

FOR BOARD INFORMATION  
**February 9, 2000**  
**L-2000-7**

**TO** : The Board

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Ticket to Work and Work Incentives Improvement Act of 1999  
Public Law 106-170

In a memorandum dated July 19, 1999, we provided the Board an analysis of two bills (S. 331 and H.R. 1180) entitled the Work Incentives Improvement Act of 1999. The purpose of each bill was to amend the Social Security Act to add incentives to encourage social security disability beneficiaries to return to work. H.R. 1180 was signed by the President on December 17, 1999, as Public Law 106-170.

The prime purpose of Public Law (P. L.) 106-170 is to expand the availability of health care coverage for working individuals with disabilities and to establish a "Ticket to Work and Self-Sufficiency Program" in the Social Security Administration to provide such disabled individuals with meaningful opportunities to work. P. L. 106-170 does not include disability beneficiaries under the Railroad Retirement Act. However, as explained in the following discussion, our review of the legislation indicates that it may affect railroad retirement disability annuitants who have been certified by the Board to be eligible for Medicare benefits.

P. L. 106-170 consists of 5 titles. Title I contains "Ticket to Work" and self-sufficiency provisions. Title II deals with expanded availability of health care services. Title III covers demonstration projects and studies, Title IV sets out miscellaneous and technical amendments, and Title V contains the Tax Relief

Extension Act of 1999.<sup>1</sup>

Section 101 of P. L. 106-170 directs the Commissioner of Social Security to establish a “Ticket to Work and Self-Sufficiency Program” under Title XI of the Social Security Act. Each eligible social security disability insurance (SSDI) beneficiary would receive a “ticket” which could be used to obtain employment services, vocational rehabilitation services, and other support services from a participating “Employment Network” of his or her choice. The purpose of this program is to enable an SSDI beneficiary to enter the workforce. “Employment Networks” would have to consist of a single public or private provider or an association of providers combined into a single entity which assumes responsibility for the coordination and delivery of services. Employment networks would have to have experience providing relevant employment services and support for individuals with disabilities and would have to provide an array of such services under the program. Employment networks and beneficiaries would have to develop an individual employment plan so that the beneficiary can exercise informed choice in selecting an employment goal and specific services needed to achieve that goal. Employment networks would prepare and provide periodic performance reports to beneficiaries holding a ticket and would make the reports available to the public. The Commissioner would have to provide periodic quality assurance reviews of employment networks and would have to establish a method for resolving disputes between beneficiaries and employment networks.

The Legislation provides that payments to employment networks, including State agencies that elect to participate in the Ticket to Work and Self-Sufficiency Program (hereafter the Ticket to Work Program), shall be made from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as appropriate, in the case of SSDI beneficiaries who return to work.

P. L. 106-170 provides for the gradual implementation of this provision with full implementation within 3 years after enactment. The Section also provides for ongoing evaluation of the program with reports following the close of the third and fifth fiscal years ending after the effective date of the legislation and prior to the close of the seventh fiscal year ending after that date.

Section 101(f) of the legislation establishes a Work Incentives Advisory Panel to advise the President, Congress, and the Commissioner of Social Security on issues related to work incentives programs, planning, and assistance for individuals with

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<sup>1</sup> P. L. 106-170 includes amendments which will affect recipients of Supplemental Security Income and Medicaid. Those provisions and the provisions of the Tax Relief Extension Act of 1999 set out in Title V of the legislation are not discussed in the text of this memorandum.

disabilities, including work incentive provisions of the Social Security Act. The Panel is to submit interim reports and a final report not later than 8 years after the date of enactment. The Panel terminates 30 days after the submission of its final report.

Section 111 of P. L. 106-170 amends section 221 of the Social Security Act to change the criteria for determining when a continuing disability review (CDR) would be conducted due to work activity by an SSDI beneficiary. The purpose of a CDR is to determine whether an individual remains disabled and thus eligible for continued benefits. Under present law, a CDR may be triggered by evidence of recovery from disability, including a return to work. In addition, the Social Security Administration is required to conduct periodic CDR's every 3 years for any beneficiary who is determined to be non-permanently disabled and at times determined by the Commissioner for beneficiaries with a permanent disability. Section 111 of P. L. 106-170 provides that the a CDR for long-term SSDI beneficiaries, i.e., individuals who have been receiving disability benefits for at least 24 months, may not be scheduled based solely on work activity. In addition, section 111 provides that no work activity may be used as evidence that the individual is no longer disabled and no cessation of work activity may give rise to the presumption that the individual is unable to engage in work. CDR's for such individuals may only be based on periodic reviews that are not triggered by work. Section 111 also provides that cash benefits may be terminated when an individual exceeds the earnings established to represent substantial gainful activity (\$700 per month as of July 1, 1999).

