period if you were entitled to benefits after December 1987 or if the 15-month period described in paragraph (b)(2)(i) of this section had not elapsed as of January 1988. (See §§ 404.316, 404.337, and 404.352 for when your benefits end.)

* *

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

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

Authority: Secs. 1102, 1614(a), 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a), (c) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.901 is amended by revising paragraph (m) to read as follows.

§ 416.901 Scope of subpart.

- (m) Our rules on when disability or blindness continues and stops are contained in §§ 416.986 and 416.988 through 416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status and when we will review to see if you are still disabled. We also explain how we consider the issue of medical improvement (and the exceptions to medical improvement) in determining whether you are still disabled.
- 3. Section 416.973 is amended by revising paragraph (c) and removing paragraph (f) to read as follows:

§ 416.973 General information about work activity.

(a) * * *

(b) * * *

- (c) If your work is done under special conditions. Even though the work you are doing is done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. Examples of the special conditions that may relate to your impairment include situations in
- (1) You required and received special assistance from other employees in performing your work;

- (2) You were allowed to work irregular hours or take frequent rest periods;
- (3) You were provided with special equipment or were assigned work especially suited to your impairment;
- (4) You were able to work only because of specially arranged circumstances, such as where other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

4. Section 416.974 is amended by redesignating current paragraph (a)(3) as (a)(6); revising paragraphs (a)(1), (a)(2), newly designated (a)(6), (b)(1), and (b)(4); and adding new paragraphs (a)(3) through (a)(5), (c), and (d) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

(1) Your earnings may show you have done substantial gainful activity. In evaluating an employee's work activity for substantial gainful activity purposes, our primary consideration is the earnings that are derived from the work activity. The amount of your earnings from work you have done may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) We consider only the amounts you earn. When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the

amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a handicapped person does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity. Paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section explain how we determine the amounts of subsidies.

(3) Evidence of subsidy from your employer. We will first ask your employer to tell us if your wages have been subsidized and, if so, the amount of the subsidy. Your employer may set a specific amount as the reasonable value of your services. If the wages you receive exceed the reasonable value of the actual services you performed, we will regard the excess as a subsidy rather than earnings. Any of the following circumstances may indicate the existence of a subsidy:

(i) You work in sheltered

employment.

(ii) Čhildhood disability is involved. (iii) You have a mental impairment.

(iv) There is a marked discrepancy between the amount of your pay and the value of your services.

(v) You receive an unusual degree of help from others to do your work.

(vi) Your impairment indicates you would need an unusual degree of help from others.

(vii) You are involved in a government-sponsored job training and employment program.

(4) When your employer does not tell us the value of your subsidy. If your earnings are subsidized and your employer does not set the amount of the subsidy, or does not adequately explain how the subsidy was determined, we will use the following criteria to determine the amount of your subsidy:

(i) In most instances, we will determine the amount of your subsidy by comparing the time, energy, skills, and responsibility involved in your services with the time, energy, skills,