

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 105, 123, 125, 133, 140, 141, 145, 151, 153, 165, 177, 178, 181, 183, 187 AND 281]

[Correction]
TANF Program

An error occurred in the preamble to the document which appeared at 32 Pa.B. 4435, 4438 (September 14, 2002). Act 1996-35 was inadvertently dropped at several locations when statutory authority was discussed. The correct version of the preamble is as follows, with ellipses referring to the existing text:

The Department of Public Welfare (Department), by this order, adopts the amendments to read as set forth in Annex A. The statutory authority for this rulemaking is sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)) (code); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 5543 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33) (42 U.S.C.A. § 653(p)); section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); the Federal TANF regulations in 45 CFR 260.10—265.10; Act 1996-35 (Act 35) which amended sections 401, 402, 403(b), 405, 405.1, 405.3, 408, 432, 432.3—432.5, 432.12, 432.19, 442.1 and 481 of the code and added sections 405.5, 432.22, 434, 448 and 449 to the code; and the Domestic Relations Code, 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418.

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Need for Amendments

The purpose of this final-form rulemaking is to codify regulations based upon landmark Federal and State welfare reform legislation that emphasizes personal responsibility, work and self-sufficiency. Specifically, TANF and Act 35 transformed welfare from an unlimited entitlement to a temporary support system. The new regulations reflect the legislative intent to promote self-sufficiency. Changes, including more substantial work requirements and increased financial incentives for working welfare recipients, illustrate this refocus of welfare. Moreover, the Domestic Relations Code contains revised provisions requiring cooperation with the Child Support Enforcement Program (established under Title IV-D of the Social Security Act) as a condition of eligibility for cash assistance, and a new support pass-through program. Implementation of child support cooperation provisions is another key component to assure an income source for needy families seeking to achieve self-sufficiency. This final-form rulemaking provides numerous supports and incentives to assist employable individuals in their quest for financial independence. These supports and incentives include waivers of various program requirements for victims of domestic violence, a 50% earned income disregard, exclusion of educational savings accounts and special allowances, such as child care and transportation expenses, to support training, education and work.

Scope

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Grounded in the legislative directive in Act 35 that work is essential to self-sufficiency, this final-form rulemaking incorporates statutory work and work-related requirements and sanctions for willful noncompliance with these requirements. At the same time, the Department recognizes that some individuals have significant obstacles that hinder their ability to work. Depending on the nature and extent of these obstacles, an individual may be exempt or excused from work and work-related requirements for good cause, and receive appropriate supportive services. These requirements and benefits associated with employment and training are embodied in the Department's Road to Economic Self-Sufficiency Through Employment and Training (RESET) program, established by Act 35.

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This revision does not reflect a new interpretation of what the statute requires an individual to do regarding employment. With or without this revision, the individual must accept, work in and keep as many hours of employment as the individual is reasonably able to maintain. This means that an individual must maximize hours of employment, above minimum requirements, if the hours are available and the individual is reasonably able to work those hours. For example, if the individual has the opportunity to increase the individual's work hours from 20 to 30 per week, the individual must accept the additional hours, unless the individual cannot reasonably do so (such as, the 30 hours are available only during the night shift, and the individual is a single parent with no appropriate child care during that time; or, the 20-hour per week job pays the individual more than the other would). Because an individual must accept the additional hours only if the individual can reasonably do so, this requirement should not be too burdensome to those who may have difficulty working full-time. This requirement is consistent with the goal of TANF and Act 35 that a recipient transition from dependency through increased employment to self-sufficiency as soon as practicable.

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[Pa.B. Doc. No. 02-1589. Filed for public inspection September 13, 2002, 9:00 a.m.]

[55 PA. CODE CH. 133, 141, 183 AND 187]
Redetermining Eligibility; General Eligibility Provisions; Income; Support from Relatives Not Living with the Client

Statutory Authority

The Department of Public Welfare (Department), by this order, adopts this final-form rulemaking to read as set forth in Annex A. The statutory authority for this rulemaking is sections 402(a)(7)(A)(iii) and (B) and 408(a)(7)(A) and (C) of the Social Security Act (act) (42 U.S.C.A. §§ 602(a)(7)(A)(iii) and (B) and 608(a)(7)(A) and (C)); 45 CFR 264.1(c) (relating to what restrictions apply to the length of time Federal TANF assistance may be provided); sections 201(2), 401(a), 402, 403(b), 405, 405.1, 405.3, 432, 432(3) and (8) and 432.21(a) of the Public

Welfare Code (code) (62 P.S. §§ 201(2), 401(a), 402, 403(b), 405, 405.1, 405.3, 432, 432(3) and (8) and 432.21(a)); Act 1996-35 (Act 35) which amended sections 401, 402, 403(b), 405, 405.1, 405.3, 408, 432, 432.3—432.5, 432.12, 432.19, 442.1 and 481 of the code and added sections 405.5, 432.22, 434, 448 and 449 of the code; and 23 Pa.C.S. §§ 4301—4381, 5103, 7101—7901 and 8101—8418 (relating to Domestic Relations Code).

Notice of proposed rulemaking was published at 32 Pa.B. 431 (January 26, 2002).

Purpose

The purpose of this rulemaking is to codify regulations to take advantage of an option under Federal law that permits states to extend Temporary Assistance for Needy Families (TANF) beyond 60 months to a limited number of families on the basis of hardship or domestic violence.

Need for Final-Form Rulemaking

The Department recognizes that some families, due to domestic violence or other barriers, or both, will not achieve self-sufficiency within the 60-month time limit for receipt of TANF assistance prescribed under Federal law. This rulemaking reflects the legislative intent that the Commonwealth's cash assistance programs promote self-sufficiency over dependency. This final-form rulemaking affords families that have exhausted the 60-month time limit the opportunity to receive cash assistance contingent upon participation in employment or other activities designed to move them toward economic independence. This final-form rulemaking provides supportive services, including transportation and child care, to individuals to allow them to participate in specific programs and activities which are part of their plan for self-sufficiency. This final-form rulemaking is also needed to clarify that Extended TANF is a Federal benefit which cash assistance applicants must seek first, before applying for General Assistance (GA), if they are potentially eligible, in accordance with sections 432(8) and 432.21(a) of the code.

Requirements

The Department has reorganized and revised the regulations setting forth eligibility requirements. In the proposed rulemaking, all the eligibility and compliance requirements for Extended TANF were set forth in § 141.51 (relating to policy). In this final-form rulemaking, § 141.51 contains only the basic eligibility policy for Extended TANF. Revised definitions are in § 141.52 (relating to definitions). Provisions applicable to individuals who qualify for Extended TANF based on domestic violence are found in § 141.53 (relating to eligibility based on domestic violence). Section 141.54 (relating to maximum participation project) applies to individuals referred to and participating in the Maximizing Participation Project (MPP). Section 141.55 (relating to mandatory RESET participants) applies to individuals who are mandatory participants in the Road to Economic Self-Sufficiency Through Employment and Training (RESET) Program. Section 141.56 (relating to deferred referral) applies to individuals for whom referral to either MPP or the Work Plus Program (WPP) or another employment and training program is deferred. The provision for special allowances for supportive services for all recipients of Extended TANF is found in § 141.57 (relating to special allowances). Section 141.58 (relating to appeal rights) provides for appeals from termination or denial of Extended TANF.

Affected Individuals, Groups and Organizations

This final-form rulemaking affects families with an adult head of household or spouse of head of household who has received TANF for 60 cumulative months. These families may qualify for Extended TANF on the basis of domestic violence or their willingness to enroll in and cooperate with programs and activities designed to lead toward self-sufficiency.

Accomplishments/Benefits

The final-form rulemaking provides additional services as well as cash assistance to families that did not achieve self-sufficiency in 60 months under TANF.

Summary of Public Comment and Changes

Written comments, suggestions and objections were solicited within a 30-day comment period after the publication date of the proposed rulemaking. The Department received 109 public comments, 89 of which were one of three form letters. In addition to providing constructive comments or suggested revisions to the regulations, a majority of commentators commended the Department for proposing regulations that will continue assistance to needy families who were unable to achieve self-sufficiency within the prescribed TANF time limits. Commentators included: citizens, advocates, the Minority Chairperson of the Public Health and Welfare Committee, the Minority Chairperson of the House Health and Human Services Committee and IRRC.

The Department has carefully reviewed and considered each suggestion and comment and thanks the individuals and organizations that commented on this rulemaking. The following is a summary of the written comments received during the public comment period and the Department's responses.

