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Administrative Review Process for Adjudicating Initial Disability Claims; Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

[Regulation Nos. 4, 5, 16, and 22]

RIN 0960–AG31

Administrative Review Process for Adjudicating Initial Disability Claims

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Social Security Administration is committed to providing the type of service the American people expect and deserve. In light of the significant growth in disability claims, the increased complexity of those claims, and the younger age of beneficiaries in recent years, the need to make substantial changes in our disability determination process has become urgent. We propose to amend our administrative review process for benefit claims you file under title II of the Social Security Act (Act) based on disability, and for applications you file for supplemental security income (SSI) payments based on disability or blindness under title XVI of the Act. We expect that the changes we are proposing will improve the accuracy, consistency, and timeliness of decision making throughout the disability determination process.

DATES: To be sure that we consider your comments, we must receive them by October 25, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (i.e., Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 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. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at *www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Mary Chatel, Executive Director, Disability Service Improvement, Social Security Administration, 500 E Street, SW, Suite 854, Washington DC, 20254, 202–358–6094 or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We propose to amend our administrative review process for Social Security benefit claims based on disability and for applications for SSI payments based on disability or blindness in order to improve the accuracy, consistency, and timeliness of decision making throughout the disability determination process. We expect that our proposed changes will significantly reduce average disability determination processing time, increase decisional consistency and accuracy, and ensure that the right determination or decision is made as early in the disability determination process as possible. Our proposed changes will ensure that beneficiaries who are clearly disabled receive determinations within 20 calendar days or less of the date that their completed application for benefits is sent to the State agency for adjudication. We believe that our proposed changes will ensure that adjudicators are held accountable for the quality of disability adjudications made at every step of the process. In addition, we believe that our proposed changes will help ensure that disability claimants provide all material evidence to adjudicators in a timely manner, resulting in a more efficient disability determination process.

Program Trends

We currently decide claims for Social Security benefits based on disability under title II of the Act and for SSI based on disability or blindness under title XVI of the Act using an administrative review process that consists of four levels. Initial determinations as to whether or not you are disabled are made by a State agency. If you are dissatisfied with the initial determination, you may request reconsideration by the State agency. If you are dissatisfied with the reconsidered determination, you may request a hearing, which is held by an administrative law judge. Finally, if you are dissatisfied with the administrative law judge's decision, you may request review by the Appeals Council. Once you have completed these administrative steps and received our final decision, you may request judicial review of the final decision in Federal district court.

Over the years the Social Security and SSI disability programs have grown in size and complexity. There has been significant growth in the number of individuals who file claims for disability benefits each year. During the early years of the Social Security disability program, the number of claims for disability benefits filed each year was measured in the hundreds of thousands. Currently, more than two and a half million individuals apply for Social Security and SSI benefits based on disability each year. The volume of claims will grow even more in future years as baby boomers move into their disability-prone years.

The factors involved in determining disability claims have also changed. Since the beginning of the disability programs, the percentage of claims involving allegations of mental impairments has increased dramatically, particularly in the SSI program. Claims of disability involving mental impairments raise particular administrative resource issues because they involve complex psychological issues, and the evidence for these claims may be difficult to develop. The number of claims being decided on the basis of vocational considerations rather than meeting or equaling more readily determinable medical factors has also been increasing steadily. Thus, in addition to the exponential growth in the number of disability claims that must be adjudicated each year, there has been a corresponding increase in the complexity of those claims.

In addition, the average age of beneficiaries has fallen over the years because an increasing number of younger individuals have been found to be disabled. This trend has heightened the importance of improving our efforts to assist disabled individuals in returning to the workforce.

All of these trends have underscored the need for substantial change if our disability decision making process is to be able to provide claimants with accurate, fair, and consistent adjudications as early in the adjudication process as possible, and also provide them with the assistance they need to overcome barriers to employment.

The Service Delivery Budget Assessment

In 2001, we established a Service Delivery Budget Assessment Team to thoroughly investigate the current disability determination process from the perspective of an applicant for disability benefits. We hoped that this process would help us to understand and effectively manage the administrative challenges posed by growth and other changes in the disability programs. The team's research revealed that: (1) State Disability Determination Services (DDS) generally made an initial eligibility determination within three and a half months of a claimant's application; (2) forty percent of disability claimants were determined to be eligible for benefits at this initial stage; and (3) it took an average of 1153 days to pursue a disability claim through all stages of administrative appeal to obtain a final Agency decision.

The Team discovered that only seven days of this 1153-day period were spent actually working on the claim. Six hundred and twenty one days of this period were associated with delays in the administrative process, such as time spent waiting for an appointment or hearing, time spent waiting for forms to be sent in the mail, time spent waiting for medical reports and consultative examinations to be completed and received, and time spent attempting to locate misrouted or lost paper folders. One-third of these 621 days involved the mandatory delays associated with the due process rights of claimants, such as the 60-day time periods established in the Act and in our regulations for filing appeals after each of the first three adjudicatory levels. The Team also discovered that 525 days of the 1153-day period were related to the backlog of cases that are pending at each level of the administrative review process. As the backlogs are reduced, the amount of time spent waiting for the next action in the case will also be reduced.

Transition to an Electronic Disability Process

In an effort to improve the efficiency and timeliness of our disability determination process, we decided to accelerate our transition to an electronic disability process—one we usually refer to as eDib. In an electronic disability process, applications, claimant information, and medical evidence that have been processed in paper form in the past are processed in electronic form instead. Each adjudicative component involved in the disability determination process is able to work with claims by electronically accessing and retrieving information that is collected, produced, and stored as part of an electronic disability folder. This significantly reduces the delays that result from mailing, locating, and organizing paper folders. In addition, an electronic disability process allows more than one Agency component to work on a single claim at the same time if necessary, which alleviates the delays associated with transferring paper records from one component to another.

We also believe that the transition to an electronic disability process will improve the accuracy and integrity of our disability determination process. We have been impressed with the successful efforts of the Department of Veterans Affairs to offer patients an electronic health record. We understand that their reliance on an electronic health record has reduced errors and streamlined their record keeping process. We expect that our transition to an electronic disability process will help us avoid the kind of errors that result from misunderstanding handwritten notes, or misplacing or improperly filing important documents that are part of the record.

We expect that as eDib continues to be implemented throughout the country, the amount of time needed to process disability claims will decrease because claim files will be transferred instantly in electronic form between our offices. As eDib is implemented, we expect to reduce and eventually eliminate the delays currently associated with waiting for forms to be sent in the mail and with time spent attempting to locate misrouted or lost paper folders.

The transition to this new electronic disability process is currently taking place throughout the country. All of our field offices across the nation are now using the Electronic Disability Collect System (EDCS) that provides State agencies with an electronic folder. EDib was implemented at the first State agency DDS in January 2004, and additional State agency DDSs have continued to implement eDib ever since. Currently, all State agency DDSs, except New York, which is scheduled for rollout in November 2005, are adjudicating disability claims using an electronic folder.

At the same time, our Office of Hearings and Appeals (OHA) has begun using the Case Processing and Management System (CPMS), which is a new software system for processing cases and managing OHA office workloads. CPMS will enable OHA to work with the electronic file. Currently, all 140 hearing offices across the country are using CPMS and 73 hearing offices have been trained to begin adjudicating cases using an electronic folder.

The complete implementation of eDib throughout the country and at every level of the adjudicatory process will assist us in addressing to a significant degree the unacceptably long case processing times described earlier. EDib provides opportunities to manage and process workloads in ways that have not existed until now. However, eDib alone is not enough to improve the current process to the level that we believe is necessary. Further actions must be taken to improve our ability to adjudicate every claim in a prompt, fair, and accurate manner. We have concluded that to significantly improve disability adjudications, we must change the process itself. In addition, we believe we must revisit and update some of our policies regarding disability adjudications, including the revision and updating of medical listings, in order to sufficiently improve the entire process.

Answering the President's Questions

In formulating a new approach to improving the disability determination process, we were guided by three questions that the President of the United States posed during a meeting with the Commissioner in the spring of 2002. These questions were: (1) Why does it take so long to make a disability decision?

(2) Why can't people who are obviously disabled get a decision immediately?

(3) Why would a disability program beneficiary risk attempting to work after having gone through such a long disability determination process and having been found to be disabled?

In order to fully address the central and important issues raised by the President's three questions, we designed an approach that focuses on two over-arching goals: (1) to make the right decision as early in the process as possible; and (2) to foster return to work at all stages of the process.

New Approach To Improve the Disability Determination Process

At a September 25, 2003 hearing before the House Ways and Means Subcommittee on Social Security, we first presented a new approach to improve the disability determination process. This new approach maintained some of the significant features of the current disability determination process:

- Initial claims for disability would continue to be handled by our field offices;

- The State DDSs would continue to adjudicate claims for benefits;
- Administrative law judges would continue to conduct de novo hearings and issue decisions; and
- Claimants would still be able to appeal the Agency's final decision to the Federal courts.

As we outlined in September 2003, the new approach also reflected some important differences from the current system:

- A Quick Disability Determination process would be established at the outset of the claims process to identify people who are clearly disabled;
- Medical and vocational expertise within a new Federal expert unit would be available to disability decision makers at all levels of the process, including the DDSs, reviewing officials, and administrative law judges;
- We would eliminate the reconsideration step of the administrative review process and end the disability prototype test being conducted in 10 States;
- We would institute both in-line and end-of-line quality assurance programs at every step of the process (but the hearing level in-line quality assurance program would not apply to administrative law judge decision making);
- Following the initial determination made by the DDS, a Federal reviewing official would review the claim upon the claimant's request. The reviewing official would be authorized to issue an allowance or to deny the claim. If the reviewing official did not allow the claim, he or she would be required to explain why the disability claim should be denied;
- If requested by a claimant who was dissatisfied with the reviewing official's decision, an administrative law judge would conduct an administrative hearing. If the administrative law judge determined that a favorable decision should be made, the administrative law judge would explain the basis for disagreeing with the reviewing official's decision;
- Claimants could continue to submit evidence to support their claim through the administrative law judge level of review. However, the record would be closed after the administrative law judge decision was issued;
- The Appeals Council stage of the current process would be eliminated. A portion of administrative law judge decisions would be reviewed by a centralized quality control staff. If the administrative law judge's decision was not chosen to be reviewed by the centralized quality control staff, the decision of the administrative law judge would become the final Agency decision;
- If the centralized quality control staff disagreed with an administrative law judge's decision, the disability claim would be referred to an Oversight Panel, consisting of two administrative law judges and one Administrative Appeals Judge. The Oversight Panel could affirm, modify, or reverse the administrative law judge's decision, making the panel's decision the final Agency decision;
- We would improve the quality of the administrative record by ensuring that evidence development is performed early in the disability determination process, and by ensuring that adjudicators sufficiently articulate the basis of their adjudications.

The Work Opportunity Initiative

We have recently implemented a number of work incentive programs that are designed to encourage an individual's return to work. Currently, beneficiaries may take advantage of several work incentive programs, including our Ticket to Work and Self-Sufficiency (TTW) program, our plans for achieving self-support (PASS) under the SSI program, and our Benefits Planning, Assistance, and Outreach (BPAO) program. Recognizing the importance of encouraging a return to work, the Act contains a number of other provisions that help us assist beneficiaries who would like to work, such as the provisions that allow us to provide expedited reinstatement of benefits, or continue benefit payments to certain individuals who recover medically while participating in an appropriate program of services. Despite these current work incentives, however, disability program beneficiaries still face significant barriers to work. These barriers may include:

- The adverse psychological impact of the lengthy disability determination process;
- The delays experienced when attempting to obtain needed health care, including the 24-month waiting period for Medicare benefits;
- Lack of access to the training, employment services, and other supports actually needed to obtain work;
- Strict SSI asset limits and strict disability insurance benefit offset rules; and
- The fear of work-related overpayments.

At the same time that we presented the new approach in September 2003, we outlined our Work Opportunity Initiative to foster voluntary return to work. This initiative responded to the President's third question (why would a disability program beneficiary risk returning to work after going through such a long process to receive benefits?). The initiative incorporates several demonstration projects designed to overcome the current barriers to work listed above and provides greater opportunities for disability beneficiaries and applicants who want to work.

Within the Work Opportunity Initiative, we targeted three different demonstration programs to provide supports, incentives, and work opportunities to people with disabilities at the early stages of the disability determination process. The *Early Intervention* demonstration project would provide immediate medical and cash benefits and employment supports to disability insurance applicants with certain impairments presumed disabling who elect to pursue work rather than proceed through the disability determination process. An *Accelerated Benefits* demonstration project would provide immediate cash and medical benefits for a two-to three-year period to applicants who are highly likely to benefit from aggressive medical care and, as a result, return to work. The *Interim Medical Benefits* demonstration project would provide immediate health insurance coverage to applicants who otherwise would not have insurance but whose medical condition is likely to improve with medical treatment.

Other demonstration projects within the initiative would provide ongoing employment supports and incentives to assist disability program beneficiaries obtain and sustain employment. A national *benefit offset* demonstration would test the effects of allowing disability insurance beneficiaries to work without total loss of benefits by reducing their monthly benefit one dollar for every two dollars of earnings above a specified level. Two different *ongoing medical benefits* demonstration projects would test the effects of providing ongoing health insurance coverage to disabled beneficiaries with (1) HIV/immune disorders and (2) mood and affective disorders who want to work, but who would otherwise lose access to affordable health insurance if they returned to work.

We believe that these demonstration projects will help people with disabilities return to work, and that they will help remove barriers for those disability applicants and beneficiaries who can and want to work.

Ideas, Concerns, and Comments on the New Approach

At the same time that we presented the new approach, we announced that

we wanted to hear the views and suggestions of all interested parties, so that we could take them into account as we continued to refine the new approach and develop proposed rules to improve the disability process. We also established an Internet site in order to hear from all interested parties and consider a wide variety of perspectives as we continued to develop proposed rules. Since that time, we have met with hundreds of interested organizations, groups, and individuals to hear their views regarding the new approach, including:

- Members of Congress and congressional staff;
- Groups and organizations representing claimants, beneficiaries, retired individuals, and members of the public;
- Organizations representing legal and medical professionals, including Federal judges and administrative law judges; and
- Organizations representing SSA and State agency employees who are engaged in the disability determination process.

A list of the groups and organizations with whom we met appears near the end of this preamble.

These interested parties provided views, suggestions, and recommendations that we considered as we developed our proposal to create an improved disability process. We particularly appreciate the interest that members of Congress expressed regarding our desire to improve the disability determination process and are thankful for the suggestions that they have provided to us. We also received hundreds of e-mails from individuals currently receiving disability benefits, individuals currently applying for benefits, and other interested citizens providing recommendations on how to refine the process.

In general, those commenting on the new approach were supportive. Most agreed that we need a disability process that is quicker and more responsive to the needs of disability applicants and beneficiaries. Some noted that the current disability determination process is too complicated and difficult to navigate. Others suggested that we should strive to achieve greater consistency in the determinations and decisions issued at different levels of review, as well as greater consistency in determinations and decisions issued throughout the country.

We are deeply indebted to all of the individuals and organizations who expended substantial time and resources both to consider and analyze the current disability determination process and to share with us their views, suggestions, and recommendations about how to improve that process. Our ability to propose an effective and comprehensive strategy for improving the disability determination process was greatly enhanced by these views, suggestions, and recommendations.

