

# WORKING

Newsletter of the New York Makes Work Pay Initiative · Issue 3 UPDATED · April 2012

## Social Security Disability Insurance and Work

### A Review of SSDI Rules Related to Work Activity. A Discussion of the SSDI Work Incentives Available to Maximize Independence through Work

Social Security Disability Insurance (SSDI) beneficiaries who go to work in 2012 have a better set of work rules and work incentives than ever before. These work incentives, as discussed below, will allow the individual with a disability, in many cases, to thoughtfully plan their progression to maximum levels of independence through work.

Our feature article will discuss the current SSDI work rules and work incentives that beneficiaries will face as they consider work and commence work during 2010 and into the future. Although most of the work rules and work incentives have been around for more than 20 years, we will describe positive changes to the old rules and some new work incentives that were first implemented during 1999, 2000, 2001, and 2002. These changes to the old work rules and work incentives structure have dramatically altered, in a positive way, the benefits analysis that an SSDI beneficiary will face when he or she goes to work or considers work today.

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Combined with other incentives, including the state's Medicaid Buy-In for Working People with Disabilities (see newsletter and policy-to-practice brief on this topic at [http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG\\_Newsletter\\_SP09.pdf](http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_Newsletter_SP09.pdf) (this will have a new cite as it will have been updated by the time this one makes it on the web) and [http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG\\_PP\\_MBI.pdf](http://www.ilr.cornell.edu/edi/nymakesworkpay/docs/MIG_PP_MBI.pdf)), many more beneficiaries can be expected to conclude that, yes, these incentives can "make work pay."

Readers who would like to review a much more thorough discussion of the SSDI and work topic can check out our policy-to-practice brief, Social Security Disability Insurance, Medicare and Work at <http://nymakesworkpay.org/docs/SSDI%20Brief-2.0.pdf>. Like most of our other policy-to-practice briefs, this brief includes extensive citations to the relevant law, regulation, and policy.

## History Placing The Current Rules In Perspective

SSDI beneficiaries have long faced major barriers when they considered working. As recently as June 1999, earnings of \$500 per month were enough to terminate benefits after a brief trial work period. Based on substantial gainful activity (SGA) rules that were in effect during the 1990s, if work continued at this modest level for another three years but then stopped, it would take a new application and new approval to re-establish eligibility. SSDI beneficiaries also feared that any work activity would trigger continuing disability reviews and that their work would be held against them during that review.

Prior to July 1999, the trial work period appeared to be a great work incentive, allowing the individual to collect both a paycheck and SSDI check for nine months. There was a major drawback, however. Throughout the 1990s, the beneficiary could use up the entire trial work period by earning as little as \$200 per month. Thus, a 10-hour per week job at minimum wage was enough to use up trial work months. Even work at a sheltered workshop, which could not be considered competitive employment, was often enough to put wages above this \$200 threshold.

Many SSDI beneficiaries understand that a certain level of wages could cause them to lose their entire monthly check, but understand

little more. Those beneficiaries often structure their work activity to ensure that their wages never exceed the SGA amount that applies to them. In many cases, the beneficiary or the agency personnel working with them may not fully understand what the current rules are or that the work rules and work incentives have dramatically improved during the last 10 to 12 years.

## The Substantial Gainful Activity Rule

During calendar year 2012, \$1,010 in monthly wages is considered to be SGA for nearly all individuals, and \$1,690 in monthly wages is considered to be SGA for those who are legally blind. When an applicant for SSDI or Supplemental Security Income (SSI) disability benefits has earnings above that amount, his or her application is ordinarily denied on a finding that the individual is not disabled.

After an application is approved, the rules governing how work affects benefits, and the available work incentives, are very different for SSDI and SSI. This article will only discuss SSDI. SSI and work will be discussed separately in an upcoming newsletter and a policy-to-practice brief. After the SSDI application is approved, the SGA rule will continue to be important and could eventually result in a termination of benefits following a nine-month trial work period (discussed below).