1. GA for children and other family members. (§§ 141.51(b)(2), 141.61(a)(1)(xii))

Comment: Commentators suggested that the Department has no authority to make a family ineligible if the adult fails to comply with the Work Capacity Assessment (WCA), MPP or domestic violence services plan. Some called this a "full family sanction" whether or not the individual's failure to comply involves work requirements. They claimed that according to State law, except for violations of work requirements, only the individual is ineligible and not the entire family. One commentator said that this policy will punish children whose parents are not eligible for Extended TANF; the commentator claimed that the code specifies that children are eligible for GA up to age 18 (or up to age 21 if they are in secondary school). Another commentator expressed concern that the Department's proposed policy regarding family ineligibility may encourage parents to "pass off" their children to other relatives so the children may qualify for cash assistance. Some commentators expressed concern that this policy will lead to increased foster care and related services, an undesirable outcome. Commentators submitted that the requirement in section 432.21(a) of the code that individuals apply first for Federal benefits does not justify precluding GA for the family when the individual fails to comply with this requirement. They disputed the Department's position that the State-run and partially State-funded TANF program is a "Federal benefit" covered under section 432.21(a) of the code. They argued that this statute bars only the "person" who fails to cooperate in seeking Federal benefits.

One commentator claimed that the Department attempted to bolster its "TANF first" argument by making a

subtle but important so-called "technical edit," changing the requirement from applying for a "Federal benefit" to a "Federal program." The commentator suggested that, in making this change, the Department apparently acknowledged that TANF is not a Federal benefit. The commentator suggested that this change is a departure from the statute, which requires that applicants and recipients apply for Federal benefits, which are programs administered and paid for with Federal revenues, such as Supplemental Security Income (SSI). Moreover, the commentator claimed that TANF is not a Federal benefit; rather, it is a block grant of money paid to the states, commingled with state maintenance of effort (MOE) funds, to be used to benefit needy children as the Commonwealth sees fit. The commentator said that the Department's position is undercut by the existence of the Time-Out program; if TANF is a Federal program that must be accessed first, before any State funds are utilized, there would be no way to administer Time-Out because recipients would have to immediately reapply for the Federally-funded TANF program first. In addition, the commentator suggested that attempting to recast the statutory requirement as an obligation to apply for any Federally-funded program requires all individuals to apply for a vast array of Federally-funded programs, such as public housing, food stamps, school breakfast and lunch, Head Start and the Women, Infants and Children Program (WIC). The commentator suggested that although application for such voluntary programs may sometimes be advisable, it is not, and should not be, necessary, nor does the Department intend this result.

Finally, the commentator claimed that cooperation with WCA, MPP or a domestic violence services plan are not definitive conditions of TANF eligibility, so a parent who does not cooperate with these cannot herself be denied GA (if otherwise eligible) for one of these reasons. The commentator said that although the code does not specify what constitutes a "definitive condition," the definition can be readily inferred, and does not include work and other requirements that apply equally to TANF and GA applicants and recipients. The only conditions of TANF that truly distinguish it from GA, the commentator said, are that TANF requires: (1) a deprived child; and (2) a specified relative. Without these, an otherwise eligible individual may receive GA, not TANF; they contend there are no other rules that distinguish TANF from GA, and the Department may not create new differences the General Assembly did not authorize. The commentator noted that under section 432(8) of the code, failure to meet a definitive condition of TANF solely because of refusing to cooperate in establishing eligibility for TANF results only in the person's ineligibility for GA.

Response: The Department disagrees with the commentators' suggestion that it has no authority to make the family ineligible if the adult fails to comply with WCA, MPP or other Extended TANF provisions that do not involve work requirements. Under sections 201(2), 403(b) and 432 of the code, the Department is authorized to establish rules, regulations and standards regarding eligibility of individuals who may be eligible for cash assistance, including GA. Contrary to the commentators' suggestion that certain individuals (for example, children up to age 18, or age 21 for those in secondary school) are entitled to GA, see section 432(3) of the code states that certain individuals "may be eligible for general assistance . . . subject to the rules, regulations, and standards established by the department." See sections 432, 432(3)(i) of the code. Thus, section 432(3)(i) of the code recites who may be eligible for GA, while section 432 of the code

authorizes the Department to establish the rules, regulations and standards for those individuals. The prefatory language of section 432 of the code evinces the General Assembly's intent to confer broad discretion upon the Department in setting these rules and standards, including eligibility requirements.

For example, although some commentators questioned the Department's authority to establish rules specifying: (1) that the family is ineligible for GA if the adult fails, without good cause, to cooperate in establishing eligibility for Federal benefits; and (2) that the family is ineligible for GA if the adult fails to meet a definitive condition of TANF solely because he refuses to cooperate in establishing eligibility for TANF, section 432 of the code and other statutory provisions clearly give the Department this discretion. While sections 432.21(a) and 432(8) of the code, respectively, preclude GA for an individual who fails to comply with these requirements, these provisions do not constrain the Department to limit GA ineligibility to the adult. Unlike section 432.3(a)(iii)(2) of the code (regarding durational sanctions for failure to comply with work requirements), the General Assembly did not limit ineligibility "only" to the individual. Under section 432 of the code, the Department is authorized to establish the foregoing rules, stating that the family is ineligible if the individual (the adult) fails to comply with WCA, MPP or other Extended TANF provisions that do not involve work requirements.

Further, the Department does not agree with the commentator who suggested that "definitive conditions" under section 432(8) of the code do not include work and other requirements that apply equally to TANF and GA applicants and recipients. The Department disagrees with the commentator's claim that the only definitive conditions of TANF (and Extended TANF) are that the family must include: (1) a deprived child; and (2) a specified relative. The Department interprets "definitive conditions" to mean "conditions of eligibility." The Department does not agree with the commentator that "definitive conditions" of TANF (or Extended TANF) must be exclusive to TANF (or Extended TANF). Moreover, the Department does not agree that the regulations create new differences the General Assembly did not authorize. However, the Department agrees that if a family is ineligible for TANF or Extended TANF because the family does not include a deprived child and specified relative, the family may receive GA if otherwise eligible.

Other statutory provisions also bolster the Department's discretionary authority to set eligibility rules and standards such as these. These rules and standards supplement, and are consistent with, those already articulated in the code. For example, section 201(2) of the code specifies that the Department shall have the power and duty "to promulgate regulations, establish and enforce standards and to take such other measures as may be necessary to render the Commonwealth eligible for available Federal funds and other assistance." Certainly, this includes Federal funds for Extended TANF benefits. In addition, section 403(b) of the code provides that "the department shall establish rules, regulations and standards, consistent with the law, as to eligibility for assistance and as to its nature and extent." Section 403(b) of the code also underscores that "[w]henver possible, except for residency requirements, and consistent with State law, the department shall establish rules, regulations and standards for general assistance consistent with those for aid to families with dependent children [now, TANF]. In no instance shall the rules, regulations and standards established for general assistance provide for

assistance greater than that provided for [TANF].” As these provisions demonstrate, the General Assembly did not intend for section 432 of the code to comprise all the rules and standards for GA.

The Department disagrees with the commentator who attempted to distinguish “Federal benefits” from “Federal programs,” claiming that TANF is not a Federal benefit. This is a distinction without a difference. In fact, the General Assembly used these phrases interchangeably in section 432.21(a) of the code. Therefore, § 141.21 (relating to policy) is not a substantive departure from the statute. The Department disagrees that TANF is not covered under section 432.21(a) of the code simply because Federal TANF block grant money is commingled with MOE funds for TANF. Both are funding sources for the TANF program; both are used to provide TANF benefits to eligible recipients. Section 432.21(a) of the code does not specify that a benefit or program must be solely Federally funded to be considered a Federal benefit or program. The Department’s position is not undercut by the existence of the Time-Out program. Section 403(b) of the code grants the Department authority to establish rules and regulations for assistance benefits and the nature and extent of those benefits. The Department has chosen not to apply the provision of section 432.21(a) of the code to the optional Time-Out benefits provided in the TANF program under Chapter 281 (relating to Time-Out benefits). Accordingly, Time-Out benefits are not listed in § 141.21(n).

Time-Out benefits are provided to TANF-eligible families who have not exhausted 60 months of TANF and who are exceeding applicable work participation requirements, are kinship caregivers or are victims of domestic violence. This is consistent with the General Assembly’s intent to encourage and aid families in their efforts to achieve self-sufficiency. These benefits also enable children to remain in the care of relatives. Although Time-Out is funded with State funds, those State expenditures for families eligible for basic TANF are counted as State MOE expenditures for purposes of assuring the receipt of Federal TANF funds. See 42 U.S.C.A § 609(a)(7). Expenditures of State funds qualify under 42 U.S.C.A. § 609(a)(7) only if the families meet all the TANF requirements except the time limit and provisions applicable to certain aliens. See 42 U.S.C.A. § 609(a)(7)(B)(i)(IV). Families in Time-Out meet these requirements. In providing State-funded Time-Out benefits to families who could qualify for TANF, the Department is acting consistent with both the mandate in section 201(2) of the code to ensure the receipt of Federal funds and the requirement of 42 U.S.C.A. § 609(a)(7) to maintain the level of State expenditure on TANF-eligible families.