Proposal To Improve the Disability Determination Process

We believe that the changes we are proposing now will improve the overall disability determination process by shortening decision times, providing benefits and payments to people who are clearly disabled much earlier in the process, and improving quality, efficiency, adjudicatory consistency, and accountability throughout every step of that process. These changes will also help ensure that adjudicators have a complete administrative record when issuing the determination or decision and that there is proper documentation to support the determination or decision.

In a further effort to improve our disability programs, we will establish a Disability Program Policy Council to provide a forum for policy issues to be discussed in a collaborative fashion and to make policy and procedural recommendations. Council members will include a mix of disability adjudicators at all levels of the process as well as representatives from the Office of the General Counsel, the Disability Review Board, program analysts, operations, including field office personnel, etc. The Deputy Commissioner of Disability and Income Support Programs will serve as chair of the Council. The Council will meet on a regular basis, and the Deputy Commissioner will routinely report on policy recommendations to the Commissioner. The Council will be a channel for experts to escalate disability policy and procedural issues.

This proposed disability process is contingent on the eDib system. As with eDib rollout, we plan to roll out the proposed disability process carefully and gradually to ensure any problems can be corrected. We will start in one region and will expand to other regions over time. If the rollout goes well, we may accelerate the phased implementation of our new disability process.

As a result of our proposed improvements to the disability determination process, we expect:

- Average disability determination processing time to be reduced by at least 25 percent;
- Decisional consistency and accuracy to increase;
- Quick Disability Determination units in State agencies to provide favorable determinations within 20 calendar days for beneficiaries who are clearly disabled; and
- Accountability for the quality of decision making and documentation of the record to be reinforced at every step of the process.

We propose to apply these revised regulations when we administer claims for benefits and payments under title II and title XVI of the Act. Specifically, these improvements will:

- Establish a Quick Disability Determination process through which State agencies will expedite initial determinations for claimants who are clearly disabled;
- Create a Federal Expert Unit to augment and strengthen medical and vocational expertise for disability adjudicators at all levels of the disability determination process;
- Eliminate the State agency reconsideration step and terminate the disability prototype that we are currently conducting in 10 States;
- Establish Federal reviewing officials to review State agency initial determinations upon the request of claimants;
- Preserve the right of claimants to request and be provided a de novo hearing, which will be conducted by an administrative law judge;
- Close the record after the administrative law judge issues a decision, but allow for the consideration of new and material evidence under certain limited circumstances;
- Gradually shift certain Appeals Council functions to a newly established Decision Review Board; and
- Strengthen in-line and end-of-line quality review mechanisms at the State agency, reviewing official, hearing, and Decision Review Board levels of the disability determination process.

Quick Disability Determinations

We believe that many individuals who are obviously disabled wait too long to get Social Security disability benefits or SSI payments based on disability or blindness under our current disability determination process. Therefore, we propose to establish at the initial determination level a screening system for disability claims to identify those claims in which a wholly favorable decision may be made quickly. These claims will be processed in an expedited manner by State agencies and will be called Quick Disability Determination claims. State agencies will create special units

comprised of experienced disability examiners whose sole focus will be the efficient, accurate, and timely adjudication of Quick Disability Determination claims.

We initially believed that Quick Disability Determination claims should be adjudicated in regional units across the country, and not in the State agencies. However, many of the groups we met with and numerous individuals who submitted suggestions to us asserted that the State agencies could effectively adjudicate Quick Disability Determination claims. We have decided to propose that the State agencies be allowed to adjudicate these claims. We propose that a State agency adjudicating Quick Disability Determination claims must create a separate Quick Disability Determination unit that will be comprised of experienced examiners who will work exclusively on these claims and complete adjudication of these claims within the timeframes we have established.

We expect that the range of claims that will qualify to be adjudicated as Quick Disability Determination claims will be relatively small when we first begin implementing the proposed changes. However, as we gain experience with the Quick Disability Determination process and as we improve and fine-tune our case-selection tools, we expect that the range of potential Quick Disability Determination claims will increase over time.

We will make use of a predictive model screening software tool that will identify claims that indicate a high degree of probability that an individual both meets our definition of disability and has readily available medical evidence. This software will utilize data from the initial disability application and provide an alert to the State agency that the disability claim meets the criteria to be adjudicated as a Quick Disability Determination claim.

In these proposed regulations we require that the State agencies comply with timeliness standards for processing Quick Disability Determination claims in order to maintain their Quick Disability Determination adjudication responsibilities. We propose that the Quick Disability Determination units will provide favorable determinations of disability in 20 days or less to disability applicants who are clearly disabled and who meet our disability criteria. The Quick Disability Determination units will not make unfavorable determinations when processing potential Quick Disability Determination cases. Our proposed rules provide that if a favorable quick disability determination cannot be made within 20 days (either because the particular Quick Disability Determination criteria have not been met in the case or because the case involves impairments that require more than 20 days to properly evaluate), the case will be adjudicated by the State agency in the normal manner using our existing procedures.

Our proposed rules also provide that the State agency Quick Disability Determination units must ensure that a medical or psychological expert who has the qualifications required by the Commissioner verifies the particular diagnosis that is the basis of the claim in each case.

Our proposed rules explain that we will monitor the performance of the Quick Disability Determination units to ensure that these claims are being processed in a timely manner. We propose to establish special processing standards that the Quick Disability Determination units must meet in order to perform this important workload. Although these proposed rules do not change our existing rules regarding State agency responsibilities for performing the disability determination function, we intend to modify those rules, currently promulgated in subpart Q of part 404 and subpart J of part 416, in the future.

State Agency Determinations

We also propose to require the State agency to document and explain the basis for the determination made in every claim it adjudicates. We believe that more complete documentation and explanation of the basis for the determination will result in more accurate initial determinations and will assist adjudicators in claims that are reviewed by a Federal reviewing official or considered by an administrative law judge.

Medical and Vocational Expertise and the Federal Expert Unit

Making correct disability determinations and decisions in a consistent and timely manner is critically important to disability claimants, as well as to the general public. Ultimately, whether someone is disabled within the meaning of the Act is a legal question that often requires consideration of complicated medical and vocational evidence. In crafting the new approach, we realized from the beginning that having sufficient expertise to help us consider the medical and vocational issues in claims filed throughout the country would be essential to an efficient, accurate, and fair adjudication process. However, we realized that under our current disability adjudication process, medical, psychological, and vocational experts are not consistently available to all adjudicators at every level or in all parts of the country.

We are therefore proposing to establish and operate a Federal Expert Unit, which we believe will help to ensure the full development of the record, enable adjudicators to make accurate determinations or decisions as early in the process as possible, and facilitate subsequent review should a case be appealed to a higher level. We propose to create a national network of medical, psychological, and vocational experts who will be available to assist adjudicators throughout the country. This national network may include experts employed by or under contract with the State agencies; however, all experts affiliated with the national network must meet qualifications prescribed by the Commissioner.

The Federal Expert Unit will organize and maintain this network comprised of medical, psychological, and vocational experts who will provide medical, psychological, and vocational expertise to State agencies, reviewing officials, administrative law judges, and the Decision Review Board. We want to ensure that the right set of medical eyes reviews medical records and answers questions about the wide variety of impairments seen in disability claims. We believe that the expert network affiliated with the Federal Expert Unit will help ensure that a medical, psychological, and vocational expert who has the qualifications required by the Commissioner assists in adjudicating disability claims. With the assistance of the Institute of Medicine, we plan to develop standards that define the medical and psychological expertise necessary for experts to qualify for participation in the national network.

We will also establish standards with respect to the qualifications of vocational experts employed by the State agencies and affiliated with the Federal Expert Unit because we are committed to employing consistent, high quality vocational expertise in the disability determination process. To that end, we plan to undertake a study to enhance the expertise needed to make decisions on a claimant's functional limitations and his/her ability to perform jobs available in the national economy. Among other things, the study will help determine (1) how best to provide vocational and occupational medical expertise at all levels of the disability determination process to improve the quality of case adjudication

and (2) what qualifications vocational and occupational medical experts should have.

Several organizations and numerous individuals urged us to allow the State agencies to continue to use State agency medical consultants when making initial disability determinations under the new approach. While we agree that the State agencies should continue to employ medical and psychological consultants, we believe that it is essential that every medical and psychological expert meet our qualification standards in order to participate in the disability adjudication process.

Therefore, experts who are affiliated with the Federal Expert Unit and experts who are under contract with a State agency must meet these qualification standards on the effective date of these regulations or when we publish the qualifications, whichever is later. We expect to publish expert qualification standards on or before issuing a final rule, but will publish them no later than six months after the effective date of this final rule. Experts who are employed by a State agency must meet them no later than one year after the effective date of these regulations or no later than one year after the date we publish the qualifications, whichever is later. Our proposed regulations also provide that we will not reimburse State agencies for the costs associated with work performed on our behalf by experts employed by, or under contract with, the State agencies who do not meet our qualification standards. However, we intend to implement this reimbursement provision on a region-by-region basis as we implement our new approach. Therefore, our reimbursement policy will be applied only to State agencies where we have implemented these proposed regulations.

We further propose that in those instances where an administrative law judge requires medical, psychological, or vocational testimony in order to hear a case or make a decision, the administrative law judge must use a medical or vocational expert from the network. However, in order to ensure the independence of the administrative law judge process, if the State agency or the reviewing official has used an expert from the network and the administrative law judge needs an expert in the case as well, the administrative law judge must use a different expert.

When requested by an administrative law judge or the Decision Review Board, appropriate medical, psychological, and vocational expertise will be made available by the Federal Expert Unit from the national network on a rotational basis, taking into account the decision maker's potential need to have an expert who is physically located nearby. We propose to pay these medical, psychological, and vocational experts at rates that we will establish.

Reviewing Official

Several of the interested organizations and individuals who contacted us expressed the view that, under the current disability determination process, there are inconsistencies in initial determinations made by State agencies which are not being corrected at the State agency reconsideration step. Some of these interested parties also expressed the belief that the reconsideration step was merely a ''rubber stamp'' of the initial State agency determination. We believe that the remarkably high percentage of claimants who pursue further review of their determinations perceive the reconsideration step as a burdensome step in the process which adds no appreciable value to the process.

Under our proposed rules, if a claimant is dissatisfied with the determination made by the State agency, the claimant may appeal the determination to a Federal reviewing official, who will conduct a review of the claim. The reviewing official will review the administrative record and issue a decision in your case or return your case to the State agency. The reviewing official will not conduct a hearing or meet with you in person.

We received a considerable number of comments from interested parties regarding whether or not the reviewing official should be an attorney. Some interested parties stated that the effective performance of reviewing official duties required certain legal and analytical skills that only licensed attorneys possess. In addition, some argued that the reviewing official's decision would have greater credibility if it were made by an attorney. However, others argued that the responsibilities of the reviewing official could be met by a non-attorney with experience making disability determinations.

We believe that attorneys are ideally suited to perform certain critical reviewing official functions such as garnering the requisite evidence to compile a complete case record and drafting a well-supported, legally-sound decision. We believe that attorneys will be able to effectively adjudicate claims in a manner that ensures that the right decision is made early in the administrative review process. We also believe that using attorneys as reviewing officials will help improve the level of confidence that applicants, members of the pubic, administrative law judges, and other interested parties have regarding the integrity of our first level of administrative review. For these reasons, we plan to hire attorneys to serve as Federal reviewing officials.

Under our proposed rules, the reviewing official may reverse, remand, modify, or affirm your initial determination. The reviewing official's action on your claim will be made only on the basis of a review of the record; you will not have any right to a hearing before the reviewing official. We propose that if additional evidence is necessary, the reviewing official may obtain such evidence from other sources, including ordering a consultative examination with the assistance of the Federal Expert Unit. In addition, if additional evidence is necessary, we propose that a reviewing official may remand a claim back to the State agency so that the State agency can readjudicate the claim. The reviewing official may also, while retaining jurisdiction of the claim, return the claim to the State agency so that it can obtain the additional evidence.

Under our proposed rules, if the reviewing official disagrees with the State agency's determination that you did not meet our definition of disability, the reviewing official must have a qualified medical or psychological expert affiliated with the Federal Expert Unit evaluate the evidence to determine the medical severity of the impairment before the reviewing official can issue his or her decision. In addition, if there is new and material evidence that the State agency did not consider, the reviewing official must make a decision in consultation with a medical or psychological expert affiliated with the Federal Expert Unit.

We propose to require that the reviewing official issue a written decision in every case that he or she adjudicates. The reviewing official will explain in this decision why he or she agrees or disagrees with the State agency's determination that you did not meet our definition of disability. The reviewing official's decision will be sent to the State agency and used by us for quality management purposes.

A major objective of using Federal reviewing officials to review disability claims is to ensure to the maximum extent possible the accuracy and consistency—and thus the fairness—of determinations made at the front end of the process. We intend to provide careful administration of the reviewing official function. We plan to employ highly qualified individuals who will be thoroughly trained in the policies and

procedures of our disability determination process.

Administrative Law Judge Hearings and Decisions

We are proposing some changes to the hearing level process as part of our overall effort to improve disability decision making. Under these proposed rules, administrative law judges will continue to hold de novo hearings and issue decisions based on all the evidence presented. They will not be required to give any legal deference or particular weight to the determinations previously made by the State agency or by the reviewing official.

Under the new process, the administrative law judge's hearing decision will generally become our final decision, and you will no longer be able to request that the Appeals Council review the decision. Recognizing the importance of this change, and consistent with our goal to improve all aspects of the administrative review process, we are proposing to make some changes to the hearing process that we expect will improve the timeliness of the process and the quality of the administrative law judge's decision.

For example, we propose to improve the timeliness of the hearing process by revising the rules that address the time frames for submitting evidence to us. Our current rules state that, if possible, you should submit the evidence, or a summary of the evidence, that you wish to have considered at the hearing to the administrative law judge with the request for a hearing or within 10 days after filing the request for a hearing. In many cases, however, claimants submit evidence to us well after that time frame.

Our program experience, as well as our discussions with interested parties, has convinced us that the late submission of evidence to the administrative law judge significantly impedes our ability to issue hearing decisions in a timelier manner. When new and voluminous medical evidence is presented either at the hearing, or shortly before the hearing, the administrative law judge needs time to review and consider that evidence. The late submission of evidence reduces the efficiency of the hearing process because we often must reschedule hearings to give the administrative law judge an opportunity to perform that review. Rescheduling hearings not only delays decisions on individual claims, but also delays the hearings of other claimants for benefits.

To manage our hearing process more effectively, we propose time limits for submitting evidence to the administrative law judge as well as consequences for failing to abide by the time limits. The lack of any consequences for violating the time limits is a major shortcoming of our current rules. We propose, as described in more detail below, that generally, you must submit evidence 20 days before the hearing. Nevertheless, recognizing that there may be situations where it is impossible to comply with the time limits for submitting evidence, we propose specific exceptions to them.