The Social Security Administration (SSA) annually reviews and updates the monthly gross earnings figure that is considered to be SGA, based on changes to the National Wage Index. The SGA amount will increase if the wage index for the previous year has increased. If the index stays the same or goes down, the SGA amount for the previous year will continue unchanged. The SGA amount that applies to individuals who are legally blind will only increase if there is both an increase in the National Wage

Index and a cost-of-living adjustment (COLA). The SGA rule will not apply to SSI recipients after the initial application, but it will apply to SSDI beneficiaries. For SSI recipients, the only impact of working is that roughly half of gross wages will be budgeted against the monthly SSI maximum or base rate. For SSDI beneficiaries, the SGA rule will apply only during the extended period of eligibility, and the expedited reinstatement period.

Many individuals receive a combination of SSDI and SSI benefits. When these dually entitled individuals work and earn wages, SSA will apply one set of rules to their SSDI benefits and another set of rules to their SSI benefits. Dual entitlement is beyond the scope of this newsletter, but we expect to address these issues in an upcoming policy-to-practice brief.

## The Trial Work Period

This nine-month period allows the SSDI beneficiary to test his or her ability to work without losing benefits. (The SSI program has no trial work period (TWP), as SSI recipients do not face an SGA rule.) During the nine TWP months, the individual will be allowed to get both a paycheck and an SSDI check no matter what the amount of earnings. The nine months need not be consecutive. Once an individual has used up nine TWP months within any period of 60 consecutive months, the TWP is over.

Between January 1990 and December 2000, a TWP “services month” was any month in which gross earnings were \$200 or more. This was increased to \$530 effective January 2001. Starting with 2002, this amount has been increased each year based on increases in the National Wage Index. If the index remains the same or goes down, the amount considered to be a TWP month will remain at the previous year’s level.

During calendar year 2012, a TWP services month was any month in which gross earnings were \$720 or more. In determining whether a



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TWP month has been used, SSA will always use the gross amount in a person’s paycheck. No deductions will be taken for taxes, Social Security withholding, or anything else that would reduce take home pay. Nor will SSA allow any deduction for impairment related work expenses (IRWEs) or subsidies (IRWEs and subsidies are not discussed in this article, but are discussed in detail in our policy-to-practice brief involving SSDI and work). (For self-employed individuals, either net earnings of \$720 per month or 80 hours or more worked in the business during a month, without regard to profit, will be enough to count as a TWP month in 2012.)

NOTE: Individuals who are legally blind and over age 55 may be subject to a different set of rules depending on their individual circumstances. Those separate rules are discussed in our policy-to-practice brief involving SSDI and work (see <http://nymakesworkpay.org/docs/SSDI%20Brief-2.0.pdf>).

## Application of the TWP

**The case of Georgia.** *Georgia began collecting SSDI benefits in 2001. She did not work at all after getting on benefits until January 2012. Georgia worked in January, February, and March 2009 and earned \$300 in gross wages during each of those months. Starting in April, Georgia earned \$1,200 gross each month and continued earning at that level through the end of 2012.*

In this scenario, Georgia did not use any TWP months in January, February, or March 2012, as she did not have gross earnings of \$720 or more (the 2012 figure for a TWP services month). However, when her gross wages go up to \$1,200 in April she does begin using TWP months. In this case, since this earnings level continued through the remainder of 2012, April through December 2012 will be her nine TWP months and her TWP will end in December 2012. During each of these months, Georgia will be entitled to keep her full SSDI check and her paycheck.

**NOTE:** Under pre-2001 rules, this would be Georgia's only TWP. Under the old rules, she would only get a second TWP if she lost SSDI, reapplied, and was awarded benefits on the new claim and had a new five-month waiting period. Since 2001, the expedited reinstatement provisions, discussed later in the article, allow Georgia to qualify for a new TWP if she qualifies for and receives reinstated benefits for 24 months.

## The Extended Period of Eligibility

The extended period of eligibility (EPE), like the TWP, applies only to SSDI beneficiaries. It does not apply to SSI recipients because SGA is not a factor in SSI payments. The EPE is sometimes referred to as the re-entitlement period.

The 36-month EPE immediately follows the ninth TWP month. The 36 months run consecutively whether the individual is working or not. During these 36 months, the SSDI beneficiary can move in and out of benefits status depending upon monthly earnings.

