999d How do we determine provisional benefits?**

(a) You may receive up to 6 consecutive months of provisional cash

benefits and Medicaid during the provisional benefit period, while we determine whether we can reinstate your disability benefit eligibility under § 416.999a—

(1) We will pay you provisional benefits beginning with the month after you file your request for reinstatement under § 416.999a(a);

(2) If you are an eligible spouse, you can receive provisional benefits with the month your spouse's provisional benefits begin;

(3) We will pay you a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual under §§ 416.401 through 416.435 with the same kind and amount of income as you have;

(4) If you have an eligible spouse, we will pay you and your spouse a monthly provisional benefit amount equal to the monthly amount that would be payable to an eligible individual and eligible spouse under § 416.401 through 416.435 with the same kind and amount of income as you and your spouse have; and

(5) Your provisional benefits will not include state supplementary payments payable under §§ 416.2001 through 416.2176.

(b) We will not pay you a provisional benefit for a month where you are not eligible for a payment under §§ 416.1322, 416.1323, 416.1325, 416.1327, 416.1329, 416.1330, 416.1334, and 416.1339.

(c) We will not pay you a provisional benefit for any month that is after the earliest of: The month we send you notice of our determination on your request for reinstatement; or, the sixth month following the month you requested expedited reinstatement.

(d) You are not eligible for provisional benefits if, prior to starting your provisional benefits—

(1) We determine that you do not meet the requirements for reinstatement under §§ 416.999a(a)(1) through 416.999a(a)(3);

(2) We determine that you are not eligible for reinstatement under § 416.999a(b); or

(3) We determine that your statements on your request for reinstatement, made under § 416.999b(d)(2), are false.

(e) Determinations we make regarding your provisional benefits under paragraphs (a) through (d) of this section are final and are not subject to administrative and judicial review under §§ 416.1400 through 416.1499.

(f) If you were previously overpaid benefits under title II or title XVI of the

Act, we will not recover the overpayment from your provisional benefits unless you give us permission.

(g) If we determine you are not eligible to receive reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (c) of this section, will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 416.999a.

#### **§ 416.999e How do we determine reinstated benefits?**

(a) If you meet the requirements for reinstatement under § 416.999a(a), we will reinstate your benefits with the month after the month you filed your request for reinstatement. We cannot reinstate your eligibility for any month prior to February 2001.

(b) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs in §§ 416.401 through 416.435. We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit due, we will treat the difference as an overpayment under § 416.536.

(c) Once you have been reinstated under § 416.999a you cannot be reinstated again until you have completed a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you are due a cash benefit of any amount for the month based upon our normal computation and payment rules in § 416.401 through § 416.435. If your entire benefit payment due you for a month is adjusted for recovery of an overpayment under § 416.570 and § 416.571 or if the amount of the provisional benefit already paid you for a month exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider the month a payable month.

(d) Your eligibility to reinstated benefits ends with the month preceding the earliest of the following months—

(1) The month an applicable terminating event in §§ 416.1331 through 416.1339 occurs;

(2) The third month following the month in which your disability ceases; or

(3) The month in which you die.

(e) Determinations we make under this section are initial determinations under § 416.1402 and are subject to review under § 416.1400 through 416.1499.

(f) If we determine you are not eligible for reinstated benefits, we will consider your request filed under § 416.999a(a) your intent to claim benefits under § 416.340.

#### **Subpart N—[Amended]**

7. The authority citation for subpart N continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

8. Amend § 416.1403 by revising paragraphs (a) (18) and (19), adding paragraph (a) (20), and revising paragraphs (b)(1) and (2) to read as follows:

#### **§ 416.1403 Administrative actions that are not initial determinations.**

(a) \* \* \*

(18) Determining whether we will refer information about your overpayment to a consumer reporting agency (see §§ 416.590 and 422.305 of this chapter);

(19) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see § 416.590 and 422.310 of this chapter); and

(20) Determining when provisional benefits are payable, the amount of the provisional benefit payable, and when provisional benefits terminate. (See § 416.999d).

(b) \* \* \*

(1) If you receive an emergency advance payment; presumptive disability or presumptive blindness payment, or provisional payment, we will provide a notice explaining the nature and conditions of the payments.

(2) If you receive presumptive disability or presumptive blindness payments, or provisional payments, we shall send you a notice when those payments are exhausted.

\* \* \* \* \*

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