Another proposed change that we anticipate will improve the timeliness of our hearing process is that within 90 days of the date we receive your hearing request, the administrative law judge will set the time and place for the hearing. Our current rules do not provide any date by which the administrative law judge should schedule a hearing. This proposed 90-day time frame represents a management goal for us and does not provide you with a substantive right to have a hearing scheduled within this period. Given the size and magnitude of our hearing process, it simply would not be administratively feasible for us to hold a hearing within 90 days for every claimant who filed a hearing request. Indeed, it would not be appropriate for us to do so, because some claims will inevitably require more development than others. Nevertheless, by including this provision in the rules, we are stressing to our adjudicators our commitment to providing timely service. We also propose that the administrative law judge must notify you of your hearing date at least 45 days before the date of the scheduled hearing, unless you agree that the administrative law judge may provide you with less notice.

One of our major goals in proposing these rules is to improve the quality and consistency of decision making at all levels of our administrative review process. As noted above, one of the new features of the administrative review process is the use of a Federal reviewing official who (after the filing of a request for review) will review the State agency's initial determination and make a decision on your disability claim. As we noted earlier in the preamble, we expect that the use of Federal reviewing officials will help improve the quality of determinations by State agencies, because the reviewing official will explain why he or she agrees or disagrees with the State agency's determination. We propose to include a similar rule at the administrative law judge hearing level. Under the proposed rules, an administrative law judge will provide in his or her decision an explanation for why he or she agrees or disagrees with the reviewing official's rationale in the written decision. We expect that the administrative law judge's explanation will provide information for the reviewing official and for management and that this type of feedback from administrative law judges to reviewing officials and from reviewing officials to the State agencies will be important to accomplishing our goal of improving the quality of the decision making process.

We propose that the administrative law judge decision in your disability claim will become our final decision, unless we select your disability claim for review by a new administrative body we propose to create called the Decision Review Board. We explain the purpose and functions of the Decision Review Board below. If your claim is not sent to the Decision Review Board for review, the administrative law judge's decision will stand as the final Agency decision, and you may seek review of the administrative law judge's decision in Federal district court.

Closing the Record

We received many comments from interested parties about closing the record. Some interested parties argued that the record should not be closed after the issuance of the administrative law judge decision. These parties believed that claimants should have the right to submit additional evidence at any time. Some stated that if we decided to close the record after the issuance of the administrative law judge decision, we should provide for a good cause exception that would allow the submission of new evidence in certain circumstances. Other interested parties argued that the record should firmly close after the issuance of the administrative law judge decision, believing that this would encourage more efficient collection of evidence and more timely and efficient processing of claims.

Every reasonable effort should be made to submit evidence as early in the adjudicative process as possible. We are proposing to close the record after the administrative law judge issues a decision on your claim. A consistent policy of closing the record after the issuance of the administrative law judge decision will promote administrative efficiency and timely claims processing. However, we agree that there are certain limited circumstances where a claimant may have good reasons for failing to provide evidence in a timely manner to the administrative law judge. Consequently, we propose to close the record after the administrative law judge

issues a decision in a case, but to allow the consideration of new and material evidence under certain limited circumstances.

We propose that you must submit all of the evidence you will rely upon in your case to the administrative law judge no later than 20 days before the hearing. This time limit should be easily met because we also are proposing that the administrative law judge must notify you of your hearing date at least 45 days before the hearing.

The 20-day time limit for submitting evidence is subject to only two exceptions, both of which must be raised at the hearing. If you are aware of any additional evidence that you could not timely obtain and submit or if you are scheduled to undergo additional medical evaluation after the hearing for any impairment that forms the basis of your disability claim, you must inform the administrative law judge of either of these circumstances during your hearing. If you request additional time to submit the evidence, the administrative law judge may exercise his or her discretion and choose to keep the record open for a defined period of time to give you the opportunity to obtain and submit the additional evidence. If the extension is granted, once he or she receives this additional evidence, the administrative law judge will close the record and issue a decision.

After the record is closed, we will not consider additional evidence unless you establish good cause for failing to submit the evidence during the extended time period that the administrative law judge granted to you. In these situations, you must have informed the administrative law judge during the hearing that you were attempting to obtain this evidence or that you anticipated receiving such evidence after the hearing. You must submit your evidence and provide your good cause explanation to the administration law judge within 10 days of receiving the administrative law judge's decision. However, if your case has been selected for review by the Decision Review Board, you will be notified that the administrative law judge's decision is not our final administrative decision, and you must submit your additional evidence and provide your explanation of good cause to the Decision Review Board within 10 days of receiving the administrative law judge's decision.

We will find good cause only when you were prevented from obtaining or presenting your evidence during the extended time period due to unusual and unavoidable circumstances beyond your control. For example, if an administrative law judge grants you an extended time period to submit a doctor's report and you receive the report during the extended period, but could not provide it to the administrative law judge because you were hospitalized, we may find that you had good cause for failing to submit the evidence. However, we will not find good cause in instances where your additional medical evidence is obtained during the extended period but your representative fails to submit it in a timely manner as we hold you accountable for the actions of your representative pertaining to the submission of evidence. Although we will not consider the additional evidence in such cases, you will continue to have the right to file a new application for disability benefits for the time period beginning on the date after the administrative law judge's decision in your case.

Finally, in very limited situations, we may consider evidence after the record is closed and when you *did not* inform the administrative law judge at the hearing that additional evidence may exist. We are aware that there may be instances when a claimant attends a hearing and complies with all of our proposed rules regarding submission of evidence, but then experiences a significant worsening of condition or experiences the onset of a new impairment after the hearing, but before the decision is issued. In such circumstances, material evidence regarding a worsening or an onset of a new impairment may become available that the claimant could not have been expected to identify or discuss during the hearing. Since the period being reviewed by an administrative law judge includes the period of time between the date of the hearing and the date that the administrative law judge issues a decision, we believe that material evidence regarding your condition during this period should be considered.

Therefore, if you obtain new evidence after your hearing that shows your impairment(s) or condition changed materially during the period after the hearing and before the issuance of the administrative law judge's decision, you must submit this evidence to us as soon as possible, but no later than 10 days after the date of you receive the administrative law judge's decision in your case.

If you have not yet received your administrative law judge decision, you should submit this evidence to the administrative law judge, who will review the evidence and, if it is material to your claim, consider it when deciding your claim.

If the administrative law judge has already issued your decision and your case has not been selected for review by the Decision Review Board, you must submit this evidence to the administrative law judge no later than 10 days after the date you receive notice of the decision and request that the administrative law judge reconsider his or her decision. Upon your timely request, the administrative law judge will review and consider the evidence as appropriate. The administrative law judge may reconsider the decision on your claim and revise it based on the new evidence if warranted or vacate your decision and order a new hearing if warranted. However, if you submit this evidence more than 10 days after the date you receive notice of the decision, the administrative law judge will not consider the new evidence.

If the administrative law judge has already issued your decision and your case has been selected for review by the Decision Review Board, you must submit this evidence to the Decision Review Board (not to the administrative law judge) within 10 days after the date you receive notice of the administrative law judge's decision. The Decision Review Board will review and consider the evidence as appropriate.

Decision Review Board

The question of whether or not to eliminate the Appeals Council generated a considerable number of comments from a wide variety of interested parties. Some interested parties argued that the Appeals Council should be retained because it identifies erroneous administrative law judge decisions and provides recourse in a significant number of instances. They argued that, as a result, the elimination of the Appeals Council would result in an unacceptable increase in the number of cases filed in Federal district court, particularly those problematic or erroneous cases that are currently identified and resolved by the Appeals Council. Interested parties also observed that elimination of the Appeals Council would effectively prevent any review of dismissals made by administrative law judges because claimants would have no right to file for Federal district court review.

On the other hand, many other interested parties expressed the belief that the Appeals Council should be eliminated, arguing that the Appeals Council does not effectively identify and address erroneous administrative law judge decisions. These and other interested parties further expressed the

view that the delays associated with Appeals Council review outweighed any benefits provided by this level of review. Others believed that the impact of our eliminating the Appeals Council would be ameliorated to a significant degree because the new approach already contemplated the ability of claimants to receive two separate levels of Federal administrative review after the initial State agency determination—the Federal reviewing official level and the administrative law judge level.

While we agree that the Appeals Council has identified erroneous administrative law judge decisions and provides recourse in some instances, we believe that the current Appeals Council review process adds substantial processing time to the disability adjudication process without intercepting large numbers of claims that do not withstand Federal district court review. The district courts are currently remanding more than 50 percent of the disability cases filed against us.

We believe that the important and critical functions pertaining to the review of disability claims currently performed by the Appeals Council can be performed more effectively by a smaller review body that will focus on promptly identifying decision making errors and identifying policies and procedures that will improve decision making at all levels of the disability determination process. We propose to establish a new Decision Review Board to perform these functions.

The Decision Review Board will be an administrative review body comprised of experienced adjudicators who can advance the objective of ensuring fair, consistent, and efficient decision making. The members of the Decision Review Board will be appointed by the Commissioner and will consist of administrative law judges and administrative appeals judges. Decision Review Board members will have staggered terms and serve on a rotational basis. The Decision Review Board will select and review both favorable and unfavorable administrative law judge decisions that are likely to be error-prone, and it will generally select and review an equal share of each type of case.

Under our proposal, you will no longer have the right to request administrative review of a disability decision issued by an administrative law judge. However, you will have the right to request review by the Decision Review Board of the dismissal of your request for hearing, an action that is not subject to Federal court review. In addition, you will continue to have the right to seek further administrative review of any administrative law judge decision pertaining to your nondisability case. These cases will continue to be reviewed by the Appeals Council while we implement our proposed rules. Once our proposed rules are fully implemented nationwide, this review function will be transferred to the Decision Review Board.

We anticipate that the Decision Review Board will review a wide range of decisions and identify decision-making errors, provide advice regarding the nature and magnitude of these errors, identify policies and procedures that could be used to address such errors, and develop information mechanisms aimed at improving decision making at all levels of the disability determination process. The Decision Review Board will have the authority to affirm, reverse, or remand an administrative law judge's decision. The wide range of decisions that the Decision Review Board will review include:

- Cases that are likely to be the subject of requests for voluntary remand or judicial remand;
- Allowance and denial cases where error is likely, including cases that involve the interpretation of new policy or procedural issuances; and
- A selection of decisions that are issued after remand by the Decision Review Board or a Federal district court.

We intend to screen every administrative law judge decision, using computer-based predictive screening tools and individual case record examination performed by skilled reviewers, to identify cases for Decision Review Board review. The Decision Review Board will select cases for review based, in part, on its identification of problematic policies or on its own experience with processing cases that have been identified as error-prone by our Office of the General Counsel or by the Federal courts.

The Decision Review Board will monitor administrative law judge and district court decisions in order to identify trends or developments relating to the quality and accuracy of administrative law judge decisions throughout the country. We will conduct an ongoing review of administrative law judge decisions that are either the subject of requests for voluntary remand or are remanded to us by the Federal district courts. The results of our review will help us to develop a profile of decisions that have a high likelihood of resulting in errors. The Decision Review Board will focus its review on these decisions. Cases will not be selected for review by the Decision Review Board based on the identity of the administrative law judge who issued the decision or on the particular outcome of the decision.

We propose that once the Decision Review Board has assumed jurisdiction of a case, it may, among other things:

- Affirm the administrative law judge disposition;
- Reverse the administrative law judge disposition and issue a new final decision;
- Modify the administrative law judge disposition and issue a new final decision; or
- When there is insufficient evidence to support a decision or where an improper dismissal has occurred, remand a case to an administrative law judge with instructions to take further action.

The Decision Review Board will have authority to take any of these actions consistent with the instructions of a Federal court when the court has remanded a case for further administrative proceedings.

If your case is selected for Decision Review Board review, we will notify you when you receive your administrative law judge decision that the Decision Review Board is reviewing your case and that the administrative law judge decision you received is not our final administrative decision. The Decision Review Board will review the administrative law judge decision and consider the record that was closed at the time that the administrative law judge issued the decision (subject to the exception described above when there is good cause for failure to submit evidence timely). We propose that the Decision Review Board must complete its review of your case within 90 days from the date that you receive the administrative law judge's decision. If the Decision Review Board issues a decision within the 90-day period, it becomes our final decision, and you will have the right to seek Federal district court review of that final decision. If the Decision Review Board does not issue a decision by the end of the 90-day period, the administrative law judge's decision will become our final decision in your case, and you will have the right to seek Federal district court review of that final decision.

If the administrative law judge's decision becomes the final Agency decision because the Decision Review Board did not act within 90 days, but the Decision Review Board subsequently determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision and revise it as appropriate. If you have already sought

judicial review of the final decision, the Decision Review Board will notify the Office of the General Counsel, which will take appropriate action with the Department of Justice in order to request that the court remand the case for the purpose of issuing the Decision Review Board's favorable decision.

The Decision Review Board will meet on a regular basis as a body to discuss decisional trends and procedural issues and to prepare advisory materials for appropriate Agency officials. It will be headed by a director who will also serve as a member of our Disability Program Policy Council, which we will create to assess and to make improvements in the overall disability determination process by assessing and improving our disability policy.

The Proposed Disability Determination Process

Thus, under these proposed rules, the adjudication of a disability claim will proceed in the following manner:

The State agency will issue an initial determination on your claim. If your claim meets certain criteria, it will be processed by the State agency as a Quick Disability Determination claim. If you are dissatisfied with the initial determination made by the State agency, you may request review by a reviewing official. If you are dissatisfied with the reviewing official's decision, you may request a hearing before an administrative law judge. If the administrative law judge issues our final decision and you are dissatisfied with the final decision, you may file a civil action in Federal district court.

However, if the administrative law judge reaches a decision in your case but your case has been selected for review by the Decision Review Board, the administrative law judge's decision will not be considered our final decision in your case. Instead, the Decision Review Board will have 90 days to review the ALJ's decision in your case. You may not file a civil action in Federal district court until either the Decision Review Board issues our final decision within 90 days of the date you receive the administrative law judge's decision, or the 90-day period lapses without the Decision Review Board taking action on your case. If the 90-day period lapses, the administrative law judge's decision will constitute our final decision in your case. As discussed above, if you have already sought judicial review of the final decision and the Decision Review Board decides it will issue a favorable decision, it will ensure that appropriate action is taken to remand the case for the purpose of issuing that decision.

You will have the right to request administrative review of an administrative law judge's dismissal of your request for hearing.

Unless specified, all other regulations relating to the disability determination process and the administrative review process remain unchanged.

When we make a determination or decision on your claim for benefits, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence review standard.

In addition to these proposed changes, we intend to take additional steps to improve decisional quality, promote consistency of decision making, and increase accountability for all decision makers. We intend to create standardized decision writing formats to provide a framework for the proper and consistent articulation of determinations and decisions by the adjudicators at the State agency, reviewing official, and administrative law judge levels. We will create standardized decision writing formats that are appropriate for each level of adjudication. We believe that these formats will help decision makers at every adjudicatory level explain to the claimant the basis of the determination or decision being made in each case, and will ensure that our determinations and decisions contain sufficient rationale for those cases that are subsequently reviewed at another administrative level or in the Federal courts. We also intend to establish procedures to enable decision makers at all levels in the process to receive constructive information regarding their decisions or determinations from subsequent administrative adjudicators or reviewers.