Here is how the EPE works. The first month, during the EPE, that the individual has gross earnings above the SGA limit will be considered the "benefit cessation month." In all cases, the individual will continue to receive SSDI for the benefit cessation month and the following

two months. These three months are known as the "grace period." To determine whether an individual has engaged in that first month of SGA during the EPE, SSA will look at "average" wages if wages have fluctuated. (Income averaging principles are fully discussed in our policy-to-practice brief on SSDI and work.)

Following the grace period, and for the remainder of the EPE, the right to an SSDI check will depend on monthly wages:

### Extended Medicare for SSDI Beneficiaries Who Lose Cash Benefits through Work Activity

If the SSDI beneficiary works despite a continuing disability, Medicare eligibility will continue throughout the nine-month trial work period (TWP) as the person continues to receive SSDI benefits. Medicare Part A (Hospital Insurance Benefits) eligibility will continue to be automatic and cost-free; Part B (Supplemental Medical Insurance) will be optional and subject to the same premium payment; Part D (the Prescription Drug Benefit) will also be optional and subject to certain out-of-pocket expenses.

After the end of the TWP, if the person's disability continues, Medicare coverage can be extended for at least 93 months. During this extended period, Part A will continue to be automatic and cost-free, and Parts B and D will continue to be optional, subject to a premium payment and/or other out-of-pocket costs.

An individual who exhausts the TWP and Extended Period of Medicare Coverage may be able to continue Medicare eligibility through a "buy-in" program. He or she must continue to be disabled and the loss of SSDI must be due solely to earnings that exceed the SGA amount. Medicare eligibility can continue indefinitely so long as the individual continues to be disabled and pays the enrollment premiums.



- ▶ when countable wages are above the 2012 SGA level of \$1,010 (as adjusted in years 2013 and later), the individual will not get an SSDI check;
- ▶ when countable wages are below the SGA level for the year in question, the individual will get an SSDI check.

Impairment related work expenses, subsidies, and paid time off can be subtracted from gross monthly wages to determine countable wages. Our longer, policy-to-practice brief covering the subject of SSDI and work includes an extensive discussion of the use of IRWEs, subsidies, and paid time off to reduce countable income when measuring wages against the SGA rule for the year in question.

Upon completion of the EPE, if a person is not performing SGA (i.e., not earning more than \$1,010 in 2012), his or her SSDI benefits will continue. Historically, a person who performed SGA after the EPE would lose his or her entitlement to SSDI. If he or she later had countable wages go below the SGA level, it would take a new application to re-establish eligibility. This has changed under the new, expedited reinstatement provisions summarized below.

**Application of the EPE to Georgia.** *As noted above, Georgia completed her TWP in December 2012. In January 2013, Georgia is working and earning \$1,200 gross with no deductions available for IRWEs, subsidies, or paid time off. Georgia continues to earn \$1,200 per month throughout the entire year, January through December 2013. In late December 2013, she is laid off and earns no money between January and June 2014. In July 2014, she goes back to work and earns \$1,200 per month between July and December 2014. (Please assume the SGA amount remains the same in 2013 and 2014.*

**Georgia’s EPE began in January 2013** (i.e., immediately following her ninth TWP month). Her 36-month EPE will run from January 2013 through December 2015.

Since Georgia’s January 2013 wages (\$1,200) are clearly more than the SGA amount (\$1,010), January 2013 will be her “benefit cessation month.” Georgia will be eligible for an SSDI check for January, February, and March 2013 (her three-month grace period). Thereafter, beginning in April 2013 and for the remaining 33 months of her EPE: Georgia will be entitled to an SSDI check for any month when her countable gross wages are at or below the SGA amount for the year in question; she will not be entitled to a check for any months when her countable earnings are more than the SGA amount for the year in question. Since we know that Georgia’s countable wages for the remaining nine months of 2013 will be \$1,200 per month (more than the \$1,000 SGA amount), she will not be entitled to SSDI checks for those nine months.