Moreover, the Department disagrees that the “Federal programs/benefits first” rule requires all individuals to apply for every type of Federally-funded program/benefit, including noncash benefits, public housing, food stamps, school breakfast and lunch, Head Start and WIC. These programs/benefits are supplementary in nature; section 432.21 of the code requires applicants and recipients to pursue Federal programs/benefits as the “primary source of financial assistance” for these individuals. Noncash benefits are generally not a primary source of financial assistance.

The Department does not agree that this policy will punish children whose parents are not eligible for Extended TANF, encourage parents to “pass off” their children to other relatives so the children may qualify for

cash assistance or lead to increased foster care and related services. For those not subject to RESET participation requirements, failure to comply does not yield a full-family durational sanction under § 141.55(c), which follows sections 432.3 of the code and § 165.61 (relating to sanctions). Recipients who become ineligible for failure to comply with Extended TANF provisions that do not involve RESET participation requirements (for example, requirements to cooperate in obtaining a WCA or to comply with an MPP service plan) may reestablish eligibility for Extended TANF an unlimited number of times.

2. 30-hour requirement. (§§ 141.51, 141.52)

Comment: Commentators claimed that the 30-hour WPP work and work-related activity requirement violates Federal and State law. Specifically, they argued that requiring 30 hours violates the Fair Labor Standards Act (FLSA) (29 U.S.C.A. §§ 201–219) and the Americans With Disabilities Act (ADA) (42 U.S.C.A. §§ 12131–12156); they also suggested that the 30-hour rule is bad policy. They asked the Department to articulate a rationale for requiring this more stringent work requirement after 60 months and for expecting that recipients will be able to meet the 30-hour requirement. They asked the Department to state the specific statutory authority for requiring 30 hours of combined work or work-related activities and questioned the statutory authority for making this requirement a condition of eligibility.

Further, they suggested that the regulations be revised to require compliance with Federal and State employment laws (for example, involving unemployment insurance, the Occupational Safety and Health Act and the FLSA) and civil rights laws. One commentator said that the 30-hour rule violates the ADA for disabled persons unable to work those hours, but required to participate in WPP. The commentator said the Department should modify this requirement for those who cannot work 30 hours per week due to disability (whether their own or a child in their care), for example, by requiring less than 30 hours for these individuals or excusing them from the requirement based on “good cause.” Whether a disabled individual cannot work the requisite 30 hours on occasion or as a rule, the commentator suggested that the regulations be revised to accommodate these individuals. Moreover, the commentator said that the 30-hour requirement is inconsistent with the minimum 20-hour per week work requirement in section 405.1(a.2)(6) of the code because the statute requires 20 hours per week, based on an average. Also, the commentator claimed that the 30-hour requirement is more objectionable than the proposed requirement to “maximize employment,” which appeared in the Department’s proposed rulemaking for the basic TANF program at 31 Pa.B. 5875 (October 20, 2001). Arguing that the 30-hour minimum creates an “all or nothing” approach to work that makes no sense, the commentator asked whether a person who, trying as hard as she can, can find a job for 25 hours per week should be treated the same as a person who is not meeting the work requirement.

Commentators also suggested that 30 hours may not be possible for everyone who is not self-sufficient after 60 months of TANF, especially those caring for children with special needs, single parents who cannot balance working 30 hours and other responsibilities, such as raising their children or caring for elderly or infirm relatives, and those without guaranteed child care or transportation. They contended that individuals in these situations should not be sanctioned. Some commentators submitted that those who must care for disabled or infirm relatives

are best suited to do so because they have the necessary skills and compassion for this difficult task. They noted that a 30-hour per week job might pay less per week than a 20-hour job if the hourly wage is lower. One commentator questioned whether the Department has information about these factors: the distance between families' homes and available child care; availability of public transportation at all necessary times; how long it takes to travel from home to child care to work and back again; what time is left for education and training in light of the Department's "work-first" policy. One commentator suggested that the regulations be revised to also allow an individual to qualify for Extended TANF if the individual engages in an average of at least 20 hours per week of private sector employment.

Response: Although the Department disagrees that the 30-hour WPP work and work-related activity requirement violates Federal and State law, it has revised the regulations to specify that: (1) program rules and requirements will be modified in accordance with the ADA; and (2) the 30-hour work and work-related requirement will consist of combined work and work-related activities, in accordance with the FLSA. The Department finds that it is unnecessary to revise the regulations to require compliance with other Federal and State employment and civil rights laws. The Department is already required to comply with Federal and State law whether or not the regulations cross-reference applicable statutory provisions.

The Department is authorized to require at least 30 hours of combined work and work-related activities for individuals who must comply with RESET. Contrary to the commentators' claim, this requirement does not violate Act 35 and is not inconsistent with the minimum 20-hour work requirement in section 405.1(a.2)(6) of the code. Under sections 403(b), 405, 405.1, 432 and 432.3 of the code, the Department is authorized to require individuals to work more than the statutory minimum of 20 hours per week. Under sections 403(b) and 432 of the code, the Department may establish eligibility rules for its programs. The code does not contain an exhaustive recitation of the rules and requirements for the Department's programs; Departmental regulations contain additional eligibility rules and requirements for these programs. Likewise, section 405 of the code authorizes the Department to establish eligibility rules for employment, work-related activities and training for employable recipients. In addition, section 405.1(a.2)(6) of the code sets the statutory minimum at 20 hours per week as a condition of eligibility after 24 months of cash assistance, but section 405.1 of the code nowhere states that this is the maximum number of hours an individual is required to work as a condition of eligibility. Indeed, under section 432.3(a)(ii) and (iii) of the code, an individual is subject to sanction if he fails, without good cause, to apply for work at such time and manner as the Department prescribes, accept referral to and participate in a work-related activity, or work in and retain employment in which he is able to engage. Accordingly, if the Department directs that a nonexempt individual must apply for work through WPP, accept referral to and participate in a work-related activity through WPP, or work in and retain employment in which he is able to engage through WPP, he must comply unless he establishes good cause for not doing so.

The 30-hour requirement is also squarely consistent with Federal law. The Department is authorized under 42 U.S.C.A. § 608(a)(7) and 45 CFR 264.1 to establish rules for TANF after 60 months, exempting up to 20% of the caseload, as specified in 42 U.S.C.A. § 608(a)(7)(C)(ii). In

addition, under 42 U.S.C.A. § 609(a)(3), the Department is subject to penalty if it fails to satisfy the minimum work participation rate for that year. See 42 U.S.C.A. § 607(a) (regarding participation rate requirements). The work participation rate is based on the number of adults and minor child heads of household who are "engaged in work," as defined in 42 U.S.C.A. § 607(c). In calculating the work participation rate for the year 2000 and beyond, an individual is considered "engaged in work" if he participates in at least 30 hours per week, consisting of at least 20 hours of "core" activities (for example, unsubsidized and subsidized employment) and the balance consisting of a broader range of activities. See 42 U.S.C.A. § 607(c) and (d) (regarding minimum work requirements for individuals to be considered "engaged in work") and (d) (regarding work activities).

In part, the Department's rationale for requiring at least 30 hours per week of combined work and work-related activities (including education and training) is based on the Department's goal of complying with Federal work participation rate requirements. This requirement is also grounded in the legislative directive that work is essential to self-sufficiency. Indeed, many current TANF recipients are already participating 30 hours per week in contracted employment and training programs. If working at least 20 hours per week during 60 months of TANF did not lead to financial independence, the Department finds that stepped-up efforts—of recipient and agency alike—are needed. Training, job search and other work-related activities are intended to bolster an individual's participation in work activities. For these reasons, the Department also disagrees with the commentator's suggestion that the regulations should specify that an individual may receive Extended TANF if he engages in an average of at least 20 hours per week of private sector employment. The Department does not find sufficient reason to treat those working in private sector employment differently than those working in the public sector or in one of the Department's employment and training programs.

The final-form regulations clarify that unless an individual establishes good cause for not complying with the minimum 30-hour per week requirement, if he is working 20-29 hours per week in unsubsidized employment, he must maintain employment and enroll and participate in a job retention and advancement program for the balance (see § 141.55(a)(3)). An individual who is employed 20-29 hours per week, but establishes good cause for not participating in 30 hours of combined work and work-related activities, is required to maintain employment and address the good cause situation through WPP (see § 141.55(a)(6)(i) and (iv)). Further, an individual who is employed less than 20 hours per week must maintain employment and enroll in WPP for the balance (see § 141.55(a)(4)), unless the individual establishes good cause for not participating in 30 hours of work and work-related activities. In that case, unless he has good cause for not complying with RESET, the individual must maintain employment, comply with RESET by participating in WPP for a combined total of at least 20 hours per week, and address the good cause situation (see § 141.55(a)(6)(ii) and (iv)). Finally, an individual who is unemployed must participate in WPP, unless he establishes good cause for not participating in at least 30 hours of work and work-related activities (see § 141.55(a)(5)). If the individual has good cause for not participating in 30 hours, he must comply with RESET, unless he has good cause for not doing so, by participating in WPP for at least 20 hours per week and address the good cause situation through WPP (see § 141.55(a)(6)(iii) and (iv)).