How the Proposed Changes Will Be Implemented

We intend to implement our proposed changes gradually, region by region. We expect to begin the implementation process in one of our smaller regions, expanding to additional regions as we gain experience. We believe that this will enable us to carefully monitor the implementation process and to quickly address any potential problems that may arise.

Thus, if our regulations for the new approach as proposed in the new part 405 are adopted as final regulations, they will apply only in a region where this new approach has been implemented and will apply only to claims that are filed in that region. If a claim is filed in a region where we have not yet implemented the new approach, we will use our current rules and regulations to adjudicate that claim.

We are considering alternative rollout procedures for the quick determination process. We therefore invite comments on whether, and under what circumstances, we should use such an alternative procedure, and if so, what such an alternative procedure might be.

We also intend to implement our new qualification standards for medical, psychological, and vocational experts as quickly as possible. We expect to publish expert qualification standards on or before issuing a final rule, but we will publish them no later than six months after the effective date of this final rule. Experts who are affiliated with the Federal Expert Unit and experts who are under contract with a State agency must meet these qualification standards on the effective date of these regulations or when we publish the qualifications, whichever is later. Experts who are employed by a State agency must meet them no later than one year after the effective date of these regulations or no later than one year after the date we publish the qualifications, whichever is later.

Our proposed regulations also provide that we will only reimburse State agencies for the costs associated with work performed on our behalf if the experts employed by, or under contract with, the State agencies meet our qualification standards. However, we intend to implement this reimbursement provision on a region by region basis as we implement our new approach. Therefore, we will only reimburse State agencies for costs associated with work performed by a State agency expert who meets our qualification standards if the work was performed in a region where we have implemented our new approach.

We are aware of the concerns of some of the interested parties about the possible effects of the elimination of the Appeals Council and the right to appeal disability decisions. Under our implementation plan, we propose to eliminate the right of claimants to appeal disability decisions to the Appeals Council only with respect to claims that have been adjudicated in those States where our proposed changes have been implemented. If your claim has not gone through the new process, you will retain the right to appeal according to our current rules. However, if your claim has gone through the new process, including review by a reviewing official, you will not be allowed to seek administrative review of the administrative law judge decision. We will closely monitor the effects that these changes are having as

we implement our new approach. If we determine that our proposed changes adversely affect the disability determination process or the Federal courts over time, we will amend our regulations as necessary.

Responsibilities of the Appeals Council will be shifted to the Decision Review Board on a gradual basis as we implement our new approach region by region so that we can closely monitor the effect that our proposed changes are having on the rate of new disability cases being filed in Federal court. As noted above, we expect to begin implementation in one of our smaller regions, which will allow the Decision Review Board to review a significant percentage of cases. In addition, we will select the region that has had the least number of court cases filed each year in the current process. This should allow us to monitor what effects the elimination of the Appeals Council, combined with reviews by the new Decision Review Board, has on the number of suits filed in the Federal courts in this region. We believe that the Decision Review Board's ability to accurately select for review those administrative law judge decisions most likely to be error-prone will improve as it gains greater experience. The Decision Review Board will monitor administrative law judge and district court decisions in order to identify trends or developments that we need to address. If we determine that our proposed changes are causing a significant increase in Federal disability case filings, we will make changes to the process as necessary.

Throughout the implementation process, we will meet regularly with organizations representing the interests of various perspectives in the disability process, including claimant representatives and advocates, State agency directors and employees, administrative law judges, and members of the judiciary. Through these discussions, we will continue, and further expand, the dialogue begun when the new approach was first introduced. The meetings will provide an opportunity to discuss and better understand the impact of these changes as they are rolled out.

Judicial Review

We propose that when a Federal court remands a disability case to us for further consideration, the Decision Review Board may make a decision based upon the evidence in the record, or it may remand the case to an administrative law judge. If the Decision Review Board remands a case to an administrative law judge, it will send the claimant a notice.

Ensuring Quality

To ensure improved quality and accountability throughout the disability determination process, we intend to create and operate a comprehensive and multidimensional approach to quality assurance that:

- Includes both in-line and end-of-line quality assurance programs at every step of the process;
- Includes all components contributing to the disability decision;
- Continues the mandated pre-effectuation review at the initial claims level and provides that Quick Disability Determination claims and reviewing official decisions will be subject to pre-effectuation review;
- Replaces the current Disability Quality Branch review of State agency claims with a new centrally-managed quality assurance system that will perform independent end-of-line reviews of targeted cases and a random sample of all cases, and provide for an in-line quality process performed by the State agencies;
- Is consistently applied across all States and regions by implementing uniform program and reporting standards for component-administered in-line and end-of-line quality assurance programs, and encourages local flexibility and initiative in supplementing standardized local quality assurance programs;
- Focuses on building quality into the determination process by emphasizing ongoing excellence and prospective improvement, and not just retroactive error detection and correction;
- Institutionalizes continuous improvement principles in order to develop ongoing process and policy enhancements;
- Reemphasizes management responsibilities and accountability for ongoing quality measurement, analysis, improvement, and mentoring;
- Focuses on the human capital element by contributing to the development of formal position competencies and training programs, including continuing education;
- Requires decision rationales to be articulated at all levels of adjudication;
- Requires that the various review levels of the disability determination process address determinations or decisions made at the prior level;
- Collects and aggregates claim and quality information for all levels and all components in a standardized fashion, thus providing comparable quality data for the life of a claim through all adjudicative levels;
- Uses quality information to provide ongoing information for both individual and process improvement purposes; and
- Considers service, timeliness, productivity, and cost as components of quality along with accuracy.

In addition, we envision that the Decision Review Board will be actively involved in the activities of our Disability Program Policy Council. In this capacity, the Decision Review Board will be able to raise issues and concerns that might warrant efforts to improve existing policy.

Adjudicator Training

We also intend to clarify our authority to require all individuals who are part of the adjudicatory process to participate in training programs that we establish. This includes DDS examiners and support staff, reviewing officials and support staff, administrative law judges and hearing office support staff, Decision Review Board members and support staff, and medical, psychological, vocational, and other consultants and experts used at every stage of the disability determination process.

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether to issue them as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

How Long Would These Proposed Rules Be Effective?

If we publish these proposed rules as final rules, they will remain in effect unless we revise and issue them again.

Explanation of Changes

We are creating a new part 405 to explain our new procedures for determining entitlement to benefits based on disability under title II of the Act, and eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. We propose that part 405 will consist of ten subparts.

General Description and Definitions

The rules in subpart A briefly explain the purpose of the proposed rules and provide a short description of our proposed new administrative review process. We make clear in this subpart that our administrative review process

will continue to be conducted in a non-adversarial manner, and that we will continue to consider any evidence presented to us during this process, subject to certain limitations on evidence that is provided after an administrative law judge has issued a decision in your case. We also provide a list of definitions that apply to all of part 405.

Federal Expert Unit

We intend to enhance our medical, psychological, and vocational expert resources by establishing a Federal Expert Unit to support our disability determination procedures at every step of the process. We explain in subpart A that the Federal Expert Unit will manage a national network of medical, psychological, and vocational experts who will assist State agencies, reviewing officials, and administrative law judges in making disability determinations and decisions. We also explain that medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, may affiliate with this national network only if they meet certain qualification standards.

Good Cause for Missing a Deadline

The rules in subpart A also explain how we will determine whether you have shown good cause for missing a deadline to request a hearing or request further administrative review. The proposed rules are similar to the current regulations in that they list the factors we consider when determining whether good cause exists and provide examples of circumstances where we might find that good cause exists. The proposed regulations also provide that the same standard must be used for all such good cause determinations.

Fair and Impartial Administrative Review

We are committed to ensuring the fairness of our adjudicative process. To that end, we explain in subpart A that adjudicators at every level of the administrative review process must consider the merits of your claim in a fair and impartial manner. We explain that an adjudicator who believes that he or she has any personal or financial interest in the matter pending for determination or decision is disqualified as an adjudicator and must withdraw from conducting any proceeding with respect to your disability claim. This provision applies to adjudicators at every level of the process, including State agency examiners, medical, psychological, and vocational experts, reviewing officials, administrative law judges, and officials at the Decision Review Board. Under our proposed rules, the adjudicator must believe that he or she has a personal or financial interest in the matter before he or she is disqualified and must withdraw from the matter. The adjudicator will not withdraw if he or she does not believe that the presence of a personal or financial interest is an issue in the adjudication of your case, even if you believe or assert that the adjudicator should withdraw.

Our current regulations explain procedures you must follow to request that an administrative law judge withdraw from adjudicating your claim. We are proposing to change our regulations so that it is clear that the duty to withdraw when necessary applies to all adjudicators, not just administrative law judges. We expect that this procedure will continue to ensure that our hearing process remains fair.

Discrimination Complaints

Our proposed rules at subpart A also explain that you may file a discrimination complaint against us if you believe that an adjudicator has improperly discriminated against you. Due to the very nature of the disability determination process, adjudicators must sometimes consider factors such as your age or your sex, or the nature of your impairment(s), when adjudicating claims for disability benefits. However, our proposed rules make clear that adjudicators must never give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of impairment(s). For example, it would be proper for an adjudicator to consider the sex of a claimant when adjudicating a claim based on allegations of certain gender-specific genitourinary or neoplastic impairments. However, it would normally be inappropriate for an adjudicator to establish that a claimant was precluded from certain types of work activity due to the claimant's particular sex rather than due to the claimant's particular functional capacity resulting from his or her impairment(s).

Our proposed rules explain that if you believe an adjudicator has improperly considered your race, color, national origin, age, sex, religion, or nature of impairment(s) and has discriminated against you as a result, you may file a discrimination complaint against us. The proposed rules further explain that this complaint must be filed within 60 days of the date upon which you became aware that you may have been discriminated against.

Quick Disability Determinations

The rules in subpart B explain our proposal to establish a Quick Disability Determination process that will provide favorable determinations of disability to disability applicants who are clearly disabled. These rules provide that potential Quick Disability Determination claims will be processed by Quick Disability Determination units created in the State agencies. The rules in subpart B provide that the State agencies must ensure that an appropriate medical or psychological expert verifies the particular diagnosis that is the basis of the claim in each case. The Quick Disability Determination units will not make unfavorable determinations when processing potential Quick Disability Determination claims. The proposed rules provide that if a favorable Quick Disability Determination cannot be made within 20 days after a claim is received by the State agency, the claim must be removed from the unit and processed by the State agency in the normal manner using our existing procedures. If your claim was originally identified as a potential Quick Disability Determination claim but was removed from the unit for normal State agency processing, your claim will be adjudicated based on the date that the claim was originally referred to the Quick Disability Determination unit.

Initial Determinations

The proposed rules in subpart B of part 405 explain how we will inform you that an initial determination has been made in your case. These proposed rules also explain that your initial determination will be binding unless you timely request that a reviewing official review your claim, or unless we revise your initial determination.

Reviewing Official

The rules in subpart C of part 405 explain that, under our new approach, you may request administrative review by a Federal reviewing official if you are dissatisfied with the State agency's initial determination in your case. The rules reflect our objective of providing well-trained, centrally-administered Federal reviewing officials who will be able to adjudicate claims accurately and consistently in a timely manner. The rules provide that you will not have a right to a hearing before the reviewing official, and that the reviewing official's decision will be made solely on the basis of a review of the record.

The rules explain that a reviewing official may obtain additional evidence necessary to adjudicate a claim in some

circumstances. The reviewing official may also remand a claim to the State agency when the State agency fails to carry out a duty that, if followed, would have resulted in a material change to the determination made at the initial level. The rules provide that in cases where the reviewing official disagrees with the State agency determination, the reviewing official must refer the case to a medical or psychological expert affiliated with the national network for evaluation of the evidence to determine the medical severity of your impairment(s). The rules also provide that if there is new and material evidence that the State agency did not consider, the reviewing official will make a decision in consultation with a qualified medical or psychological expert affiliated with the Federal Expert Unit.

The proposed rules also require the reviewing official to provide you with a written notice of his or her decision that explains in clear and understandable language the specific reasons for the decision. The reviewing official must explain why he or she agrees or disagrees with the rationale articulated in the State agency's initial determination. This explanation will be sent to the State agencies and used for quality management purposes.

The rules in subpart C of part 405 also explain that a reviewing official's decision will be binding on you unless you timely request a hearing before an administrative law judge, the reviewing official's decision is revised, or you go directly to Federal district court by properly using our expedited appeals process.

Administrative Law Judge Hearing Process

The rules in subpart D of part 405 explain how we will decide your disability claim when you request a hearing before an administrative law judge. The rules in this subpart are based on our current rules in subpart J of part 404 and subpart N of part 416. For the most part, we have retained in subpart D the same rules that we currently follow. As under the current process, when you request a hearing on your disability claim, a de novo hearing will be held by an administrative law judge. The administrative law judge's role in the hearing process under these proposed rules will remain the same as it is under the current process: the administrative law judge will examine the evidence and make a decision regarding your entitlement to or eligibility for benefits.

We propose that each administrative law judge assist our efforts to effectively manage the functions of the reviewing officials by explaining why he or she agrees or disagrees with the rationale articulated by the reviewing official that serves as the basis for the reviewing official's decision. Administrative law judges will provide this explanation in each of their decisions.

We do not intend that this new responsibility will constrain an administrative law judge's independent decision making authority in any manner. Each administrative law judge will continue to issue written decisions based on his or her independent evaluation and consideration of the evidence offered at the hearing or otherwise included in the record. We believe that the inclusion of an explanation for why the administrative law judge agrees or disagrees with the rationale provided by the reviewing official will greatly assist our ability to provide reviewing officials with information from the hearing level that will help ensure that reviewing official decisions are based upon a fully developed record, are carefully articulated, and are consistent with program rules. We believe that with this assistance from each administrative law judge, we can ensure that the reviewing officials are making the right decision early in the administrative review process. Accordingly, we also propose that a copy of the administrative law judge's decision be sent to the reviewing official at the same time that it is sent to the claimant. This new, systematic process will also create a method for transmitting management information that will enable us to assess problems in decision making and to improve the quality of decisions.

We also propose to make a number of other changes to our current rules. We expect that these changes will improve the hearings process by clarifying language in our current rules, by updating some of our rules to reflect changes in technology, and by making our hearing procedures more efficient. For example, we propose that the administrative law judge may decide, or you may request, that a prehearing conference be held to simplify or amend the issues to be considered by the administrative law judge, or to discuss matters that might expedite your hearing. We also propose that the administrative law judge may hold a post-hearing conference to facilitate the hearing decision.

We propose to require that you submit all evidence available to you when you request your hearing. This rule will require you to submit all available evidence that supports the allegations that form the basis of your claim, as well as all available evidence that might undermine or appear contrary to your allegations. We also propose that you must submit all additional evidence that becomes available after you have filed your request to the administrative law judge no later than 20 days before the hearing, or we will generally not consider such additional evidence.

The Decision Review Board

The rules we propose in subpart E of part 405 explain what the Decision Review Board is and how it will operate. Subject to certain limited exceptions, you will not have the right to request that the Decision Review Board review the action that the administrative law judge takes on your claim for disability benefits. Instead, we envision that the Decision Review Board will help us to promote the consistency and efficiency of the adjudicatory process by promptly identifying and reviewing, and possibly readjudicating, those administrative law judge decisions that are the most likely to be erroneous.