The Board conducts continuing disability reviews pursuant to section 2(a)(3) of the Railroad Retirement Act, which states in part that, "Such satisfactory proof shall be made from time to time as prescribed by the Board, of the . . . continuance of such disability. . . ." Subpart O of Part 220 of the Board's regulations sets forth the standards which the Board applies in conducting continuing disability reviews. Although the amendments to the Social Security Act with respect to CDR's do not apply to this agency, the Board could conform its standards for CDR's to those included in P. L. 106-170 by amending its regulations.<sup>2</sup>

Section 112 of P. L. 106-170 provides for an expedited reinstatement of benefits for an SSDI beneficiary whose benefits were terminated due to a return to work. Under current law, an individual entitled to SSDI benefits may receive expedited reinstatement of benefits following termination of benefits because of work activity any time during a 36-month extended period of eligibility (EPE). In other words, benefits may be reinstated during an EPE without the need for a new

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<sup>2</sup>The Board has recently approved a proposed rule which would eliminate CDR's where no medical improvement is expected. That proposed regulation was published on November 18, 1999 (64 Fed. Reg. 62996).

application and disability determination so long as reinstatement is being requested due to the same physical or mental impairment that is the basis for the original finding of disability. Section 112 of P. L. 106-170 provides that an individual whose entitlement to SSDI benefits has been terminated on the basis of work activity may request reinstatement of those benefits without filing a new application within the 60-month period following the month of such termination. Under the amendment, while the Commissioner is making a determination of a reinstatement request, the individual will be eligible for provisional cash benefits, for a period of not more than 6 months. The purpose of this provision is to encourage SSDI beneficiaries to return to work by providing assurance that benefits could be restored in a timely fashion if an individual must discontinue employment and continues to meet standards for disability set by the Social Security Administration. The new legislation provides that if the Commissioner of Social Security makes a favorable determination with respect to a request for reinstatement, such individual's prior entitlement to benefits would be reinstated, as would be the prior benefits of his or her dependents who continue to meet the entitlement criteria. If the Commissioner makes an unfavorable determination, provisional benefits would end, but the provisional benefits already paid would not be considered an overpayment.

The Railroad Retirement Act does not contain a provision dealing with reinstatement of a disability benefit. The Board has, however, provided for a re-entitlement period of 36 months following the end of the annuitant's trial work period in section 220.171 of its regulations. It is our opinion that the Board could extend the re-entitlement period currently in section 220.171 to conform it to P. L. 106-170. However, statutory authority would be needed in order to allow the Board to pay provisional benefits for up to 6 months while a request for re-entitlement is being processed.

Section 121 of P. L. 106-170 directs the Commissioner of Social Security to establish a community-based work incentives outreach program. The law provides that the total amount of all grants, cooperative agreements, and contracts awarded under this section is limited to \$23,000,000 per fiscal year. This section would not extend to railroad disability annuitants.

Section 122 of P. L. 106-170 authorizes the Commissioner to make grants to existing protection and advocacy programs authorized by the States under the Developmental Disabilities Assistance and Bill of Rights Act. Services may include information and advice about obtaining vocational rehabilitation and employment services and advocacy and other services SSDI beneficiaries may need to secure or regain gainful employment. Like section 121, this section does

not apply to the disability program administered by the Board.

Section 202 of P. L. 106-170 amends section 226 of the Social Security Act (42 U.S.C. § 426) to extend Medicare Part A coverage for SSDI beneficiaries and qualified railroad retirement beneficiaries who continue to work in substantial gainful activity beyond a trial work period for 78 months (increased from 24 months). P. L. 106-170 requires the Comptroller General of the United States to submit a report to Congress no later than 5 years after enactment that will examine the effectiveness and cost of extending Medicare coverage.

Title III of P. L. 106-170 permanently authorizes the Commissioner of Social Security to conduct certain demonstration projects. Title III also provides authority for the Commissioner to conduct a demonstration project under which payments to SSDI beneficiaries would be reduced \$1 for every \$2 of beneficiary earnings that is above a level to be determined by the Commissioner. Statutory authority would be necessary for the Board to conduct a similar project for railroad retirement disability annuitants.

Title IV of P. L. 106-170 contains a number of technical amendments, including one which would allow members of the clergy to revoke their exemption from social security coverage during a 2-year "open season," one relating to disability benefits for drug addicts and alcoholics and one involving the prohibition of payment of benefits to prisoners.

cc: Director of Programs  
Director of Legislative Affairs