As revised, the final-form rulemaking protects individuals who are required to comply with RESET but establish good cause for not complying with the minimum 30-hour work and work-related requirement of Extended TANF.

Individuals who establish good cause for not complying with the 30-hour work requirement are not subject to sanction under § 141.55(c), but must comply with RESET, unless they establish good cause for not complying with RESET. The Department's policy is flexible, fair and illustrates that the 30-hour requirement is not an "all-or-nothing" approach or "bad policy," as commentators suggested. For example, an individual who declines a 30-hour job in favor of a 20-hour job that pays more per week may have good cause for not taking the 30-hour job. Unless the individual establishes good cause for not participating in 30 hours of work and work-related activities, the individual is required to participate in a job retention and advancement program for the balance. Likewise, an individual caring for a disabled or infirm relative may establish good cause for not working 30 hours per week. The individual, too, must comply with § 141.55(a), unless he establishes good cause for not complying with RESET. If the individual must comply with RESET, the individual is required to address the good cause situation, which may include seeking appropriate care within a reasonable distance from home. Although the Department agrees that family members are often best suited to provide nurturing care for disabled or infirm relatives, appropriate care within a reasonable distance from home may be available from nonfamily members in or outside of the home.

Finally, the Department has systematic and anecdotal information regarding available child care, public transportation, travel times and distances between areas and other factors affecting an individual's ability to comply with the 30-hour work requirement and RESET. Caseworkers are usually familiar with the transportation and services in their counties; caseworkers also receive information about these factors from the recipients.

3. Domestic violence. (§ 141.51(a)(1))

Comment: Commentators suggested that the regulations do not protect victims of domestic violence. They claimed that: (1) the regulations do not fully implement the Family Violence Option (FVO) and recommendations of the Department's Domestic Violence/TANF Task Force (DVTF); (2) the regulations should provide for waivers generally and specifically, waivers involving the time limit "for as long as necessary," and for families "at risk of further violence," as provided in Federal law; (3) domestic violence victims should qualify for Extended TANF whether or not they received a prior waiver of child support or work requirements; (4) the regulations should include a comprehensive description of who is eligible for a time limit waiver based on domestic violence, including those with current, past or threat of future domestic violence, whether or not they had waivers of program requirements; (5) the regulations should clarify that Extended TANF is available for those with past, current or at risk of future domestic violence; (6) the regulations should provide a comprehensive description of the domestic violence services plan. They suggested that the regulations be revised to provide guidance on Extended TANF for victims of domestic violence who: (1) have or have not had waivers of other program requirements (including those who received Time-Out benefits); (2) are experiencing or have experienced domestic violence but do not currently have (and did not previously obtain) waivers of program requirements; or (3) will experience domestic

violence in the future and need to return to TANF after a brief time off TANF. They claimed that all of these individuals are encompassed within the FVO, and that they (as well other recipients) have had no prior notice that Extended TANF would be available. They also said that many victims may have chosen not to pursue a waiver, and that clear information regarding domestic violence waivers has not always been readily available to them. One commentator asked if a family experiencing domestic violence can qualify for Extended TANF if domestic violence was not previously established under TANF. If so, the commentator said the regulations should include a cross-reference to this process.

One commentator asked the Department to clarify the duration of Extended TANF for domestic violence victims other than those with good cause waivers for child support or work requirements. The commentator suggested that for those with current or previous waivers of program requirements or who received Time-Out due to domestic violence, the minimum duration should be the length of the waiver, supplemented by an assessment of need based on current or future risk of domestic violence. Another commentator asked the Department to allocate more resources to improve how caseworkers handle domestic violence issues. Yet another commentator suggested that the regulations be revised to help individuals "break the abusive cycle" and to disqualify those who continue "of their own free will, to engage in a relationship which had a history of violence or abuse." The commentator urged the Department to require counseling and anger management sessions as a condition of eligibility for cash assistance. One commentator suggested that § 141.51(a)(1)(iv) of the proposed rulemaking provides for a domestic violence services plan that is inconsistent with Federal regulations (45 CFR 260.55(c) (relating to what are the additional requirements for Federal recognition of good cause domestic violence)) requiring that waivers be "accompanied" by a services plan. The commentator suggested that proposed § 141.51(a)(1)(iv) be revised to track and cross reference 45 CFR 260.55(c).

Another commentator said that the regulation does not provide enough detail about what constitutes a domestic violence plan, and that it should specify or cross reference the requirements of a domestic violence services plan. This commentator asked the meaning of the phrase "person trained in domestic violence," the level of training required to develop a domestic violence services plan, and whether these persons are employed by the Department or under Department contracts for services. Finally, this commentator asked what process the Department will follow to rescind a waiver when eligibility is reviewed, and how an applicant can appeal a finding that would rescind eligibility; the commentator suggested that the Department include or cross reference these processes in the regulation.

Response: The Department finds that this rulemaking does protect victims of domestic violence. The Extended TANF regulations implement the FVO by including domestic violence as a criterion for receipt of assistance beyond 60 months. Section 141.51(a)(1), revised and redesignated § 141.53, sets forth the eligibility requirements for Extended TANF based on domestic violence.

The Department, in collaboration with members of the DVTF, will develop a comprehensive FVO regulation that includes FVO policies and recommendations of the DVTF not yet included in either the basic TANF regulations or this final-form rulemaking. These planned enhancements are primarily procedural rather than substantive. These

include provisions related to policies and recommendations related to universal notification, referral for supportive services, uniform verification requirements, a more detailed description of the domestic violence services plan, battered immigrants and waivers of TANF program requirements for other than time limits, child support and RESET.

The Department agrees with the commentators' suggestion that the regulations should provide for waivers of the time limit "for as long as necessary" and has revised § 141.51(a)(1)(ii) and (iii), redesignated § 141.53(c) accordingly. This revision is consistent with 42 U.S.C.A. § 602(a)(7)(A)(iii) and 45 CFR 260.52(c) (relating to what are the basic provisions of the Family Violence Option (FVO)), which outline the basic provisions of the FVO. This revision is consistent with and, in fact, is more generous than one commentator's suggestion that the minimum duration of a time-limit waiver be the length of the child support or work requirement waiver, supplemented by an assessment of current or future risk of domestic violence.

The Department appreciates the commentators' suggestion that the regulations should provide for waivers of time limits for families "at risk of future domestic violence" but disagrees that this language is consistent with Federal law. Federal statute at 42 U.S.C.A. § 602(a)(7)(A)(iii) and regulations at 45 CFR 260.52(c) and 45 CFR 260.59(a)(2)(i) (relating to what penalty relief is available to a State that failed to comply with the five-year limit on Federal assistance because it provided federally recognized good cause domestic violence waivers) provide for waivers of time limits for families "at risk of further domestic violence." Consequently, the Department has revised § 141.51(a)(1), redesignated § 141.53(a), to clarify that a family is eligible for Extended TANF if an individual or family member is experiencing, has experienced, or is at risk of further domestic violence.

In response to the commentators' suggestion that victims of domestic violence should qualify for Extended TANF whether or not they received a prior waiver of child support or work requirements, the Department agrees and has revised § 141.51(a)(1), redesignated § 141.53(a) accordingly. As explained previously, § 141.53(a) provides that a family is eligible for Extended TANF if the individual or family member is experiencing, or has experienced domestic violence, or is at risk of further domestic violence. Additionally, § 141.53(a)(2) outlines verification requirements for families which never had a waiver of TANF child support cooperation or work requirements. Because the regulations clarify that a family may receive Extended TANF on the basis of domestic violence even though the domestic violence was not established under TANF, a cross reference is unnecessary.

The Department disagrees with the commentators' suggestion that the regulations should include a comprehensive description of the domestic violence services plan. The Department has purposely refrained from including more specific detail on the services plan at this time. The Department has made a commitment to the DVTF that its members will be permitted to play a major role in the development of "final" FVO regulations, which the Department expects will include a more comprehensive description of the domestic violence services plan. The Department agrees with the commentators' suggestion that the regulations should cross-reference the Federal regulations at 45 CFR 260.55(c), and has revised § 141.51(a)(1)(iv), redesignated § 141.53(a)(2), as follows: "A fam-

ily eligible for Extended TANF due to domestic violence shall have a domestic violence services plan that meets the requirements of 45 CFR 260.55(c) (relating to what are the additional requirements for Federal recognition of good cause domestic violence waivers)."