The proposed rules in subpart E explain how the Decision Review Board will review cases. The proposed rules also explain how we notify you that your case will be reviewed by the Decision Review Board, and what effect that review has on your right to seek judicial review of the administrative law judge's decision. We also propose procedures for cases that are before the Decision Review Board.

We propose to address the issue of timeliness of the Decision Review Board's review in two ways. First, the proposed rules in subpart E set out time frames under which the Decision Review Board must act when it reviews a claim. Under our proposed rules, we will consider the administrative law judge's decision to be our final decision, for which you may seek judicial review, if the Decision Review Board does not complete its review within 90 days of the date of the administrative law judge's decision. Second, these proposed rules contain specific provisions governing the record that the Decision Review Board will consider. The rules also contain a specific definition of what constitutes new and material evidence.

The proposed rules in subpart E also enhance our goal of improving the quality of our decision-making process. For example, the rules provide that the Decision Review Board will review the claim and act either by issuing a decision that affirms, reverses, or modifies the administrative law judge's decision, or by issuing an order that remands the case to the administrative

law judge for further proceedings. As is true for the other levels of the administrative review process, the Decision Review Board's action on cases that it reviews will provide valuable feedback to administrative law judges regarding the quality of their decisions.

The rules that we are proposing will also help us to improve the quality of our decision-making process by providing you with the opportunity to request that the Decision Review Board vacate the administrative law judge's dismissal of your request for a hearing. The dismissal of a request for a hearing is not a final decision for which judicial review is available under section 205(g) of the Act. Accordingly, in order to ensure that disability claims are not dismissed improperly, we have decided to provide you with the opportunity to ask the Decision Review Board to vacate the dismissal of your hearing request.

Judicial Review

As we noted earlier in the preamble, if these rules are issued as final rules, we will closely monitor the impact of these rules on the Federal courts. The rules in subpart F address three issues related to judicial review. First, we provide rules that govern how to request an extension of time in which to file a civil action. Second, we propose to provide procedures for cases that are remanded by a Federal court. Third, we propose to apply the same rules on acquiescence in circuit court case law that we currently apply under subpart I of part 404 and subpart N of part 416.

Reopening and Revising Determinations and Decisions

Our current rules allow us to reopen and revise a determination or decision that has become final under certain specified circumstances. In subpart G of the proposed rules, we propose changes that are intended to improve the timeliness of our administrative review process. We propose to remove the current reopening criteria that allows us to reopen a determination or decision within one year of the date of the notice of the initial determination ''for any reason.'' In order to foster the finality of our decision making process, we propose to require that a determination or decision may be reopened in limited situations as defined in part 405, subpart G. We also propose to delete new and material evidence as a basis for finding good cause to reopen. Consistent with this change, we also propose that we will not find good cause to reopen a determination or decision if the only reason for requesting reopening is the existence of new evidence that was not considered in making the determination or decision.

Under our proposed rules, for example, we would reopen your decision if you established within the requisite time limits that the evidence the administrative law judge considered when issuing your decision clearly showed on its face that an error was made. However, we would not reopen your decision if you presented new and material evidence after the issuance of your administrative law judge decision but had failed to earlier inform the administrative law judge during your hearing that you were attempting to obtain this evidence.

Expedited Appeals Process

The proposed rules at Subpart H describe our expedited appeals process, which is essentially unchanged from the current expedited appeals process found in Subpart J of part 404 and Subpart N of part 416. The proposed rules explain that you may use the expedited appeals process if you have no dispute with our findings of fact or our application and interpretation of the controlling law, but you believe that part of that law is unconstitutional. The proposed rules explain how you may seek our agreement to allow you to go directly to Federal district court so that the constitutional issue may be resolved.

State Agency Quick Disability Determination Units

The proposed rules in subpart I describe the procedure State agencies must follow in order to be authorized to process Quick Disability Determination claims. First, we outline new responsibilities for the State agencies and for us. Second, we propose rules to measure whether the State agencies are processing Quick Disability Determination claims as required. Third, we explain what action we will take if the State agencies do not meet our Quick Disability Determination processing standards.

Payment of Certain Travel Expenses

The proposed rules in subpart J explain that we use current regulations in 20 CFR Parts 404 and 416 for determining reimbursable expenses and for explaining how and where you may request reimbursement of certain travel expenses you incur when you file your disability claim.

Other Changes

We propose to make several conforming changes to subparts J and P of part 404 and subparts I and N of part 416, and to add subpart I of part 422 of this chapter.

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 is not 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?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and have determined that these proposed rules meet the criteria for an economically significant regulatory action under Executive Order 12866. The Office of the Chief Actuary estimates that these proposed rules, if finalized, will result in increased program outlays resulting in the following costs (in millions of dollars) over the next 10 years:

Fiscal year	Title II	Title XVI	Total
2006	$5	$1	$5
2007	40	7	46
2008	94	11	105
2009	209	43	253
2010	307	43	350
2011	277	39	316
2012	156	8	164

Fiscal year	Title II	Title XVI	Total
2013	31	2	32
2014	2	2	4
2015	−9	(1)	−9
Total:			
2006–2010	654	104	758
2006–2015	1,110	155	1,265

Note: The totals may not equal the sum of the rounded components.
[1] Decrease of less than $500,000.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect only individuals or States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required for these proposed rules.

Federalism Impact and Unfunded Mandates Impact

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local or tribal governments. These proposed rules do not affect the roles of the State, local or tribal governments. However, the proposed rules take administrative notice of existing statute governing the role and relationship of the State agencies and SSA with respect to disability determinations under the Act.

Paperwork Reduction Act

We are submitting an Information Collection Request to OMB for clearance. We have displayed a 1-hour placeholder burden for those sections covered by OMB-approved forms that the public already uses to report information. In addition, some sections show no annual reporting burden, because we are not required to seek OMB approval of these reporting requirements if they affect less than 10 respondents.

Finally, as stated in the preamble, we can only implement our proposed changes to the disability determination process in States that have fully implemented, and are successfully operating under the electronic disability process (eDib). Based on our current progress with eDib implementation, we expect to implement the changes in the disability determination process in two regions during the first 12 months after the final rule is published. The burden estimates reflect a gradual implementation by region, the number of claims and length of processing time we expect to occur at each level of appeal. Therefore, the annual burden estimates reflect the reporting burden associated with only those claims we expect to be processed using eDib and the new disability determination process.

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 and/or faxed to the Office of Management and Budget at the following number: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Part 404, Subpart P, Determining Disability and Blindness				
404.1512(c)				1
404.1513(c)				1
404.1519m	12	137	5	137
404.1520a(d)(2), 404.1520a(e)				1
404.1529(b)				1
Part 405, Subpart A, Introduction, General Description and Definitions				
405.1(a)(2)	See 405.201			
405.1(a)(3)	See 495.301			
405.1(b)	See 404.215 & 405.301			
405.20(a)	1,524	1	10	254
405.30	71	1	30	35.5
Part 405, Subpart B, Initial Determinations				
405.101(b)				1
Part 405, Subpart C, How to Request Review of an Initial Determination				
405.20	405.210(a)(b)(c)(d)			1
405.215, 405.220(b)				1
405.230(a)	See 450.305 & .310			

Section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Part 405, Subpart D, Administrative Law Judge Hearing				
405.301				1
405.305, 405.310				1
405.310(d)	206	1	10	34.3
405.316(b)				1
405.316(c)				1
405.317(a)	415	1	10	69.2
405.317(b)	22	1	30	11
405.330	2	1	20	.7
405.331				1
405.332	43	1	30	21.5
405.333				1
405.334	3,317	[1] 1	13,317	
405.340(b)				1
405.350(a)(b)	4,147	1	20	1,382.3
404.366	2	1	20	.7
405.370(b)				1
405.373(a)	151	1	30	75.5
405.373(b)				1
405.380(a)	219	1	10	36.5
405.381, 405.382	149	1	30	74.5
Part 405, Subpart E, Decision Review Board				
405.405	See 405.381 & .382			
405.425(b)	47	1	[1] 1	47
405.425(c)	See 405.381			
405.425(d)				1
405.430(b)	See 405.381			
Part 405, Subpart F, Judicial Review				
405.505	1	1	30	.5
Part 405, Subpart G, Reopening and Revising Determinations and Decisions				
405.601(b)	158	1	30	79
405.620(a), 405.625				1
Part 405, Subpart H, Expedited Appeals Process for Constitutional Issues				
405.705(b), 405.710, 405.715				
Part 405, Subpart I, Quick Disability Determination Unit and Other State Agency Responsibilities				
405.815	See 405.101(b)			
405.835				
Part 416, Subpart I, Determining Disability and Blindness				
416.912(c)				1
416.913(c)				1
416.919m	See 404.1519m			
416.920a(d)(2), 416.920a(e)(1)(2)				1
416.924(g)				1
416.929(b)				1
Part 422, Subpart B, General Procedures				
422.130(b)				1
422.140	See 405.20			

[1] Hour.

Total Number of Respondents: 10,486.

Total Estimated Annual Burden Hours: 5,600.2.

List of Organizations

The following is a list of organizations that have met with SSA regarding our New Approach to Improve the Disability Determination Process:

American Association on Mental Retardation

American Association of People with Disabilities
American Bar Association
AARP (American Association of Retired Persons)
American Council of the Blind
American Federation of Government Employees
American Federation of State, County, and Municipal Employees
American Psychological Association
ARC of the United States
Association of Administrative Law Judges (AALJ)
Association of OHA Analysts
Association of Persons in Supported Employment
Association of University Centers on Disability
Center for Budget and Policy Priorities
Congressional Staff—House Subcommittee on Ways & Means
Consortium for Citizens with Disabilities
Department of Justice
Family Policy Associates
Federal Bar Association
Government Accountability Office (GAO)
Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America (UAW)
Judicial Conference of the United States
National Association of Councils on Developmental Disabilities (NACDD)
National Association of Disability Examiners (NADE)
National Association of Disability Representatives (NADR)
National Assoc. of Protection and Advocacy Systems, Inc.
National Association of State Directors of Developmental Disabilities Services
National Council on Disabilities
National Council of Disability Determination Directors (NCDDD)
National Council of Social Security Management Associations (NCSSMA)
National Organization of Social Security Claimants' Representatives (NOSSCR)
National Treasurers Employee Union (NTEU)
NISH (National Industries for the Severely Handicapped)
Office of the General Counsel Employees
Office of Hearings and Appeals Employees
Office of Quality Assurance Employees
Office of Disability and Income Security Programs (ODISP) Employees
Office of Management and Budget
Office of Operations
Paralyzed Veterans of America
Public Employees Federation (New York)
Public Policy Collaboration
Service Employees International Union
Social Security Advisory Board
SSA's Ticket To Work and Work Incentives Advisory Panel

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

List of Subjects

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 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

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

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend part 404, add part 405, and amend parts 416 and 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 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, 425, and 902(a)(5)); 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 by removing ''and'' at the end of paragraph (u), by removing the ''.'' at the end of paragraph (v) and replacing it with '';'', and by adding paragraphs (w) and (x) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(w) Determining whether to select your claim for the quick disability determination process under § 405.101 of this chapter; and

(x) The removal of your claim from the quick disability determination process under § 405.101 of this chapter.

Subpart P—[Amended]

3. The authority citation for subpart P of part 404 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. Amend § 404.1502 by revising the definition of nonexamining source to read as follows:

§ 404.1502 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the reviewing official, administrative law judge and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 404.1527.

* * * * *

5. Amend § 404.1503 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§ 404.1503 Who makes disability and blindness determinations.

(a) * * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

6. Amend § 404.1512 by revising paragraph (b)(6), and the second sentence of paragraph (c) to read as follows:

§ 404.1512 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 404.1527(f)(2) and (f)(3).

(c) * * * You must provide evidence showing how your impairment(s) affect(s) your functioning during the time you say that you are disabled, and any other information that we need to decide your claim, including evidence that you consider to be unfavorable to your claim. * * *

* * * * *

7. Amend § 404.1513 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be ''statements about what you can still do'' made by nonexamining physicians and psychologists based on their review of the evidence in the case record.* * *

* * * * *

8. Amend § 404.1519k by revising paragraph (a) to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) Subject to the provisions of § 405.15 in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 404.1624 and 404.1626.

* * * * *

9. Amend § 404.1519m by revising the third sentence to read as follows:

§ 404.1519m Diagnostic tests or procedures.

* * * A State agency medical consultant, or a medical expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

10. Amend § 404.1519s by revising paragraph (c) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(c) Subject to the provisions of § 405.15 in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

11. Amend § 404.1520a by revising the third sentence of paragraph (d)(2), adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter. * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency

or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

12. Amend § 404.1526 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(c) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. * * *

13. Amend § 404.1527 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

* * * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

14. Amend § 404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

15. Amend § 404.1546 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

* * * * *

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, the reviewing official, the administrative law judge or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

16. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

17. Amend § 404.1601 by adding a new third sentence to the introductory text to read as follows:

§ 404.1601 Purpose and scope.

* * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

18. Amend § 404.1616 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§ 404.1616 Medical or psychological consultants.

* * * * *

(b) * * * In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

(e) * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

19. Amend § 404.1624 by revising the first sentence to read as follows:

§ 404.1624 Medical and other purchased services.

Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. * * *

20. A new part 405 is added to read as follows:

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

Subpart A—Introduction, General Description, and Definitions

Sec.

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383(b).

Subpart A—Introduction, General Description, and Definitions

§ 405.1 Introduction.

(a) *Explanation of the administrative review process.* This part explains our procedures for adjudicating disability claims under titles II and XVI of the Social Security Act. Generally, the administrative review process consists of several steps, which must be requested within certain time periods. (Some of these time frames are for purposes of managing the process, such as the 90-day time frame within which a hearing date should be scheduled; they do not confer on claimants any individual substantive or procedural rights that claimants can appeal.) The administrative review process steps are:

(1) *Initial determination.* We make an initial determination about your entitlement to benefits based on disability under title II of the Act or your eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. We also determine the period of disability.

(2) *Review of initial determination.* If you are dissatisfied with an initial determination, you may request review by a Federal reviewing official.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with a decision made by the reviewing official, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless we refer your claim to the Decision Review Board.

(4) *Decision Review Board.* When the Decision Review Board reviews your claim and issues a decision, that decision is our final decision.

(5) *Federal court review.* If you are dissatisfied with our final decision as described in paragraphs (a)(3) and (4) of this section, you may request judicial review by filing an action in the Federal district court in the district where you reside.

(b) *Nature of the administrative review process.* In making a determination or decision in your claim, we conduct the administrative review process in a non-adversarial manner. Subject to the provisions of §§ 405.331 and 405.430, at each step of the administrative review process, you may present, and we will consider, any information in support of your claim. We also will consider any relevant information that we have in our records. You may have someone represent you, including an attorney. When we make a determination or decision on your claim for benefits, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence review standard. When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language our specific reasons for allowing or denying your claim. If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(c) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

§ 405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

Administrative appeals judge means an official, other than an administrative law judge, appointed by the Commissioner to serve on the Decision Review Board.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Articulate means to explain in clear and understandable language the specific basis for the determination or decision, including an analysis of the relevant evidence in the record supporting the determination or decision.

Board means Decision Review Board.

Commissioner means the Commissioner of Social Security, or his or her designee.

Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

Day means calendar day, unless otherwise indicated.

Decision means the decision made by a Federal reviewing official, an administrative law judge, or the Decision Review Board.

Decision Review Board means the body comprised of administrative law judges and administrative appeals judges that reviews decisions and dismissal orders by administrative law judges.

Disability claim or *claim* means:

(1) A claim filed for benefits based on disability under title II of the Act,

(2) A claim for supplemental security income payments based on disability or blindness under title XVI of the Act, or

(3) A claim based on disability or blindness under both titles II and XVI of the Act.

Federal Expert Unit means the body composed of medical, psychological, and vocational experts, selected under criteria established by the Commissioner, that provides expertise to disability adjudicators at all levels of the administrative review process.

Initial determination means the determination by the State agency.

Material means that there would be a high likelihood that the outcome in your claim would change.

Medical expert means a State agency or Federal medical professional who has the qualifications required by the Commissioner. It also means an acceptable medical source under §§ 404.1513(a) or 416.913(a) of this chapter who is affiliated with the national network.

National network means those medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, who have the qualifications required by the Commissioner and who, under agreement with the Federal Expert Unit, provide advice within their areas of expertise to adjudicators at all levels of the administrative review process.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Psychological expert means a State agency or Federal psychological professional who has the qualifications required by the Commissioner. It also means an acceptable medical source under §§ 404.1513(a)(2) or 416.913(a)(2) of this chapter who is affiliated with the national network.

Quick disability determination means an initial determination on a claim where we have identified your diagnosis as one that reflects a high degree of probability that you will be found disabled.

Quick Disability Determination Unit means the component of the State agency that is authorized to make quick disability determinations.

Remand means to return a claim for further action by the component that made the determination or decision under review.

Reviewing official means a Federal official who performs the review of the initial determination.

State agency means the agency of a State that has been designated by the State to carry out the disability determination function.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.

Vocational expert means a State agency or Federal vocational specialist who has the qualifications required by the Commissioner. It also means a vocational specialist who is affiliated with the national network.

Waive means to give up a right knowingly and voluntarily.

We, us, or *our* refers to the Social Security Administration.

You or *your* refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

§ 405.10 Federal Expert Unit.

The Federal Expert Unit provides medical, psychological, and vocational expertise to State agencies, reviewing officials, administrative law judges, and the Decision Review Board. It oversees the national network of medical and vocational experts established under

§ 405.15. If a State agency refers a claim to the Federal Expert Unit, a medical or psychological expert affiliated with the national network evaluates the evidence to determine the medical severity of your impairment(s).

§ 405.15 National network of medical and vocational experts.

The national network of medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, provides expert advice to disability adjudicators. Experts affiliated with the national network must meet the qualifications prescribed by the Commissioner and may be used by the State agencies and other adjudicators at all levels of the administrative review process, in accordance with procedures established by the Commissioner. At hearings, medical, psychological, and vocational experts whom administrative law judges may call to provide impartial testimony on disability issues must be affiliated with the national network; experts whom you call, and that the administrative law judge approves, for hearing are not required to be so affiliated. We pay experts affiliated with the national network at rates established by the Commissioner for services provided to all adjudicators, including for services provided to State agencies.

§ 405.20 Good cause for missing deadlines.

(a) If you wish us to extend the deadline to request a review under § 405.210, a hearing under § 405.310, action by the Decision Review Board under § 405.382(b), or judicial review under §§ 405.501 and 405.505, you must establish that you had good cause for missing the deadline. To establish good cause, you must document that—

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that would prevent a reasonable person from filing a timely request, or

(3) Some other unusual and unavoidable circumstance beyond your control prevented you from filing a timely request.

(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:

(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;

(2) There was a death or serious illness in your immediate family;

(3) Important records were destroyed or damaged by fire or other accidental cause;

(4) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation you requested a review;

(5) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;

(6) You did not receive notice of the determination or decision, or

(7) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

§ 405.25 Disqualification of disability adjudicators.

Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

§ 405.30 Discrimination complaints.

At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 60 days of the date upon which you became aware that you may have been discriminated against.

Subpart B—Initial Determinations

§ 405.101 Quick disability determination process.

(a) If we identify your claim as one involving a high degree of probability that you are disabled, and we expect that your allegations will be easily and quickly verified, we will refer your claim to a Quick Disability Determination Unit.

(b) If we send your claim to a Quick Disability Determination Unit, within 20 days of the date your claim is received by the unit, that unit must:

(1) Have a medical or psychological expert verify your diagnosis, and

(2) Subject to the provisions of paragraph (c) of this section, make the quick disability determination as described in § 405.105.

(c) If the Quick Disability Determination Unit cannot make a determination that is favorable to you, or if it cannot process your claim within 20 days of receiving it, the State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both, and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§ 405.105 Making quick disability determinations.

(a) Subject to the provisions of § 405.101 and paragraph (b) of this section, when making a quick disability determination, the State agency will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

(b) Quick disability determinations in the State agency will be made by the Quick Disability Determination Unit only after a medical or psychological expert has verified your diagnosis.

§ 405.110 Disability determinations.

If we do not refer your claim for a quick disability determination, the State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both.

§ 405.115 Notice of the initial determination.

We will mail a written notice of the initial determination to you at your last known address. The written notice will articulate, in clear and understandable language, the specific reasons for and the effect of the initial determination. We also will inform you of the right to review by a reviewing official.

§ 405.120 Effect of an initial determination.

An initial determination is binding unless—

(a) You request review by a reviewing official within the time period stated in § 405.210, or

(b) We revise the initial determination under subpart G of this part.

Subpart C—Review of Initial Determinations by a Reviewing Official

§ 405.201 Reviewing an initial determination—general.

If you are dissatisfied with the initial determination on your disability claim, you may request review by a reviewing official.

§ 405.210 How to request review of an initial determination.

(a) *Written request.* You must request review by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act, the name and social security number of the wage earner under whose account you are filing if different from yours,

(3) The specific reasons you disagree with the initial determination on your disability claim,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* We will review an initial determination if you request review in writing no later than 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) *Place for filing request.* You should submit a written request for review at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want us to review the initial determination on your disability claim, but you do not request review timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed in time. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we will use the standards explained in § 405.20.

§ 405.215 Procedures before a reviewing official.

After you request review, the reviewing official will consider the evidence used in making the initial determination, any additional evidence that you submit along with your request for review, and any other evidence that the reviewing official obtains. If additional evidence is necessary, the reviewing official may obtain such evidence from other sources, or he or she may retain jurisdiction and send the claim to the State agency for it to obtain the additional evidence. The reviewing official also may remand a claim back to the State agency for it to readjudicate the claim.

§ 405.220 Decision by the reviewing official.

(a) The reviewing official will make a decision based on all of the relevant evidence. The written decision will articulate, in clear and understandable language, the specific reasons for the decision, including an explanation as to why the reviewing official agrees or disagrees with the rationale articulated in the initial determination.

(b) If the reviewing official disagrees with the initial determination, the reviewing official may issue a decision only after a medical or psychological expert affiliated with the national network has evaluated the evidence to determine the medical severity of your impairment(s). If you submit new and material medical evidence for consideration by the reviewing official, the reviewing official will make a decision in consultation with a medical or psychological expert affiliated with the national network.

(c) The reviewing official may remand your claim to the State agency to revise the initial determination if the reviewing official determines that the State agency did not make a material finding that might have changed the outcome of the determination made at the initial level.

§ 405.225 Notice of the reviewing official's decision.

We will mail a written notice of the reviewing official's decision to you at your last known address. We will also inform you of your right to a hearing before an administrative law judge.

§ 405.230 Effect of the reviewing official's decision.

The reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge within 60 days of the date you receive notice of the reviewing official's decision and a decision is made by the administrative law judge,

(b) The expedited appeals process is used, or

(c) We revise the reviewing official's decision under subpart G of this part.

Subpart D—Administrative Law Judge Hearing

§ 405.301 Hearing before an administrative law judge—general.

This subpart explains what to do if you are dissatisfied with a decision (including a revised decision) by a reviewing official. In it, we describe how you may ask for a hearing before an administrative law judge. The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge. You may appear at the hearing, submit new evidence, examine the evidence used in making the reviewing official's decision, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence timely submitted, and any evidence that the administrative law judge obtains.

§ 405.302 Authority of administrative law judges.

The administrative law judge derives his or her authority from the Commissioner and has the authority to find facts and to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

§ 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if a reviewing official has made a decision, including a revised decision, on your disability claim.

§ 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You must include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act, the name and social security number of the wage earner under whose account you are filing if different from yours,

(3) The specific reasons you disagree with the decision made by the reviewing official,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices. If you have a disability claim under title II of the Act,

you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want a hearing before an administrative law judge, but you do not request it timely, you may ask us for more time to request review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed in time. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 405.20.

(e) *Waiver of the right to appear.* After you submit your request for a hearing, you may ask the administrative law judge to decide your claim without a hearing, as described in § 405.340(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary to decide your claim. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

§ 405.315 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. Within 90 days of the date we receive the hearing request, the administrative law judge will set the time and place for the hearing. The administrative law judge will notify you of the hearing date at least 45 days before the hearing, unless you agree to a shorter notice period. The administrative law judge may change the time and place of the hearing, if it is necessary. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(c) *Determination regarding in-person or video teleconference appearance of witnesses at the hearing.* In setting the time and place of the hearing, the administrative law judge will determine whether you or any other person will appear at the hearing in person or by video teleconferencing. Video teleconferencing will be used when it is available and when it would be more efficient than conducting an examination of a witness in person. Section 405.350 explains how you and witnesses appear and present evidence at hearings.

§ 405.316 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service. We will mail or serve the notice at least 45 days before the hearing.

(b) *Notice information.* The notice of hearing will tell you:

(1) The specific issues to be decided,

(2) That you may designate a person to represent you during the proceedings,

(3) How to request that we change the time or place of your hearing,

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good cause, and

(5) Whether your or a witness's appearance will be by video teleconferencing.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form to let us know that you received the notice. If you or your representative do(es) not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you tell us that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

§ 405.317 Objections.

(a) *Time and place.* (1) If you object to the time or place of your hearing, you must notify the administrative law judge in writing within 10 days of the date you receive the notice of hearing. You must state the reason(s) for your objection and propose a time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether we previously granted to you any changes in the time or place of your hearing.

(3) If you object to appearing by videoconferencing, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge.

(b) *Issues.* If you object to the issues to be decided at the hearing, you must notify the administrative law judge in writing within 10 days of the date you receive the notice of hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

§ 405.320 Administrative law judge hearing procedures—general.

A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. Proceedings will be conducted in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into the issues, will question you and the other witnesses, and will accept any evidence that is material to the issues and that is submitted in accordance with § 405.331. The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the administrative law judge mails a notice of the decision, he or she may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described below. If an administrative law judge requires medical or vocational testimony in your claim, the Federal Expert Unit will provide an appropriate expert who has not had any prior involvement in your claim.

§ 405.325 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised by your claim regardless of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it.

(c) *Collateral estoppel*—issues previously decided. In one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act, we already may have decided a fact that is an issue before the administrative law judge. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in

the previous determination or decision, unless he or she reopens the previous determination or decision under subpart G of this part.

§ 405.330 Prehearing conferences.

(a) (1) The administrative law judge, on his or her own or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would expedite the hearing or the decision on your claim. A prehearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(b) The administrative law judge may have a record of the prehearing conference made.

(c) We will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them.

(d) If neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

§ 405.331 Submitting evidence to an administrative law judge.

You must submit with your request for hearing any evidence that you have available to you. You must submit all evidence that you wish to have considered at the hearing no later than 20 days before the date of the scheduled hearing, unless you show that you have good cause under § 405.20(a) for submitting the evidence after this 20-day period, or you show that the late submitted evidence relates to a material change in your condition between the date set for submitting all evidence and the date of the hearing. Your failure to comply with this requirement may result in the evidence not being considered by the administrative law judge.

§ 405.332 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and for the production of any documents that are material to an issue at the hearing.

(b) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 20 days before the hearing date. The written request must:

(1) Give the names of the witnesses or documents to be produced;

(2) Describe the address or location of the witnesses or documents with sufficient detail to find them;

(3) State the important facts that the witness or document is expected to show; and

(4) Indicate why these facts could not be shown without that witness or document.

(c) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(d) Within 10 days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

§ 405.333 Submitting documents other than evidence.

All documents should clearly designate the name of the claimant and the last four digits of the claimant's social security number. All documents must be delivered or mailed to the administrative law judge within the time frames that he or she prescribes. Each document must be clear and legible to the fullest extent practicable. Documents must use type face no smaller than 12 point font.

§ 405.334 Prehearing statements.

(a) At any time before the hearing begins, you may submit, or the administrative law judge may order you to submit, a prehearing statement as to why you are disabled.

(b) A prehearing statement, unless otherwise ordered by the administrative law judge, must discuss briefly the following matters:

(1) Issues involved in the proceeding,

(2) Facts,

(3) Witnesses,

(4) The evidentiary and legal basis upon which your disability claim can be approved, and

(5) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

§ 405.340 Deciding a claim without a hearing before an administrative law judge.

(a) *Decision wholly favorable.* If the evidence in the record supports a decision wholly in your favor, the administrative law judge may issue a decision without holding a hearing.

(b) *You do not wish to appear.* The administrative law judge may decide a claim on the record and not conduct a hearing if—

(1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the material evidence, which, except for the transcript of the hearing, will contain the material described in § 405.360. The decision of the administrative law judge must be based on this record.

§ 405.350 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the conditions in § 405.315(c) exist, by video teleconferencing, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* Subject to § 405.331, the administrative law judge may receive any evidence at the hearing that he or she believes is relevant to your claim.

(c) *Witnesses at a hearing.* Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions material to the issues.

§ 405.351 Closing statements.

You or your representative may present a closing statement to the administrative law judge. The administrative law judge may limit the time you may have to make a closing statement. The administrative law judge may also allow you to submit a brief within a time frame that he or she establishes.

§ 405.360 Official record.

All hearings shall be recorded. All evidence upon which the administrative law judge relies for decision must be

contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, and other documents that were used in making the decision under review and any additional evidence or written statements that you submit. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all testimony offered at the hearing; it also will include any prior initial determinations or decisions on your claim. The official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

§ 405.365 Consolidated hearing before an administrative law judge.

(a) *General.* (1) We may hold a consolidated hearing if—

(i) You have requested a hearing to decide your disability claim, and

(ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another claim you have pending before us.

(2) If the administrative law judge consolidates the claims, he or she decides both claims, even if we have not yet made an initial determination or a reviewing official decision on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each claim adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each claim.

§ 405.366 Posthearing conferences.

(a) The administrative law judge may decide on his or her own, or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient. We will give you reasonable notice of the time, place, and manner of the conference. A record of the conference will be made and placed in the hearing record.

(b) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

§ 405.370 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the relevant evidence. The written decision will articulate, in clear and understandable language, the specific reasons for the decision, including an explanation as to why the administrative law judge agrees or disagrees with the rationale articulated in the reviewing official's decision.