What happens to Georgia’s right to SSDI payments when she is laid off in January 2014 and does not work again until July 2014? Under the EPE rules, since her countable wages for the first six months of 2014 are \$0 per month, i.e., less than the SGA amount, she will qualify for SSDI checks for the January to June 2014 period. When she returns to work in July 2014 and earns \$1,200 per month her SSDI payments will once again be ceased.

What happens to Georgia’s SSDI checks during the remaining 12 months of her EPE (i.e., from January 2015 through December 2015)? Let’s assume she continues working, earning \$1,200 gross monthly (without deductions for IRWEs, subsidies, or paid time off) throughout the remaining 12 months. Let’s also assume that the SGA amount for 2013, 2014 and 2015 remains the same. Under this assumed set of facts, Georgia’s countable wages will be more than the SGA amount for the year in question for each

month of the remaining 12 months of her EPE. The result is that Georgia will not be eligible for an SSDI check for any of those months.

What happens in January 2016 when Georgia's EPE is over? What if she works and earns the same amount in 2016 (i.e., more than the 2013 SGA level), but then stops working in 2017? Georgia will not be eligible for SSDI checks through the 12 months of 2013 because she is performing SGA after her EPE. Under pre-2001 law, a later reduction in earnings below the SGA level would not allow Georgia to go back on benefits automatically. Rather, she would have to file a new application and wait many months for a new eligibility decision. This has changed under the expedited reinstatement provisions.

## Expedited Reinstatement of SSDI Benefits

Under pre-2001 law, a person who performed SGA after the extended period of eligibility would lose SSDI benefits. If the person later lost his or her job or had wages reduced below the SGA level, he or she would have to reapply to re-establish SSDI eligibility. This prospect of a new application, with the uncertainty of whether a new decision maker would find the individual disabled (especially in light of recent work activity), made many individuals pause at the notion of taking a chance at work that might not be successful in the long

term. The expedited reinstatement (EXR) provisions, available since 2001, should make more SSDI beneficiaries willing to try working, despite a severe disability, knowing they may re-establish eligibility if their work is not sustained for any reason.

### The EXR Criteria

Expedited reinstatement is available to an individual who performs SGA, after the EPE, with a resulting loss of benefits. If that individual later has wages reduced below SGA levels, for any reason, he or she will be reinstated to SSDI, without a new application, if the individual:

- Was eligible for SSDI;
- Lost SSDI due to performance of SGA (i.e., in 2012 by earning more than \$1,010 per month or \$1,690 if legally blind);
- Requests reinstatement within 60 months of the last month of entitlement or, if the request is filed after 60 months, the individual establishes good cause for missing the 60-month deadline;
- Has a disability that is the same as (or related to) the physical or mental disability that was the basis for their original claim; and
- That disability renders the individual incapable of SGA based on application of SSA's medical improvement review standard.

If an individual believes he or she meets the EXR criteria, the individual should contact SSA and arrange to file the request for reinstatement. This includes individuals who in the last five years stopped receiving benefits due to SGA and who, since their last month of SSDI entitlement, also stopped performing SGA for any reason (e.g., because of their disability or health



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condition; because of a lay off; because of a voluntary reduction of hours for personal reasons, such as school attendance). (Copies of the EXR request form, in electronic format, are available by calling the NY Makes Work Pay Work Incentives Hotline, toll free, at 1-888-224-3272 or through SSA's website at: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0413050105!opendocument>.)

If the SSDI beneficiary satisfies the EXR criteria, both his or her benefits and the benefits of dependents can be reinstated. SSDI dependent's benefits, including benefits for dependent children and spouses, can be reinstated if the dependent satisfies all the eligibility criteria as a dependent (this includes having a new medical determination if the dependent's entitlement is based on being disabled). A previously-entitled dependent does not have to file a new application to qualify for reinstated benefits. New dependents will have to file an application to qualify for reinstated benefits.

**NOTE:** The EXR provisions also apply to SSI under much more limited circumstances. For a more detailed discussion of EXR, see Expedited Reinstatement of Social Security or SSI Disability Benefits, available at [http://nymakesworkpay.org/docs/EXR\\_Brief\\_v1.pdf](http://nymakesworkpay.org/docs/EXR_Brief_v1.pdf).