With regard to one commentator's question concerning persons trained in domestic violence, the Department refers the commentator to the final Federal TANF rule-making that was published at 64 FR 17720 (April 12, 1999). While Federal law does not define "a person trained in domestic violence," the preamble for the TANF Federal regulations, 64 FR 17745, provides some guidance to states in this area. According to the Department of Health and Human Services, Administration for Children and Families, states have the flexibility to decide the appropriate roles for TANF staff and domestic violence service providers in administering the provisions of the FVO. The Federal expectation is that persons trained in domestic violence will develop service plans and assessments. However, Federal regulations do not prescribe any specific training curriculum, staff credentials or administrative structure for delivering services. Notwithstanding the lack of regulatory guidance on these issues, the Department will expect staff who perform these functions to have some training in domestic violence and must have some level of special knowledge and expertise to make appropriate decisions in these highly sensitive cases.

Consequently, from June 1999 through February 2000, the Department provided training to caseworkers, in collaboration with the Pennsylvania Coalition Against Domestic Violence (PCADV). The training included information about: (1) domestic violence and its impact on self-sufficiency; (2) Department policies and procedures related to domestic violence; and (3) services, supports and protections available to victims through PCADV and other agencies. One objective of the training on domestic violence provided to caseworkers was to help them understand why victims make certain decisions related to staying or leaving an abusive relationship. In many instances, leaving does not reduce the risks. In some instances, leaving may cause the violence to escalate.

Individuals who disclose domestic violence and agree to referral for counseling and other supportive services are directed to a domestic violence service provider in the community. Depending upon the individual's circumstances and preference, the domestic violence services plan may be developed by the service provider or the caseworker.

The Department agrees with the commentator's request that the Department allocate more resources to improve how caseworkers handle domestic violence issues. Under a contract with the Department and with input from Department staff, PCADV is developing a desk guide for caseworkers that will serve as a quick reference for recognizing and responding to the needs of domestic violence victims. In addition to the desk guide for caseworkers, each CAO will receive a Domestic Violence Manual that contains: a) detailed information on domestic violence, for example, what it is, how to recognize it and where to make appropriate referrals; and b) specific references to Departmental policies in place that are relevant to the treatment of victims of domestic violence. Finally, the Department plans to provide additional training to CAO staff on the numerous changes to policy that have occurred since the initial FVO training.

The Department disagrees with the commentator's suggestion that the regulations should be revised to deny or terminate assistance benefits to individuals who stay in

abusive relationships. This commentator specifically requested that: (1) individuals who continue in abusive relationships "of their own free will" be denied or terminated from the Extended TANF program; and (2) that participation in anger management and counseling programs be conditions of eligibility for Extended TANF. Caseworkers have received training in recognizing the signs of domestic violence and will refer individuals to appropriate voluntary counseling and protective services. However, the Department does not agree that attendance in counseling and anger management sessions should be conditions of eligibility for Extended TANF. Victims may be reluctant to disclose domestic violence if they know that accessing services is mandatory, especially if they believe they may be in more danger if they seek such help. The decision to seek help must be the individual's, because counseling is most effective when it is voluntary and unencumbered by the fear of reprisal by the perpetrator.

Finally, with respect to the commentator's question about the processes followed to notify families of ineligibility for Extended TANF or a waiver and their right of appeal, the answer is that the customary regulatory processes are followed. If the family is determined ineligible for a waiver or for Extended TANF on the basis of domestic violence, the caseworker will generate a notice of adverse action that informs the family of the reasons for the termination and advises them of their right to appeal the decision. Rather than add a cross-reference to Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) in § 141.53, the Department has added § 141.58 to provide the following: "An individual may appeal the denial or termination of Extended TANF under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings)."

4. *Verification of domestic violence.* (§ 141.51(a)(1))

Comment: Commentators suggested that the regulations set forth verification procedures for domestic violence, including those for individuals who have not previously provided verification of domestic violence and who previously verified and need not produce further verification. They also suggested that where verification is required, a uniform verification form that includes Extended TANF, Time-Out and other program requirements should be used; they say that this will make procedures for Extended TANF consistent with those for support waivers and Time-Out. They also said that as with the support waivers and Time-Out, this form would be used to accompany any one of the following types of verification: documentation, third party verification and self-affirmation. Further, they said the regulations should clearly state that any one of these types of verification is sufficient to establish eligibility for Extended TANF.

Commentators also requested that the regulations be revised to clarify the 6-month review process and the verification process during this review; they suggested that if the individual has provided verification to support waiver of any program requirement, no further verification should be required at the 6-month review unless circumstances have changed.

Response: The Department agrees with the commentators' suggestion that the regulations should set forth the verification requirements for domestic violence, including requirements for individuals who have, and those who have not, previously provided verification. The Department has revised § 141.51(a)(1)(i), redesignated § 141.53(a)(1), to provide that no further verification is

necessary if the adult has a current or past waiver of child support or work requirements, or both, or received Time-Out benefits based on a claim of domestic violence. Section 141.53(a)(2) provides that verification or self-affirmation of domestic violence is required of individuals who have not had prior good cause waivers of program requirements or received Time-Out benefits based on domestic violence.

The Department also agrees with the commentators' suggestion that a uniform domestic violence verification form be used that applies to Extended TANF and Time-Out. Section 141.53(a)(3) specifies that the CAO will complete a domestic violence verification form under § 187.27(b)(1)(vii) (relating to waiver of cooperation for good cause), with the exception that the 6-month limitation as specified in § 187.27(b)(1)(vii)(C) does not apply. This form, the PA/CS 1747, has been renamed the "Domestic Violence Verification Form" (formerly titled "Verification of Good Cause Based on Domestic Violence") and revised to include check-off blocks for RESET, Time-Out and Extended TANF. Section 187.27(b) is revised to reflect the new "generic" name of the PA/CS 1747.

With respect to the commentators' request that the regulations clarify the 6-month review and verification process, the Department agrees. Section 141.51(a)(1)(v), redesignated § 141.53(d)(1) and (2), is revised to provide that the CAO will review eligibility for Extended TANF based on domestic violence at least every 6 months and will not require additional verification unless circumstances have changed.

5. *Time limit policy.* (§§ 141.41, 141.41(f), 141.41(f)(1))

Comment: Commentators said that the regulations should be consistent with and include the Department's other "essential" exceptions to the time limit policy, including several exceptions that have already been implemented, such as Time-Out and nonassistance. They also suggested that the regulations include a clarification of what counts or does not count toward the 60-month time limit (for example, assistance reimbursed through child support collection). They suggested that all circumstances that do not count toward the 60-month limit should be included in subsection (f). One commentator suggested that the regulations clarify the relationship between Regulation # 14-472 (which establishes the 60-month time limit for receipt of TANF assistance) and this rulemaking; specifically, the commentator suggested that a clear statement be made that the 60-month limit will not apply until after this rulemaking is final.

Further, commentators said that § 141.41(f)(1) describes "one circumstance when a TANF recipient would not be charged with assistance against their 60-month time limit;" they noted other circumstances such as nonassistance, Time-Out and other examples described in the Department's Cash Assistance Handbook. One commentator suggested that the regulations be revised to say that "periods of cash assistance that are solely State-funded do not count toward the 60-month limit." Another commentator said proposed § 141.41, as written, would not exclude the months spent in the Time-Out program from a recipient's 60 months.

They reiterated a comment they made about the basic TANF regulations and time limit policy: that the Department should publish all proposed rulemaking involving exceptions to the time limit as soon as possible, then file a comprehensive final-form regulation containing all TANF-related provisions as a single regulation. They also said that finalizing the basic TANF regulations before

this rulemaking will mean that “[m]any questions regarding the overall TANF program will remain unanswered under this scenario.” They also questioned whether the amendments to § 141.41 in this rulemaking remain consistent with Regulation #14-472.

Response: The basic TANF program is the foundation for this rulemaking, Extended TANF. Given the discrete nature of Extended TANF, the Department decided not to combine it with the basic TANF rulemaking. The Department chose to promulgate the basic TANF rulemaking first.

These regulations are consistent with the eligibility requirements for the basic TANF program. Basic TANF includes regulations for the State-funded Time-Out program in Chapter 281. Section 141.41(d)(8) and § 281.1 (relating to policy) clarify that benefits received under Time-Out do not count towards the 60-month limit. Section 141.41(d)(6) clarifies which benefits are not considered TANF “assistance received” for purposes of calculating months of TANF received. Accordingly, with these changes in §§ 141.41(d)(6) and (8) and 281.1, it is not necessary to revise § 141.41(f)(1).

Individuals who received 60 months of TANF prior to the effective date of this rulemaking and are otherwise eligible for TANF have continued to receive TANF. See 32 Pa.B. 432 (January 26, 2002). Upon publication of this rulemaking, individuals who have exhausted 60 months of TANF assistance will be required to comply with the eligibility requirements for Extended TANF.

