



# TICKET TO WORK & WORK INCENTIVES ADVISORY PANEL



BY EMAIL AND FEDEX DELIVERY

September 9, 2005

Jo Anne Barnhart, Commissioner  
Social Security Administration  
Office of Regulations  
100 Altmeyer Building  
6401 Security Boulevard  
Baltimore, MD 21235-6401

RE: Notice of Proposed Rule Making: Rules for Helping Blind and Disabled  
Individuals Achieve Self-Support, Federal Register July 11, 2005 (Volume 70,  
Number 131)

Dear Commissioner Barnhart:

As you know, the Ticket to Work and Work Incentives Advisory Panel advises the Commissioner of the Social Security Administration (SSA), the President, and Congress on the implementation and operation of the Ticket to Work and Self-Sufficiency Program and on issues related to work incentive programs and planning and assistance for individuals with disabilities. This communication focuses on the latter and supports SSA in enhancing current policies, regulations and programs that support the movement of beneficiaries with disabilities to greater economic self-sufficiency and independence.

The Notice of Proposed Rule Making (NPRM) released on July 11, 2005, pertaining to Rules for Helping Blind and Disabled Individuals Achieve Self-Support (20 CFR Part 416 [Regulations No.16] RIN-0960-AG00) reinforces SSA's commitment to ensuring employment support for beneficiaries with disabilities. These rules outline the Plan for Achieving Self-Support (PASS) work incentive, which allows some people who receive, or are eligible for Supplemental Security Income (SSI) disability benefits, to set aside part of their income and/or resources to meet an employment goal. A PASS can be established to cover the costs of obtaining an education, receiving vocational training, starting a business, or purchasing support services that enable individuals to work and result in reducing SSI/SSDI benefits. It can be used to supplement other funding sources.

The income and/or resources set aside by a beneficiary under a PASS are not counted in determining the amount of the person's SSI payment or his or her eligibility. In addition, the

U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) exclude income and resources set aside in an Agency-approved PASS in determining an individual's financial eligibility for housing assistance (in the case of HUD) and for Food Stamps (in the case of USDA).

It is encouraging that the PASS provision is a part of the original SSI statute. The legislative history shows that Congress expressed a "desire to provide every opportunity and encouragement to the blind and disabled to return to gainful employment." Congress intended that the PASS provision be "liberally construed if necessary to accomplish these objectives." We believe a PASS can be an especially effective tool for assisting people with disabilities.

Section 203 of the Social Security Independence and Program Improvements Act of 1994 amended section 1633 of the Social Security Act to require SSA to establish by regulations criteria for time limits and other criteria related to PASS. Beginning in January 1995, the law requires that the time limits take into account the length of time that persons need to achieve their employment goal, within a reasonable period, and other factors as determined by the Commissioner to be appropriate. Before the legislation, a PASS could not exceed 36 months (or 48 months when a lengthy educational or training program was involved).

The supplementary information section of the NPRM states that the proposed regulatory revisions do not reflect a change in SSA's current policy. This is because, after enactment of the 1994 legislation, SSA issued operating instructions to eliminate the specific time limits and provide a more individualized assessment.

We recommend that SSA move as quickly as possible toward a final PASS regulation to end the conflicts and inconsistencies between operating instructions and SSA's regulations, which could discourage individuals from participating in the PASS program. The absolute time limits reflected in the existing regulations have not been applicable for many years. Below are specific recommendations and thoughts for your consideration.

### **1. Reasonable Length of Time**

The NPRM will add rules that take into account the individual needs and employment goals of beneficiaries in determining a reasonable length of time for achieving goals. This approach recognizes the heterogeneity of the population of persons with disabilities.

The change could expand the availability of a PASS for individuals with more severe disabilities who were precluded in the past because it could:

- Give individuals a longer time period to complete a PASS; and
- Potentially open the door for greater use by individuals with disabilities that are cyclic in nature, who were previously precluded from participating because of the nature of their disability.

In addition, this change could:

- Greatly expand use of this work incentive for postsecondary education pursuits; and
- Allow greater program customization, given the focus on “individual needs” and “employment goals”.

The concept of “reasonable time frames” is subjective and open for interpretation.

### **Recommendation**

We recommend that SSA provide specific examples to assist beneficiaries as they consider proposing their own “reasonable ending date” as well as further delineating that a “reasonable period” for completion of a PASS will depend in large part on the impact of the individual’s impairment on their stated goal(s).

## **2. REFERRALS FOR ASSISTANCE IN DEVELOPING A PASS**

The current Section 416.1180 states that SSA will “refer” individuals to Vocational Rehabilitation (VR) agencies for “additional assistance” in developing a PASS. This sentence is unchanged in the NPRM. However, we note that operating instructions and informational materials indicate SSA will help with a plan or refer, not only to VR agencies, but to Benefits Planning, Assistance, and Outreach programs (BPAOs), Protection and Advocacy organizations, Employment Networks (ENs), and SSA offices.

### **Recommendation**

We recommend that SSA refine its policies to clarify when it will refer, to what type of organizations/individuals to which it will refer, and what level of support applicants can expect SSA/PASS Cadre, BPAOs, Independent Living Centers, ENs and so forth to provide.