### **Provisional Benefits Pending Reinstatement Decision**

While the EXR request is pending, the individual is eligible for up to six consecutive months of provisional SSDI benefits. Provisional benefits are payable when EXR is requested. The individual may also be eligible for Medicare coverage while receiving provisional benefits, if not already covered for such benefits. Provisional benefits may be suspended under current rules (e.g., suspension while in prison), and performing SGA will terminate provisional benefits.



## **Monthly Earnings Required for Substantial Gainful**

Activity, Trial Work Period Month – 2006 to 2010

Our readers may sometimes need to know what earnings levels, in past years, were enough to be considered substantial gainful activity (SGA) or to meet the criteria for a trial work period (TWP) month.

### **SGA levels:**

\$1010 per month, gross earnings ... calendar year 2012

\$1,000 per month, gross earnings ... calendar year 2010 & 2011

\$980 per month, gross earnings ... calendar year 2009

\$940 per month, gross earnings ... calendar year 2008

\$900 per month, gross earnings ... calendar year 2007

\$860 per month, gross earnings ... calendar year 2006

**NOTE:** The 2012 SGA level for persons who are legally blind is \$1690 per month. The 2009, 2010 and 2011 SGA levels for persons who are legally blind were, \$1,640 per month. The SGA level was \$1,570 in 2008, \$1,500 in 2007, and \$1,450 in 2006.

### **TWP levels:**

\$720 per month, gross earnings ... calendar years 2010, 2011 and 2012

\$700 per month, gross earnings ... calendar year 2009

\$670 per month, gross earnings ... calendar year 2008

\$640 per month, gross earnings ... calendar year 2007

\$620 per month, gross earnings ... calendar year 2006

What happens if SSA later determines that the individual was not entitled to reinstatement? Must they repay the provisional benefits received? SSA's policy states that provisional benefits cannot be recovered unless SSA determines that the individual knew or should have known that he or she did not meet the EXR criteria.

## Work-Triggered Continuing Disability Reviews Have Been Eliminated for Nearly All SSDI Beneficiaries

Prior law and regulations authorized a continuing disability review (CDR), in all cases, after an SSDI beneficiary completed nine trial work months or when substantial earnings were reported to the individual's wage record. This work-triggered CDR was eliminated effective January 1, 2002 for persons who have been entitled to SSDI for at least 24 months. For them, no CDR will be scheduled solely as a result of work activity. Work activity may not be used as evidence that a person is no longer disabled and cessation of work may not give rise to a presumption that a person is unable to work. Persons affected by this section are still subject to regularly scheduled CDRs that are not triggered by work and will be subject to termination of benefits if they perform SGA.

### A New Trial Work Period and Extended Period of Eligibility

For years, SSDI beneficiaries were told they would get one TWP and one EPE. The TWP and EPE could be exhausted for good at very low levels of earnings. In fact, the EPE could be exhausted whether the person was working or not. This has changed under the new EXR program.

After being paid 24 months (need not be consecutive) of reinstated benefits (including any months for which provisional and retroactive payments were actually received), the beneficiary gets: a new TWP; a new EPE; and another 60-month period in which to request EXR if

benefits are terminated again due to SGA. As demonstrated in the continuation of Georgia's case, the chance for a new TWP and EPE, fortunately, allows the person to work through the peaks and valleys of their continuing disability.

### Application of the New TWP and EPE

**Back to Georgia's case:** *As we learned in the discussion, above, Georgia exhausted both her TWP and EPE, with the last month of the 36-month EPE occurring in December 2015. Assume that Georgia continues to earn at the \$1,200 gross monthly rate throughout 2016 (without any deductions for IRWEs, subsidies or paid time off), with SGA levels continuing unchanged in 2016. She is then laid off on January 1, 2014 and does not work again during 2017 or 2018. What happens to Georgia's benefits in 2017 when she stops working?*

**Termination of benefits in January 2016.** The first time Georgia performs SGA following her EPE (the EPE ended in December 2015) her benefits are subject to immediate termination. She will not be entitled to a three-month grace period because she already received a grace period during her EPE.