The Department has not included in this rulemaking the initiatives and projects known as nonassistance. Nonassistance is not subject to the 60-month time limit. The 60-month time limit applies only to TANF “assistance.” Accordingly, an exception to the time limit for nonassistance is unnecessary. Nonassistance initiatives, announced by public notice of intent to amend the TANF State Plan published at 30 Pa.B. 2954 (June 10, 2000), include work supports and other services to low-income families. Although Federal law limits nonassistance cash benefits to a maximum of 4 months, the Department’s nonassistance benefits do not include monthly cash benefits.

Nonassistance benefits are pilot projects implemented by the Department directly, through contractors or by grants to other State agencies. The nature and extent of those benefits may vary in the future with changes in the needs of the recipients and the availability of work supports, service projects and funding. The flexibility gained through funding specific projects enables the Department to respond more quickly to changes in need and take advantage of newly-developed initiatives to meet those needs, including initiatives developed by entities other than the Department.

There is no time limit for receipt of Extended TANF. Individuals who have exhausted 60 months of TANF may be eligible to receive cash assistance beyond the 60-month limit under the Extended TANF program under this rulemaking.

It was not necessary to revise this rulemaking to provide that cash assistance that is solely State-funded is not counted towards the 60-month limit. The regulations are clear that the 60-month time limit applies only to TANF cash assistance, not to State-funded GA or Time-Out benefits. See §§ 141.41(d)(1) and 281.1.

6. No time limit.

Comment: One commentator requested “an end to time limits.” One commentator suggested that the TANF

5-year time limit should not apply to families of disabled immigrant parents who arrived in the United States after August 22, 1996, and who do not qualify for SSI because of the SSI prohibition against payments to noncitizens.

Response: With respect to the commentator’s request to “end time limits,” the Department refers the commentator to 45 CFR 264.1(a)(1) which prohibits states from providing TANF assistance to a family in which an adult head-of-household or spouse of head-of-household has received TANF assistance for 60 cumulative months. However, the Department has elected the Federal option at 45 CFR 264.1(c) that permits states to extend TANF assistance for up to 20% of the average monthly number of families receiving assistance during the fiscal year (or the preceding fiscal year). Families in the 20% are limited to families with a hardship or domestic violence. Cash assistance received under the Extended TANF program is not time-limited, but families must meet specific eligibility requirements and comply with individualized plans for self-sufficiency to remain eligible. Families of disabled immigrant parents who have received 60 months of TANF may qualify for Extended TANF in the same manner as families of parents who are citizens.

7. LEP. (§§ 141.51(a)(2), 141.52)

Comment: Commentators suggested that the Department revise the regulations to specifically acknowledge or assist those with Limited English Proficiency (LEP) and provide “off-the-clock” assistance for persons with LEP. One commentator claimed that no vocational training programs have been offered in languages other than English. The commentator also contended that persons with LEP did not have the opportunity to engage in training programs, job readiness or work experience programs which could enable them to enhance their skills and prepare to move from welfare to work. The commentator argued that the Department is required by Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000d), to take affirmative actions to overcome the effects of prior discrimination.

One commentator stated that persons with LEP have not had the opportunity to use their 5 years on TANF to participate in English-as-a-Second Language (ESL) classes. That commentator further argued that without Departmental funding for ESL classes, persons with LEP will not have the opportunity to participate in ESL programs with an intensity level needed to significantly advance in their English proficiency.

Response: The Department disagrees with the commentators’ allegation that persons with LEP did not have the opportunity to participate in ESL classes, vocational training, job readiness or work experience programs. The Department acknowledges the need for additional employment and training services for persons with LEP. The Department and its contractors are continuing to develop more programs and services for LEP individuals. Employment and training services have been and continue to be available in up to 23 languages other than English. Not all programs are available in all languages. Employment and training contractors are required to provide services to persons with LEP in the participant’s language for the following: job search, skills training, work experience, literacy, remedial education and job retention and advancement. In addition to language instruction provided by employment and training contractors, recipients of TANF have qualified for special allowances to attend ESL classes in the community. Because neither employment and training services nor ESL classes were denied to persons with LEP in the past, the Department disagrees

with the commentator's suggestion that there has been prior discrimination which necessitates affirmative action under Title VI.

The Department did not adopt the commentator's suggestion that the Department create a new basis for eligibility for "off-the-clock" benefits for persons with LEP. LEP alone is not a basis for eligibility for any cash assistance benefit. Individuals with LEP may qualify for Extended TANF under §§ 141.53–141.56 in the same manner as any other individuals. In addition, they are provided with language services needed to ensure meaningful access to benefits and programs. As discussed previously, contractors are required to provide employable recipients with employment and training services in the language they understand. In addition, ESL classes are included in WPP as specified in § 141.52 and are available to individuals in other employment and training programs. ESL classes also may be part of an individual's MPP service plan as specified in § 141.52. Extended TANF recipients whose referral to MPP or WPP is deferred or who qualify for Extended TANF based on domestic violence may participate in ESL classes. An individual whose approved AMR includes participating in ESL classes qualifies for supportive services to attend those classes.

The Department disagrees with the commentator's suggestion that it is necessary for the Department to fund ESL classes for persons with LEP to advance significantly in their English proficiency. Commentators presented no evidence to support their view that current methods of ESL instruction are insufficient. An ESL instruction is included in contracted WPP and other employment and training programs. In addition, ESL classes are available from multiple community agencies.

8. Short-term emergency benefits. (§ 141.41)

Comment: Commentators suggested that the Department provide short-term cash benefits (up to 4 months) as an available form of nonassistance for families facing a crisis. They said that providing these benefits makes more sense than MPP or WPP for people facing sudden unemployment, homelessness or other crisis who may need only short-term help to get back on track. Commentators claimed that the regulations create or fail to correct undue burdens on those needing short-term help due to an emergency, temporary disability or job loss. One commentator suggested that the Department consider establishing a monthly stipend program to help low-wage workers meet transportation and other work expenses. Commentators maintained that for an individual who has lost a job but has a considerable work history, WPP is not advisable and may interfere with finding a job; for this individual, job search may be the best course of action. Similarly, they said that an individual involved in an auto accident may not need MPP; some individuals do not need to address long-term employment barriers; they need only to overcome temporary problems, which short-term assistance may help rectify. Some commentators claimed that providing these benefits may avert family separation during short-term family crises. They say the Department should maximize the flexibility it has to address these temporary problems by providing, or acknowledging the possibility of offering, short-term cash benefits as nonassistance.

Response: The Department does not agree that offering short-term (up to 4 months) cash benefits as nonassistance is the best resolution for those facing unexpected, temporary crises such as sudden unemployment, homelessness or other emergencies. The Department's

nonassistance benefits do not include cash benefits permitted under Federal law under limited circumstances for a maximum of 4 months. Instead, these individuals, if otherwise eligible, may receive cash assistance under the TANF program for 60 months, then cash assistance under the Extended TANF program after 60 months. The Extended TANF program provides cash assistance to eligible individuals whether they need short-term or long-term help to get back on track.

As commentators noted, individuals facing short-term crises may not need MPP or WPP. The Department agrees that some of these individuals do not need to address long-term employment barriers and may have temporary good cause situations; many of these good cause situations have straightforward solutions. For these individuals, the Department added § 141.56 to temporarily defer referral to MPP or WPP for certain individuals. For example, the Department agrees that an individual whose good cause situation involves temporary injuries from an automobile accident may not require MPP referral. In that case, the individual may be referred to MPP if he continues to qualify under § 141.54 after the redetermination under § 141.56(b).

For individuals who have lost a job and who have considerable work history, the Department agrees that job search may be the best course of action. However, those who have lost a job are required to participate in WPP unless they establish good cause or verify an exemption. Work activities plus job search would be prescribed for these individuals. The "plus" portion of the WPP is designed to address the individual's needs, which may involve job search.

As revised, the regulations maximize the Department's flexibility in addressing these temporary problems in a way that nonassistance benefits would not. WPP offers a broad array of activities and services (for example, work activities, literacy training, ESL classes, job and life skills training, vocational assessments and job search). In addition, those eligible under § 141.56 may receive supportive services such as transportation and child care to support their efforts to become employable. Contrary to one commentator's suggestion, a separate "monthly stipend" program for these individuals is unnecessary and would duplicate benefits available under the TANF and Extended TANF programs. Before and after 60 months of TANF assistance, these and other individuals may receive cash assistance, if otherwise eligible. Because the Department recognizes that those requiring short-term help may need short-term solutions, the regulations do not "create or fail to correct undue burdens" on these individuals; indeed, the purpose of the regulations is to help lift those burdens.