## **3. PLAN ENDING DATE FOR EMPLOYMENT GOAL**

The new section 416.1180(b) states that SSA can help establish an ending date to meet the applicant’s employment goal and it can be different than the ending date proposed by the applicant. There are no further details in the NPRM, or that we could find in the operating instructions.

### **Recommendation**

We recommend that SSA expand on what is intended under the NPRM and specifically address the issue of SSA providing what seems to be special assistance that is limited to establishing an ending date.

#### **4. PRESUMPTIONS REGARDING OCCUPATIONAL GOALS**

SSA's operating instructions indicate that, absent contradictory evidence, SSA will assume that an occupational goal is feasible and the plan for achieving it is viable if it were prepared by one of the following: a State VR counselor; a public or private vocational counselor; a case manager; a social worker; an individual who is licensed or certified by specified organizations; or an individual acting on behalf of an agency that has been certified or accredited by specified organizations. The NPRM is silent on this issue.

##### **Recommendation**

We support the continuation of this credentialing policy. However, we recommend that SSA clarify what weight, if any, will be given to occupational goals developed with the assistance of BPAOs and others, for example, Small Business Development Centers for self-employment plans. We do think that presumption should not apply to these other entities unless they meet SSA's existing credentialing requirements.

#### **5. REDUCTION OR ELIMINATION OF BENEFICIARY DEPENDENCE ON SSI**

Section 416.1181 (a) (6) requires that a proposed PASS must show how the employment goal selected by the beneficiary will generate sufficient earnings to "substantially reduce or eliminate your dependence on SSI or eliminate your need for title II disability benefits." We agree that the program is intended to support self-sufficiency; however, we note that the language "substantially reduce or eliminate" is vague and would likely be difficult to implement consistently on a nationwide basis.

##### **Recommendation**

We recommend that SSA provide more clarity regarding how much of a reduction is "substantial" and then ensure that this criterion is consistently implemented.

#### **6. ANNUAL REVIEW OF THE PLAN**

Section 416.1181(d) states that a beneficiary's progress toward completion of their PASS will be reviewed at least annually to determine if the individual is following the provisions of their plan. We support ongoing monitoring and management of the program. This is critical to ensuring that beneficiaries have access to supports as they move toward successful completion of their PASS. We also note that an annual review of a plan may not be adequate for some beneficiaries based on their support needs.

##### **Recommendation**

We recommend that SSA expand on what the annual review entails and how it is conducted. Further, we recommend that SSA consider providing more details and an example of what the

beneficiary can expect. Finally, we recommend that PASS specialists customize timelines for progress reviews based on the specific support needs of the beneficiary.

## **7. GENERAL RECOMMENDATIONS TO ENHANCE THE PROGRAM**

In addition to the above recommendations, we make the following recommendations for enhancing the PASS program.

### **Providing Additional Training**

- We commend SSA for the increased focus on “individual needs” and “employment,” but note that this approach places greater emphasis on the preparedness of the PASS Cadre to be equipped with the essential expertise to customize programs and create effective employment support. It is highly likely that increased program training support for the PASS Cadre would be needed.

We recommend that SSA commit to ongoing training and creating opportunities for the PASS Cadre to learn from each other and from experts in the various fields of employment supports.

### **Increasing PASS Participation**

- We are concerned about the low number of approved PASS plans throughout the United States. In 2004 there were about 1,600 plans, down from 1,705 in 2003 and 1,721 in 2002. These declines have occurred even as SSA has sought to promote PASS as an effective tool for helping people with disabilities join or rejoin the workforce. Since the NPRM is not intended to reflect a change in policy, it is likely that the number of participants will remain low.

The number of PASS participants varies greatly from State to State, with 31 States having 20 or fewer participants. We recommend that SSA review the implementation policies in selected States. Every State has a tremendous opportunity to improve, especially in increasing PASS participation among people under age 21.

### **Improving Beneficiaries Understanding of Work Incentives, Including PASS**

- From its inception, the Panel has received various reports and public comment in the form of testimony and letters from beneficiaries, providers and others in the field, that most beneficiaries are unaware of SSA’s work incentives that have been in the program for decades, including PASS and the impairment related work expenses incentive.

It is unlikely that there will be a substantial increased participation in the PASS, the Ticket program, or in any type of employment program until beneficiaries fully understand the fundamentals of work incentives and the employment supports and services available to them.

We urge SSA to explore strategies to maximize utilization of the PASS and consider how the Ticket and PASS program can better complement each other. This could include explaining that beneficiaries may participate simultaneously in both the PASS and the Ticket program and seeking changes to allow an EN to be paid before the PASS holder goes off the SSI rolls, when the EN should be paid in the absence of a PASS.

We are pleased to have this opportunity to offer this advice to SSA and would be willing to meet with SSA to discuss our recommendations. If you have any questions, or would like to arrange a meeting, please contact the Panel's Executive Director, Jill Houghton. She can be reached at 202-358-6419.

Sincerely,



Berthy De La Rosa-Aponte  
Chair  
Ticket to Work and Work Incentives Advisory Panel