**Georgia's EXR eligibility in January 2017.** Since Georgia stops working in January 2017, she becomes eligible for EXR in January 2017, because her wages are now below the SGA amount, it was within 60 months of her last month of entitlement to SSDI (i.e., within 60 months of December 2015, the last month of her EPE), and the other EXR criteria are met (i.e., has the same or related impairment and is disabled based on the application of the medical improvement review standard). We assume that Georgia will apply for EXR as early as January 2017, or as soon as it becomes apparent that she will not return to work right away. We



expect that Georgia will be eligible for up to six months of provisional benefits while her EXR request is being processed.

The facts indicate that Georgia had no earnings during 2017 or 2018. Thus, having been found to meet the EXR medical criteria, Georgia is eligible for EXR benefits for all of 2017 and 2018, a 24-month period.

**NOTE:** The outcome would be the same if Georgia experienced a flare up of her disability in late 2016 and reduced her work hours, effective January 2017, and earned \$800 gross per month during 2017 and 2018. Since Georgia would no longer be performing SGA, her EXR application should be approved.

**A new trial work period and extended period of eligibility.** If Georgia returns to work in January 2019 or any time after that, she will be entitled to a new TWP. This is because Georgia received reinstated benefits for at least 24 months. Following any TWP, Georgia will be entitled to a new EPE and, if she meets the criteria, a new opportunity for expedited reinstatement.

## Conclusion

There have been many positive changes to the SSDI work rules and work incentives since 1999. These changes make it possible for many beneficiaries to move forward with their work plans knowing that they may return to benefits status should a work attempt fail or their disability worsen. Coupled with the ability to preserve cost-free or cost-limited Medicaid through the Medicaid Buy-In for Working People with Disabilities (see Spring 2012 issue of Working and our policy-to-practice brief on the topic, available through links on the Research and Publications part of the NY Makes Work Pay website, [www.nymakesworkpay.org](http://www.nymakesworkpay.org)), these work incentives will reduce much of the risk and uncertainty that traditionally made many individuals shy away from attempts to work.

## Work Incentives Planning and Assistance (WIPA) Projects are Available to Provide Benefits Advisement Services

In 2006, the Social Security Administration awarded grants to entities throughout the country to operate WIPA projects, replacing the Benefits Planning, Assistance and Outreach projects that operated between late 2000 and 2006. Each project employs staff to function as Community Work Incentives Coordinators (often referred to as benefits advisers or work incentives practitioners), providing both short-term and long-term benefits advisement services.

### SSA funds eight WIPA projects in New York:

City University of NY Research Foundation (CUNY)  
JFK, Jr. Institute for Worker Education  
City University of New York, NY  
212-652-2030

[http://www.jfkjr.institute.cuny.edu/programs/Bronx\\_WIPA](http://www.jfkjr.institute.cuny.edu/programs/Bronx_WIPA)

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## Work Incentives Planning and Assistance (WIPA) Projects are Available to Provide Benefits Advisement Services (Continued)

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(I)

Community Work Incentives Coordinator

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Cornell University, through the New York Makes Work Pay project, has trained over 200 Benefits practitioners and credentialed over 25 new benefits practitioners by the end of 2011. It will continue to credential additional Benefits Practitioners throughout 2012. These benefits practitioners, along with the Community Work Incentives Coordinators, will provide short-term and long-term benefits advisement in New York.

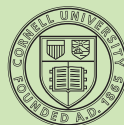
## Notes

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### **New York Makes Work Pay Partnering Organizations**

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New York Makes Work Pay is a Comprehensive Employment System Medicaid Infrastructure Grant (Contract No. #1QACMS030318) from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to the Office of Mental Health on behalf of New York State. It is a joint effort of the Burton Blatt Institute at Syracuse University and the Employment and Disability Institute at Cornell University with the collaborative support of the Employment Committee of the New York State Most Integrated Setting Coordinating Council to develop pathways and remove obstacles to employment for New Yorkers with disabilities.



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# WORKING

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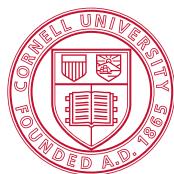
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