(b) During the hearing, in certain categories of claims that we identify in advance, the administrative law judge may orally articulate and enter into the record a wholly favorable decision. Within 5 days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that explains why the administrative law judge agrees or disagrees with the rationale articulated in the reviewing official's decision and that incorporates such oral decision by reference. The administrative law judge will also include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a transcription of the oral decision.

§ 405.371 Notice of the decision of an administrative law judge.

We will send a notice and the administrative law judge's decision to you at your last known address. The notice accompanying the decision will inform you whether or not the decision is our final decision. If it is our final decision, the notice will so state. If it is not our final decision, the notice will explain that the Decision Review Board has taken review of your claim.

§ 405.372 Finality of an administrative law judge's decision.

The decision of the administrative law judge becomes our final decision and is binding on you unless—

(a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under § 405.373.

§ 405.373 Requesting consideration of new and material evidence.

(a) If the administrative law judge's decision is our final decision, he or she may consider new evidence submitted after the issuance of his or her decision if we have not referred your claim to the Decision Review Board. To obtain such consideration, you must request consideration by the administrative law judge within 10 days of the date you receive notice of the decision, and you must show that either:

(1) There was an unforeseen and material change in your condition that occurred after the hearing and before the date of the administrative law judge's decision, or

(2)(i) At the hearing, the administrative law judge agreed to allow you to submit the evidence within a certain time period after the hearing, and

(ii) You had good cause within the meaning of § 405.20(a)(3) for missing the administrative law judge's deadline for submitting the evidence.

(b) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (a) of this section.

§ 405.380 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing.

(b)(1) When neither you nor the person you designate to act as your representative appears at the hearing or at the pre- or post-hearing conferences, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear, or

(2) When neither you nor the person you designate to act as your representative appears at the hearing or at the pre- or post-hearing conferences, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph (b), we will consider the factors described in § 405.20(a).

(c) When we have made a previous determination or decision on your disability claim on the same facts and

on the same issue or issues, and this previous determination or decision has become final,

(d) When you have no right to a hearing under § 405.305,

(e) When you did not request a hearing in time and we have not extended the time for requesting a hearing, or

(4) When you die and your estate has not pursued your claim.

§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the administrative law judge to vacate the dismissal (see § 405.382). The notice will also tell you that you may ask the Decision Review Board to review the dismissal if the administrative law judge does not vacate it.

§ 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.

(a) If you ask in writing within 10 days after the date you receive the notice of dismissal, an administrative law judge may vacate a dismissal of a hearing request. The administrative law judge will vacate the dismissal if he or she finds that it was erroneous. We will notify you of whether the administrative law judge granted or denied your request.

(b) If you are dissatisfied with the administrative law judge's action on your request to vacate the dismissal, you may request that the Decision Review Board vacate it. The Decision Review Board will not consider your request to vacate until the administrative law judge has ruled on your request. Your request to the Decision Review Board must be in writing and must be filed within 60 days after the date you receive the notice of the administrative law judge's action under paragraph (a) of this section.

§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The dismissal of a request for a hearing is binding and not subject to further review unless it is vacated by an administrative law judge or the Decision Review Board.

Subpart E—Decision Review Board

§ 405.401 Procedures before the Decision Review Board-general.

This subpart describes the Decision Review Board and explains the procedures that we use when we refer certain decisions made by administrative law judges to the Board. It explains which claims the Board will review and the effects of that review on your claim. This subpart also describes how the Board may review the administrative law judge's dismissal of your hearing request and sets out the procedures that we use when you request that the Board vacate the administrative law judge's dismissal order.

§ 405.405 Decision Review Board.

(a) The Board is comprised of administrative law judges and administrative appeals judges and is responsible for evaluating and reviewing certain decisions made by administrative law judges under this part before the decisions are effectuated.

(b) As described in § 405.410, the Board will review administrative law judge decisions. You may not appeal an administrative law judge's decision to the Board. The Board may affirm, modify, or reverse the administrative law judge's decision. It also may remand your claim to the administrative law judge for further action and decision.

(c) The Board is also the final step in the administrative review process if the administrative law judge dismissed your request for a hearing under § 405.380. As explained in § 405.382, you must ask the administrative law judge to vacate his or her dismissal order before you may ask the Board to vacate the order.

(d) The Board also may review your claim after the administrative law judge's decision has been effectuated to study our disability determination process. If the Board reviews your claim under this paragraph, it will not change the administrative law judge's decision in your claim, unless the Board determines that the rules in subpart G of this part apply. If the Board determines that subpart G applies, it may reopen and revise the administrative law judge's decision.

(e) The Board also may perform other studies of the disability determination process, and it may make recommendations to the Commissioner regarding ways to improve the process.

§ 405.410 Selecting claims for Board review.

(a) The Board may review your claim if the administrative law judge made a decision under §§ 405.340 or 405.370, regardless of whether the administrative law judge's decision was unfavorable, partially favorable, or wholly favorable to you.

(b)(1) The Board may use random sampling, the use of specific claim characteristics, a combination of these two methods, or other methods to select claims for review. For example, it may review claims that involve problematic issues or fact patterns that increase the likelihood of error or claims that involve the application of new policies, rules, or procedures. The Board will review both allowances and denials of benefits and will not review claims based on the identity of the administrative law judge who decided the claim.

(2) If your claim is selected for review under paragraph (b)(1) of this section, the Board will notify you of that selection and include with the notice, the administrative law judge's decision.

(c)(1) We also will refer your claim to the Board, for action under subpart G of this part without regard to the time limits therein, if, in the view of our effectuating component, the administrative law judge's decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim, the decision is clearly inconsistent with the Act or our regulations, or the decision is unclear regarding a matter that affects the outcome of the claim.

(2) Claims selected under paragraph (c)(1) of this section will be referred to the Board no later than 60 days from the date of the administrative law judge's decision.

§ 405.415 Notification by the Decision Review Board.

When the Board reviews your claim, we will notify you. The notice will explain that the Board will review the decision and will complete its action on your claim within 90 days of the date you receive notice. The notice also will explain that if the Board does not complete its action on your claim within the 90 days, the administrative law judge's decision will become our final decision.

§ 405.420 Effect of Board review on the right to seek judicial review.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, if the Board reviews your case, the administrative law judge's decision will not be our final decision.

(2) If the Board does not complete its review within 90 days of the date you receive notice that the Board will review your claim, the administrative law judge's decision will become our final decision. If you are dissatisfied with this final decision, you may seek judicial review of the decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period. The Board will take no further action with respect to your claim, unless it determines that it can make a decision

that is fully favorable to you under the provisions of paragraph (a)(3) of this section.

(3) If the administrative law judge's decision becomes our final decision under the provisions of paragraph (a)(2) of this section, but the Board determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision in accordance with subpart G of this part without regard to the time limits therein, and revise it as appropriate. If you have already sought judicial review of the final decision under section 205(g) of the Act, the Board will notify the Office of the General Counsel, which will then take appropriate action to request that the court remand the claim for the purpose of issuing the Board's decision.

(b)(1) When the Board reviews your claim, it will either make our final decision or remand the claim to an administrative law judge for further proceedings consistent with the Board's remand order.

(2) If the Board makes our final decision in your claim, it will send you notice of the decision, as explained in § 405.445. If you are dissatisfied with the final decision, you may seek judicial review of the decision under section 205(g) of the Act.

(3) If the Board remands your claim to an administrative law judge, the Board's remand order is not our final decision and you may not seek judicial review of the remand order under section 205(g) of the Act. The administrative law judge's decision after remand will become our final decision, unless the Board reviews the decision under § 405.410.

(c) The Board's action under § 405.382 on your request to vacate the administrative law judge's dismissal of your request for review is not subject to further review.

§ 405.425 Procedures before the Decision Review Board.

(a) The Board may limit the issues that it considers. If the Board limits the issues that it considers, we will notify you of the issues that the Board will consider.

(b)(1) The Board may ask you to submit a written statement, or you may ask, within 10 days of the date you receive notice of the Board's review, the Board's permission to submit a written statement. The written statement may not be longer than 3 pages, and the typeface must be no smaller than 12 point font. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision, citing to specific facts in the record and relevant law.

(2) The Board will not consider any written statements that you submit, unless the Board asked or allowed you to submit a statement under paragraph (b)(1) of this section. If you file a written statement in a claim and the Board has not asked or allowed you to submit one, the Board will not consider the written statement and will return it to you without making it a part of the record.

(c)(1) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, you may submit a written statement with the Board at the time that you ask the Board to vacate the dismissal order. The written statement may not be longer than 3 pages, and the typeface must be no smaller than 12 point font. The written statement should briefly explain why the request for a hearing should not have been dismissed. The written statement should cite to specific facts in the record and relevant law.

(2) If you file a written statement with the Board after you request it to vacate the dismissal, the Board will not consider your written statement and will return it to you without making it part of the record.

(d) In conducting its review of your claim, the Board may obtain advice from a medical, psychological, or vocational expert affiliated with the national network. If the Board obtains such advice, we will provide you with a copy of it and place the advice into the record.

§ 405.430 Record before the Decision Review Board.

(a) Subject to the provisions of §§ 405.373(b) and 405.425(d), in claims reviewed by the Board, the record is closed as of the date of the administrative law judge's decision. That means that the Board will base its action on your claim on the same evidence that was before the administrative law judge. When it reviews a claim, the Board will consider only that evidence that was in the record before the administrative law judge.

(b) When you request the Board to review the administrative law judge's dismissal of your claim, you may submit additional evidence, but the Board will accept only evidence that is relevant to the dismissal issue. All other evidence will be returned to you.

§ 405.440 Actions that the Decision Review Board may take.

The Board may review the administrative law judge's findings of fact and application of the law. It will apply the substantial evidence standard in reviewing the findings of fact, but review de novo the application of the law. The Board will take one of the following actions:

(a) Where there is an error of law, issue its own decision which affirms, reverses, or modifies the administrative law judge's decision;

(b) Where the factual findings are unsupported by substantial evidence, remand your claim to the administrative law judge for further proceedings consistent with the Board's order. If the Board remands your claim to the administrative law judge for further proceedings, the administrative law judge must take any action that is specified by the Board in its remand order and may take any additional action that is not inconsistent with the Board's remand order;

(c) Vacate the administrative law judge's dismissal order. If the Board issues an order vacating the administrative law judge's dismissal order, it will remand the claim to the administrative law judge for further proceedings consistent with the Board's order, or

(d) Decline to vacate the dismissal order.

§ 405.445 Notification of the Decision Review Board's action.

We will send notice of the Board's action to you at your last known address. The notice will articulate, in clear and understandable language, the reasons for the Board's action. If the Board issues a decision, it will articulate its rationale for its decision and, the notice will also explain how to seek judicial review. If the Board issues a remand order, the notice will explain that the remand order is not our final decision.

§ 405.450 Effect of the Decision Review Board's action.

(a) The Board's decision is binding unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(b) The administrative law judge's decision is binding if the Board does not complete its action within 90 days of the date your receive notice that the Board will review your claim, unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(c) The Board's action to remand your claim to an administrative law judge is binding and not subject to judicial review.

(d) The Board's action on a request to vacate an administrative law judge's dismissal order is binding and not subject to further review.

Subpart F—Judicial Review

§ 405.501 Judicial review.

You may file an action in a Federal district court within 60 days of the date our decision becomes final and judicially reviewable.

§ 405.505 Extension of time to file a civil action.

If you have received our final decision, you may request that we extend the time for seeking judicial review in a Federal district court. Your request must be in writing and explain why the action was not filed, or cannot be filed, on time. The request must be filed with the Board. If you show that you had good cause for missing the deadline, we will extend the time period. We will use the standards in § 405.20 to determine if you have good cause for an extension of time.

§ 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part to us for further consideration, the Board may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Board remands a claim to an administrative law judge, it will send you a notice.

§ 405.515 Application of circuit court law.

We will follow the procedures in §§ 404.985 and 416.1485 of this chapter for claims decided under this part.

Subpart G—Reopening and Revising Determinations and Decisions

§ 405.601 Reopening and revising determinations and decisions.

(a) *General.* If you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review, and that determination or decision becomes final. However, we may reopen and revise a determination or a decision made in your claim which is otherwise final and binding.

(b) *Procedure for reopening and revision.* We may, or you make ask us to, reopen a final determination or decision on your claim. If we reopen a determination or decision, we may revise it.

§ 405.605 Conditions for reopening.

We may reopen a determination, revised determination, decision, or revised decision:

(a) Within 6 months of our final action on your claim if we find:

(1) A clerical error in the computation or recomputation of benefits was made, or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an error was made.

(b) At any time if—

(1) It was obtained by fraud or similar fault (see § 416.1488(c) of this chapter for factors which we take into account in determining fraud or similar fault),

(2) Another person files a claim on the same earnings record and allowance of the claim adversely affects your claim,

(3) A person previously determined to be dead, and on whose earnings record your entitlement is based, is later found to be alive,

(4) It is wholly or partially unfavorable to you, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the determination or decision was made,

(5) It finds that you are entitled to monthly benefits based on the earnings of a deceased person, and it is later established that:

(i) You were convicted of a felony or an act in the nature of a felony for intentionally causing that person's death, or

(ii) If you were subject to the juvenile justice system, you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony, or

(6) It is incorrect because—

(i) You were convicted of a crime that affected your right to receive benefits or your entitlement to a period of disability, or

(ii) Your conviction of a crime that affected your right to receive benefits or your entitlement to a period of disability is overturned.

(c) We will not find good cause to reopen the determination or decision if the only reason for requesting the reopening is:

(1) A change of legal interpretation or administrative ruling upon which the determination or decision was made, or

(2) The existence of new evidence that was not considered in making the determination or decision.

§ 405.610 Late completion of timely investigation.

We may reopen and revise a determination or decision after the applicable time period in § 405.605(a) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either on our own or at your request. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if we should revise it.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. ''Diligently pursued'' means that in light of the facts and circumstances of a particular claim, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if we conclude the investigation and if necessary, revise the determination or decision within 6 months from the date we began the investigation.

(b) If we have not diligently pursued the investigation to its conclusion, we will revise the determination or decision if a revision is applicable and if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

§ 405.615 Notice of revised determination or decision.

(a) When we revise a determination or decision, we will mail notice of the revision to you at your last known address. The notice will state the basis for the revision and the effect of the revision. The notice will also inform you of your right to further review.

(b) If an administrative law judge or the Decision Review Board proposes to revise a decision, and the revision would be based on evidence not included in the record on which the prior decision was based, you will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken.

(c) If an administrative law judge or the Decision Review Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you will be notified, in writing, of the proposed action.

§ 405.620 Effect of revised determination or decision.

A revised determination or decision is binding unless—

(a) You file a written request for review by a reviewing official or a hearing before an administrative law judge, as appropriate,

(b) The Decision Review Board reviews the revised decision, or

(c) The revised determination or decision is further revised.

§ 405.625 Time and place to request a hearing on a revised determination or decision.

You may request, as appropriate, further review or a hearing on the revision by filing a request in writing at one of our offices within 60 days after the date you receive notice of the revision. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board. Further review or a hearing will be held on the revision according to the rules of this subpart.

§ 405.630 Finality of findings when later claim is filed on same earnings record.

If two claims for benefits filed under title II of the Social Security Act are filed on the same earnings records, findings of fact made in a determination on the first claim may be revised in determining or deciding the second claim, even though the time limit for revising the findings made in the first claim has passed.