Finally, the Department disagrees that providing nonassistance cash benefits in lieu of TANF or Extended TANF would help avert family separation during short-term family crises. These regulations provide necessary supportive services and cash assistance for eligible individuals and their families who need help in addressing their barriers to self-sufficiency.

9. Specificity/clarity of regulations regarding WCA, MPP and WPP. (§§ 141.51(a)(2), 141.52)

Comment: Commentators claimed the regulations are too general regarding WCA, MPP and WPP, seem inconsistent, and do not indicate how these will work. Some commentators argued that the WCA and WPP are not clearly defined. They suggested that the Department's standards for assessing disabilities and other barriers and

determining exemptions are unclear and lack standards and sufficient procedural safeguards to protect clients' rights. They also claimed the regulations do not contain substantive provisions addressing the eligibility requirements for these programs and how they will be implemented. One commentator asked the Department to explain the meanings of "functional limitations" and "good cause situations" and questioned how a physician or psychologist gets Department approval. Commentators contended that the regulations do not explain how MPP and WPP will promote self-sufficiency, and what support services will be available to recipients in MPP and WPP (such as child care subsidies and transportation) to enable them to meet work requirements and participate in activities such as mental health services and drug and alcohol counseling and treatment. They noted that these activities are often very time-consuming and require child care for recipients participating in them. One commentator said that the regulations are unclear as to whether MPP through Extended TANF will be the same version of MPP offered through the Time-Out program.

One commentator stated that the individuals who will be required to obtain a WCA are not exempt from RESET. Another commentator expressed concern that "there is no provision for the type of job, training or hiring." In addition, one commentator questioned whether mothers exempt due to caring for a child under 12 months will be channeled into MPP or WPP; the commentator suggests that the regulations be revised to clarify this. This commentator suggested that these mothers be eligible to participate in MPP. Some questioned whether young mothers and pregnant women will be able to participate in MPP, and suggested that MPP requirements be adapted to fit the needs of these women. One commentator said that the regulations have no standard for exemption from MPP when appropriate.

One commentator said that connecting severely disabled adults with Supplemental Security Disability Insurance/Supplemental Security Income (SSDI/SSI) should be an explicit goal of MPP and that standards for making such referrals should be addressed. The commentator also stated that the regulations should clarify what help individuals seeking SSDI/SSI will receive during the SSDI/SSI application process, and how they will be treated in the MPP program during the application and appeal processes. The commentator suggested that the Department adopt a provision that would encourage those with serious, permanent disability to apply for the appropriate program, with assistance where necessary from both MPP and Disability Advocacy Program. The commentator also claimed that the regulations do not address the possibility that the conditions that preclude the individual from working may not be remediable in the foreseeable future, and that some individuals or their children may be so sick, infirm or disabled that MPP participation is not possible. Further, the commentator said that while an SSDI/SSI application or appeal is pending, the recipient should be encouraged to seek treatment for his condition, but not required to participate in a work project, since working may be inconsistent with the disability application; on the other hand, an individual who wishes to engage in work activities or training should be given the opportunity to do so, despite disability.

Response: The Department has reorganized the regulations, created more sections and provided more details regarding WCA, MPP and WPP and the eligibility requirements. In response to the comment, the Department submits that it has clearly defined the WCA, MPP and

WPP. MPP for Extended TANF recipients is the same as MPP for individuals receiving Time-Out benefits. The distinction is that individuals who enrolled in MPP before implementation of this rulemaking had or are in the process of obtaining an MPP assessment. Individuals who enrolled in MPP before Extended TANF are grandfathered into MPP without a WCA. With the implementation of this rulemaking, individuals who enroll in MPP for the first time in Extended TANF will receive a WCA before the development of their individual MPP service plans.

Section 141.54 describes who is required to obtain a WCA, what is involved, the purpose and scope and the standards applied. The WCA will include an evaluation of existing documentation and consideration of available opinions of treating physicians. In conducting the WCA, physicians and psychologists will use accepted medical standards in assessing medical conditions and functional limitations. The WCA or MPP assessment will promote self-sufficiency by identifying medical conditions, functional limitations and good cause situations that may preclude or limit the adult's compliance with RESET. It will also identify the range of the adult's ability to engage in work and work-related activities. The findings and recommendations of the WCA will be provided to the MPP team. The MPP team is composed of professionals from various disciplines. The MPP team will use the information and recommendations from the WCA or MPP assessment to develop an individualized service plan.

With regard to the question concerning pregnant women and young mothers, if they otherwise qualify for MPP under § 141.54, they will be allowed to participate in MPP. In fact, they will be required to do so. In that event, their circumstances will be taken into account in developing the individualized MPP service plan. Although there is no standard for exemption from MPP, the MPP team will consider individual circumstances in formulating the MPP service plan.

A parent caring for a child under the age of 12 months, who has not exhausted the lifetime limit on exemption from RESET on that basis, will have referral to MPP or WPP deferred under § 141.56. That section also provides for referral to be deferred in other circumstances.

Examples of functional limitations are: inability to stand more than a certain number of hours, inability to lift more than a certain amount of weight and limits in range of motion. Examples of good cause situations include unavailability of transportation, the need for the adult to be in the home to care for an ill or disabled family member, and unavailability of child care. Additional examples of good cause can be found in § 165.52 (relating to good cause). Physicians and psychologists "approved by the Department" are those with whom the Department has a contract, directly or indirectly, or other agreement.

Individuals who are mandatory RESET participants will not have WCAs, as one commentator suggested, unless they have good cause for not participating in RESET. They cannot volunteer for MPP in lieu of meeting RESET participation requirements. Individuals in WPP will have a vocational assessment, not a WCA. The WPP is not limited to one type of work or training; it will offer a range of work, work activities and training. The WPP is designed to promote self-sufficiency by providing individuals with the combination of work experience and training that most research indicates is most productive and that is appropriate for the individual.

The Department agrees with the commentator's suggestion that connecting severely disabled adults with SSDI or SSI benefits is a goal of the Department. That goal is not limited to the MPP. Individuals are required to seek Federal benefits for which they potentially qualify. See section 432.21(a) of the code. The Department and its contractors assist individuals in the application for SSDI or SSI disability benefits through DAP. Protocols for referring individuals to DAP and providing them with assistance in the SSDI or SSI application and appeal process predate Extended TANF and have not been made part of this rulemaking.

The goal of Extended TANF is to engage individuals in work or approved work-related activities with reasonable accommodations as required. Towards that end, the MPP service plan is designed to increase an individual's movement towards self-sufficiency and will take into account varying individual circumstances such as illness or dependent family members. The Department recognizes there may be individuals whose personal or family conditions are not remediable in the foreseeable future; nevertheless, the goal is to engage those individuals in activities appropriate for their circumstances. The Department supports participation in work or approved work activities for SSI or SSDI applicants pending a decision on their eligibility for Federal benefits. The Department always encourages people to seek medical treatment pending award of SSDI/SSI benefits. An individual with an SSDI/SSI application or appeal pending is generally exempt from RESET.

The regulations provide procedural safeguards to individuals. An individual who disagrees with the findings or recommendations of the WCA can request a second opinion WCA under § 141.54(b)(4)(iii). In addition, any individual who receives notice from the CAO that the individual has failed to comply with any requirement of Extended TANF has appeal rights under Chapter 275.

The Department has added provisions for special allowances, now found in § 141.57. Special allowances for supportive services are available to individuals in WPP and other RESET programs and activities, and for programs and activities that are part of an individual's MPP service plan or domestic violence services plan.

10. WPP as "workfare" or other unpaid work.

Comment: Commentators claimed that WPP is akin to "workfare." They contend that recipients should not be required to "work off" their welfare checks. They suggested that WPP offer "real wages" (such as paid work experience (PWE)) so recipients can benefit from the Earned Income Tax Credit and Unemployment Compensation, and other benefits, and meaningful, nonmenial work opportunities that will help them gain skills and training. Some commentators suggested that the Department offer "real" employment and training options attached to the WCA and WPP. They claimed that this will give recipients a sense of control over their own destinies and career paths. They also suggested that the existing rapid attachment, retention and advancement program and work experience be available to individuals.

In addition, they argued that there will be no uniformity of work obligation, as the amount of unpaid work required will depend on the size of the welfare grant, which in turn depends on the size of the family and receipt of income from other sources that reduce the amount of the grant. They also asked whether the Department considers § 166.21 (relating to policy) (which they claimed uses antiquated procedures no longer appli-

cable) still in effect, although the regulation has not been updated. They suggested that WPP offer training, wages, and other benefits of a real job, as with PWE.

Response: The Department agrees with the suggestion that existing rapid attachment, retention and advancement programs should be available in the Extended TANF program, with respect to certain working individuals. These programs are designed to increase the earning capacity of individuals who are employed. Section 141.55(a)(3) provides that an adult who is employed 20-29 hours per week in unsubsidized employment and who can participate in at least 30 hours of work and work-related activities can qualify for Extended TANF by participating in a job retention and advancement program. Those individuals are not required to participate in WPP.