Subpart H—Expedited Appeals Process for Constitutional Issues

§ 405.701 Expedited appeals process—general.

By using the expedited appeals process you may go directly to a Federal district court without first completing the administrative review process that is generally required before the court will hear your claim.

§ 405.705 When the expedited appeals process may be used.

If you have filed a disability claim, you may use the expedited appeals process if all of the following requirements are met:

(a) You have received an initial determination and a decision by a reviewing official, but an administrative law judge has not made a decision;

(b) You have submitted a written request for the expedited appeals process, and

(c) You have our written agreement to use the expedited appeals process as required in § 405.715.

§ 405.710 How to request an expedited appeal.

(a) *Time limit for filing request.* If you wish to use the expedited appeals process, you must request it—

(1) No later than 60 days after the date you receive notice of the reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section), or

(2) At any time after you have filed a timely request for a hearing but before you receive notice of the administrative law judge's decision.

(b) *Place for filing request.* You should file a written request for an expedited appeal at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service in the railroad industry, an office of the Railroad Retirement Board.

(c) *Extension of time to request expedited appeals process.* If you want to use the expedited appeals process but do not request it in time, you may ask for more time to submit your request. Your request for an extension of time must be in writing and must give the reasons why the request for the expedited appeals process was not filed in time. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 405.20.

§ 405.715 Agreement in expedited appeals process.

If you meet all the requirements necessary for using the expedited appeals process, our authorized representative shall prepare an agreement. The agreement must be signed by you and by our authorized representative. The agreement must provide that—

(a) The facts in your claim are not in dispute;

(b) The sole issue in dispute is whether a provision of the Act that applies to your claim is unconstitutional;

(c) Except for your belief that a provision of the Act is unconstitutional, you agree with our interpretation of the law;

(d) If the provision of the Act that you believe is unconstitutional were not applied to your claim, your claim would be allowed, and

(e) Our decision is final for the purpose of seeking judicial review.

§ 405.720 Notice of agreement to expedite your appeal.

If we agree that you can use the expedited appeals process, a signed copy of the agreement will be mailed to you and will constitute notice. If you do not meet all of the requirements necessary to use the expedited appeals process, we will advise you that your request to use this process is denied and that your request will be considered as a request for a hearing, if you have not already requested a hearing.

§ 405.725 Effect of expedited appeals process agreement.

After an expedited appeals process agreement is signed, you will not need to complete the remaining steps of the administrative review process. Instead, you may file an action in the Federal district court in the district where you reside. You must file within 60 days after the date you receive notice that the agreement has been signed by our authorized representative.

Subpart I—Quick Disability Determination Unit and Other State Agency Responsibilities

§ 405.801 Purpose and scope.

This subpart describes the procedures the State agency must follow in order to make quick disability determinations. It outlines our responsibilities and those of the State agency and describes the processing standard the State agency's Quick Disability Determination Unit must meet. This subpart describes what action we will take if the State agency does not meet the quick disability determination processing standard. It supplements, and does not replace, the standards of Subpart Q of part 404 or Subpart J of part 416 of this chapter.

§ 405.805 Our and the State agency's basic responsibilities.

(a) *General.* We will work with the State to provide and maintain an effective system for processing quick disability determinations. We will provide program standards, leadership, and oversight. We do not intend to become involved in the State's ongoing management of Quick Disability Determination Units, except as is necessary and in accordance with these regulations. The State will comply with our regulations and other written guidelines.

(b) *Our responsibilities.* In addition to the responsibilities we have under §§ 404.1603 and 416.1003 of this chapter, we will:

(1) As described in § 405.15, provide medical, psychological, and vocational expertise needed for adjudication of a claim if such expertise is not otherwise available to the State, and

(2) Pay the established Federal rate for the State agency's use of any medical, psychological, or vocational expert affiliated with the national network.

(c) *Responsibilities of the State.* (1) In addition to the responsibilities the State has under subpart Q of part 404 or subpart J of part 416 of this chapter, any

State that performs the quick disability determination function will organize a separate Quick Disability Determination Unit that will comply with the requirements set out in this subpart.

(2) In all States to which this part applies, the medical, psychological, and vocational experts employed by or under contract with the State agency must meet the Commissioner's qualification standards prescribed under § 405.15 in order for the State agency to receive reimbursement for the experts' salaries or the cost of their services.

§ 405.810 Deemed notice that the State wishes to perform the quick disability determination function.

Any State that currently performs the disability determination function under subpart Q of part 404 or subpart J of part 416 of this chapter will be deemed to have given us notice that it wishes to perform the quick disability determination function.

§ 405.815 Making quick disability determinations.

The quick disability determination will be made as described in subpart B of this part.

§ 405.820 Notifying claimants of the quick disability determination.

The State agency will prepare a notice to the claimant using clear and understandable language when it makes a quick disability determination.

§ 405.825 Processing standard.

The processing performance standard for quick disability determinations is processing 98 percent of the claims that we refer to the Quick Disability Determination Unit within 20 days. This standard applies to all disability claims identified for quick determination.

§ 405.830 How and when we determine whether the processing standard is met.

(a) *How we determine processing time.* For all quick disability determinations, we calculate the number of days, from the day the claim is received in the State agency until the day the claim is released to us by the State agency.

(b) *Frequency of review.* We will monitor the processing time for quick disability determinations on a quarterly basis separately from the other State disability determinations. We will determine whether or not the processing standard has been met at the end of each quarter of each year.

§ 405.835 Action we will take if a State agency does not meet the quick disability determination processing time standard.

If for two or more consecutive calendar quarters a State agency falls below the quick disability determination processing standard described in § 405.825, we will notify the State agency that we propose to find it has substantially failed to comply with our standards regarding quick disability determinations. We also will advise the State agency that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make quick disability determinations consistent with the Act, our regulations, and other written guidelines, we will assume responsibility for performing the quick disability determination function. We will not provide performance support for State agency Quick Disability Determination Units prior to proposing to find that the State agency has failed to comply with our standards regarding quick disability determinations.

§ 405.840 Good cause for not following the Act, our regulations, and other written guidelines.

We will follow the procedures in §§ 404.1671 and 416.1071 of this chapter to determine if the State has good cause for not following the Act, our regulations, or other written guidelines.

§ 405.845 Hearings and appeals.

We will follow the provisions of §§ 404.1675 through 404.1683, and §§ 416.1075 through 416.1083 of this chapter when we propose to find that the State agency has substantially failed to comply with our standards regarding quick disability determinations.

§ 405.850 Assumption of the quick disability determination function when we make a finding of substantial failure.

(a) *Notice to State.* When we find that substantial failure exists, we will notify the State in writing that we will assume responsibility for making quick disability determinations, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of assumption of the disability determination function from a State agency will not be earlier than 180 days after our finding of substantial failure, and not before we have complied with the requirements of §§ 404.1692 and 416.1092 of this chapter.

(c) *Other regulations.* The provisions of §§ 404.1691, 404.1693, 404.1694, 416.1091, 416.1093 and 416.1094 of this chapter apply under this subpart to the same extent that they apply under subpart Q of part 404 and subpart J of part 416 of this chapter.

Subpart J—Payment of Certain Travel Expenses

§ 405.901 Reimbursement of certain travel expenses.

When you file a disability claim, you may incur certain travel expenses that may be reimbursable. We use §§ 404.999a through 404.999d of this chapter for title II claims and §§ 416.1495 through 416.1499 of this chapter for title XVI claims in determining reimbursable expenses and for explaining how and where you may request reimbursement.

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

Subpart I—[Amended]

21. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), 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, 1382h note).

Subpart I—[Amended]

22. Amend § 416.902 by revising the definition of nonexamining source to read as follows:

§ 416.902 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, and at the reviewing official, administrative law judge and Decision Review Board levels of the administrative review process in claims adjudicated under the procedures in part 405 of this chapter, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 416.927.

* * * * *

23. Amend § 416.903 by adding a sixth sentence to paragraph (a), and by removing the parenthetical statement after the first sentence of paragraph (e), to read as follows:

§ 416.903 Who makes disability and blindness determinations.

(a) * * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

24. Amend § 416.912 by revising paragraph (b)(6) and the second sentence of paragraph (c) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2) and (f)(3).

(c) * * * You must provide evidence showing how your impairment(s) affect(s) your functioning during the time you say that you are disabled, and any other information that we need to decide your claim, including evidence that you consider to be unfavorable to your claim. * * *

* * * * *

25. Amend § 416.913 by revising the first sentence of paragraph (c) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, and at the reviewing official, administrative law judge and Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be ''statements about what you can still do'' made by nonexamining physicians and psychologists based on their review of the evidence in the case record.

* * *

* * * * *

26. Amend § 416.919k by revising paragraph (a) to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026.

* * * * *

27. Amend § 416.919m by revising the third sentence to read as follows:

§ 416.919m Diagnostic tests or procedures.

* * * A State agency medical consultant, or a medical expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

28. Amend § 416.919s by revising paragraph (c) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(c) Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, and consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

29. Amend § 416.920a by revising the third sentence of paragraph (d)(2), adding a new fourth sentence to paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process. We will record the presence or absence of the criteria and the rating of the degree of functional limitation in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and in the decision at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter.

* * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. At the initial level in claims adjudicated under the procedures in part 405 of this chapter, a medical or psychological expert (as defined in § 405.5 of this chapter) has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant (or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, and at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The

decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) Except in cases adjudicated under the procedures in part 405 of this chapter, if the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

30. Amend § 416.924 by revising the text of paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) * * * When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under § 416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA–538, Childhood Disability Evaluation Form. We will also complete the standard form when we make an initial determination in claims adjudicated under the procedures in part 405 of this chapter. The form outlines the steps of the sequential evaluation process for individuals who have not attained age 18. The State agency medical or psychological consultant (see § 416.1016) or other designee of the Commissioner, or the medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions. In addition, in claims adjudicated under the procedures in part 405 of this chapter, reviewing officials, administrative law judge and the Decision Review Board will not complete the form but will indicate their findings at each step of the sequential evaluation process in their decisions.

31. Amend § 416.926 by revising the first sentence of paragraph (c) and paragraph (d) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(c) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. * * *

(d) *Responsibility for determining medical equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016) has the overall responsibility for determining medical equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in § 405.5 of this chapter) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the Administrative Law Judge or Appeals Council. In claims adjudicated at the reviewing official, administrative law judge and the Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding medical equivalence rests with the reviewing official, administrative law judge, or Decision Review Board.

32. Amend § 416.926a by revising paragraph (n) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(n) *Responsibility for determining functional equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016) has the overall responsibility for determining functional equivalence. In claims adjudicated at the initial level under the procedures in part 405 of this chapter, the medical or psychological expert (as defined in § 405.5 of this chapter) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the Administrative Law Judge or Appeals Council. In claims adjudicated at the reviewing official, administrative law judge and the Decision Review Board levels under the procedures in part 405 of this chapter, the responsibility for deciding functional equivalence rests with the reviewing official, administrative law judge, or Decision Review Board.

33. Amend § 416.927 by revising paragraph (f)(1) and by adding paragraph (f)(4) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the

existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. These administrative findings of fact are based on the evidence in your case record but are not themselves evidence at these steps.

* * * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, we will follow the same rules for considering opinion evidence that administrative law judges follow under this section.

34. Amend § 416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings), a State agency medical or psychological consultant, a medical or psychological consultant designated by the Commissioner, or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, or at the reviewing official, administrative law judge and the Decision Review Board levels in claims adjudicated under the procedures in part 405 of this chapter, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

35. Amend § 416.946 by revising the text of paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) (or a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter) is responsible for assessing your residual functional capacity.

* * * * *

(d) *Responsibility for assessing residual functional capacity in claims adjudicated under part 405 of this chapter.* In claims adjudicated under the procedures in part 405 of this chapter at the reviewing official, administrative law judge and the Decision Review Board levels of the administrative review process, the reviewing official, the administrative law judge or the Decision Review Board is responsible for assessing your residual functional capacity.

Subpart J—[Amended]

36. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5)1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

37. Amend § 416.1001 by adding a new third sentence to the introductory text to read as follows:

§ 416.1001 Purpose and scope.

* * * Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

* * * * *

38. Amend § 416.1016 by adding a new third sentence in paragraph (b) and a new paragraph (e)(4) to read as follows:

§ 416.1016 Medical or psychological consultants.

* * * * *

(b) * * * In claims adjudicated under the procedures in part 405 of this chapter, medical experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

(e) * * *

(4) In claims adjudicated under the procedures in part 405 of this chapter, psychological experts employed by or under contract with the State agencies must meet the qualification standards prescribed by the Commissioner.

* * * * *

39. Amend § 416.1024 by revising the first sentence to read as follows:

§ 416.1024 Medical and other purchased services.

Subject to the provisions of § 405.15 of this chapter in claims adjudicated under the procedures in part 405 of this chapter, the State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability. * * *

Subpart N—[Amended]

40. The authority citation for subpart N of part 416 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).

41. Amend § 416.1403 by removing ''and'' from the end of paragraph (a)(19), removing the ''.'' at the end of paragraph (a)(20) and replacing it with '';'' and by adding paragraphs (a)(21) and (22) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(21) Determining whether to select your claim for the quick disability determination process under § 405.101 of this chapter; and

(22) The removal of your claim from the quick disability determination process under § 405.101 of this chapter.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

42. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

43. Amend § 422.130 by revising the first sentence of paragraph (b) and the first and second sentences of paragraph (c) to read as follows:

§ 422.130 Claim procedure.

* * * * *

(b) * * * An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records

(see subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter and part 405 of this chapter for evidence requirements in disability cases). * * *

(c) * * * In the case of an application for benefits, the establishment of a period of disability, a lump-sum death payment, a recomputation of a primary insurance amount, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, the Social Security Administration, after obtaining the necessary evidence, will make a determination as to the entitlement of the individual claiming or for whom is claimed such benefits, and will notify the applicant of the determination and of his right to appeal. Section 404.1520 and subpart I of part 405 of this chapter has a discussion of the respective roles of State agencies and the Administration in the making of disability determinations and § 404.1521 and subparts B and I of part 405 of this chapter has information regarding initial determinations as to entitlement or termination of entitlement in disability cases. * * *

* * * * *

44. Revise § 422.140 to read as follows:

§ 422.140 Reconsideration or review of initial determination.

Subject to the provisions of subpart C of part 405 of this chapter, if you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. In claims adjudicated under the procedures in part 405 of this chapter, if you are dissatisfied with an initial determination, you may request review by a reviewing official. The information in § 404.1503 and part 405 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration (or review by reviewing officials) of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered (or reviewed by a reviewing official in claims adjudicated under the procedures in part 405 of this chapter), we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see § 422.201 and subpart D of part 405, and 42 CFR 405.904(a)).

Subpart C—[Amended]

45. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

46. Amend § 422.201 by revising the first and second sentences in the introductory text and by adding a new third sentence to read as follows:

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Hearings and Appeals, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 408, 410 and 416 of this chapter. It also describes the procedures for requesting such hearing or Appeals Council review, and for instituting a civil action for court review for cases decided under these parts. Procedures related to hearings before an administrative law judge, review by the Decision Review Board or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. * * *

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