To the extent commentators suggested that the Department create employment for Extended TANF recipients, the Department does not agree with this recommendation. The code is clear that the Department is not required to develop or offer employment to assistance recipients. See section 405.3(d) of the code.

The Department disagrees with the commentators' characterization of the WPP as "workfare." WPP offers a range of paid and unpaid work, work-related activities and training. The goal of WPP, as with all employment and training programs, is to move people to self-sufficiency. Paid employment is preferred over community service or unpaid work. See section 405.1(a.2)(1) of the code. In addition, WPP focuses on enhancing recipients' skills and earning ability so they can become self-sufficient. The 30-hour requirement of the WPP may consist of a combination of paid and unpaid work and work-related activities such as literacy training, ESL classes, job and life skills training, vocational assessments and job search. Unpaid work that inures to the benefit of a third party, such as community service, is limited by the FLSA. Hours of unpaid work will be limited to the number of hours obtained by dividing the monthly assistance grant, less child support collected or any other reimbursement, by the minimum wage. This limit will vary with individual circumstances.

Finally, § 166.21 regarding to policies for the Community Work Experience Program and the Pennsylvania Employable Program, has been superseded by the RESET program. Provisions for the RESET Program are found in Chapter 165.

11. Impact of regulations on homeless individuals and women with major barriers to employment, and potentially overwhelming increased demand on other agencies.

Comment: Some commentators expressed concern about the impact of the regulations on homeless individuals and other women with major barriers to employment. They also expressed concern about the potentially overwhelming increased demand on other agencies to provide services if these individuals reach their welfare time limits and fall through the proposed safety net.

Response: The Department has added language to the regulations in §§ 141.54 and 141.56 to clarify that individuals with major barriers to employment, such as homelessness, if otherwise eligible, may receive Extended TANF.

It would be speculative for the Department to address the potential increased demands on other agencies; however, the Department believes that Extended TANF may result in some diminished demand on other agencies.

12. Monitoring efforts.

Comment: One commentator challenged the Department to be vigilant in monitoring: (1) how families are notified about Extended TANF; (2) how many families take advantage of Extended TANF; and (3) whether families encounter barriers with the more stringent work requirements standards of Extended TANF, and thus are refused or voluntarily withdraw from Extended TANF.

Response: The Department will notify families of the benefits and eligibility requirements for Extended TANF in notices mailed to all potentially eligible recipients. Notices are automated and sent to recipients who have received 57 months of TANF benefits. The Department will monitor the number of notices that are sent and to whom. In addition to the "3 Months Left" notice, families are given "Road To Self-sufficiency" pocket folders that contain client information sheets on various topics including child care, child support, Time-Out, employment and Extended TANF. The pocket folders or relevant information sheets, or both, are given to families at application, reapplication, AMR completion or other contact.

Families eligible for Extended TANF will be assigned a unique program status code that will be used by the Department to monitor how many families are receiving Extended TANF benefits.

Cases are closed and applications are withdrawn for a variety of reasons. As with TANF in the first 5 years, the Department will be able to identify those Extended TANF cases that are closed because the recipient failed to comply with work requirements without good cause. Individuals who have good cause for not meeting the work requirements of Extended TANF are not subject to sanction, as provided in § 141.55(c). When an individual chooses to voluntarily withdraw an application or discontinue benefits, the Department cannot track the reason the individual made that choice.

13. Flexibility.

Comment: Commentators stressed the need for flexibility regarding Extended TANF. One commentator suggested that the regulations do not maximize the Department's flexibility to provide Extended TANF to individuals who may not need to participate in the WPP or MPP because their problems may be rectified by a job search or short-term recuperation period.

Response: The Department agrees with the commentators' statement that the regulations should allow flexibility in providing Extended TANF to eligible individuals who may not need to participate in the WPP or MPP because their problems may be rectified by a job search or short-term recuperation period. Section 141.55(a)(3) requires individuals who are working 20–29 hours per week to participate in a job retention and advancement program if they can participate in at least 30 hours of work and work-related activities.

Further, the Department added § 141.56 to temporarily defer referral to MPP, WPP or other employment and training program for certain individuals including those who establish good cause for not complying with RESET requirements. Under this section, individuals may be eligible for Extended TANF for up to 90 days before they are subject to a partial redetermination and possible referral to a program such as MPP or WPP. The 90-day deferral period provides the individual time to remediate a short-term barrier to employment so that an appropriate referral can be made, if necessary. At redetermination,

the CAO will review the good cause situation and either extend the deferral period for 90 additional days or make the appropriate referral.

14. Other TANF policies and future rulemaking.

Comment: One commentator suggested the full TANF program and policies, including future rulemaking concerning domestic violence and other TANF policies and programs should be incorporated as a single final-form regulation to allow comprehensive review of the program.

Response: The Department does not agree with the commentator's suggestion that the full TANF program, with all current TANF policies and future rulemaking concerning domestic violence, should be incorporated as a single, final-form regulation. Given the discrete nature of the Extended TANF rulemaking, the Department did not combine it with the rulemaking for the basic TANF program. The Department determined that the best course of action is to first implement the basic TANF rulemaking. The basic TANF program is the essential framework upon which the Department will build. The Extended TANF program is the first addition to that framework. As previously noted in the response to comment 3, the Department continues to work with advocates to expand the policies for domestic violence that go beyond what has been established in the basic TANF rulemaking as well as the Extended TANF program.

15. Need for clear statement in regulations that ALL clients are eligible for Extended TANF.

Comment: Commentators suggested that the regulations clearly state that all clients are eligible for Extended TANF. They expressed concern that some clients will be displaced or permanently terminated from the welfare rolls during the transition period from TANF to Extended TANF. Also, they suggested that the steps a client must follow to get Extended TANF must be clearly explained.

Response: The Department disagrees with the commentators' suggestion that the regulations should clearly state that all clients are eligible for Extended TANF. Instead, upon publication of this rulemaking, adults who have received 60 months of TANF will be required to comply with the eligibility requirements for Extended TANF to remain eligible. It is true that during the Extended TANF contingency period that began March 3, 2002 and continues until promulgation of Extended TANF regulations, clients who are otherwise eligible for TANF continue to receive cash assistance subject to the requirements of the TANF program. Following promulgation of these regulations, however, eligibility for Extended TANF will be determined on an individual basis at application and, for recipients, during a partial review of eligibility. At this review, the caseworker will explain the requirements of the Extended TANF program.

16. Miscellaneous procedural issues.

Comment: Commentators suggested that the Department "take its time" implementing Extended TANF and training its caseworkers regarding these benefits. They noted that recipients should be entitled to the full scope of appeal and fair hearing rights, and that the regulations reflect this. They also suggested that the "sanction review process"/compliance review process be utilized and referenced in the regulations, as well as provision for good cause. One commentator suggested that § 141.51(b) be revised to include references to the compliance review and good cause provisions. In addition, they urged the Department to continue the Community Connections initiative, which would help ensure smooth transition from

TANF to Extended TANF. They said these processes would help ensure that individuals are not inappropriately sanctioned.

Response: The Department agrees with the commentators' suggestion that development of Extended TANF merits time and attention and that training of staff is a critical component in the process. The Department is currently developing training and instructional materials regarding Extended TANF; once completed, training will be provided to all Department staff involved in the delivery of Extended TANF.

The Department also agrees with the commentators' suggestion that recipients are entitled to the full scope of appeal and fair hearing rights; § 141.58 clarifies that an individual has the right to appeal and a fair hearing under Chapter 275. The Department has also added cross-references to the compliance review and good cause sections of the basic TANF regulations in § 141.55(c). Both the good cause provisions of § 165.52 and the compliance review procedures under § 165.51 equally apply to Extended TANF.

The Department appreciates the commentators' observation that the Community Connections Initiative (CCI) has been beneficial to TANF recipients. The Department has reauthorized the CCI grants for fiscal year 2002-2003 to continue providing recipients with additional support in their movement toward self-sufficiency.

17. Unidentified barriers to employment.

Comment: Commentators expressed concern that some recipients will be ineligible or sanctioned if the WCA (or vocational assessment) does not identify a barrier to employment for 30 hours per week.

Response: The WCA and vocational assessment are designed to be diagnostic tools and are not intended to be entrance requirements to the Extended TANF program. Even if the WCA or vocational assessment does not identify a barrier to employment, an individual who cannot comply with the 30-hour requirement may establish good cause for noncompliance.

18. Adequacy and funding of MPP.

Comment: Commentators questioned whether MPP will offer a sufficient number of slots for willing individuals. They suggested that the Department commit to adequately fund MPP to maximize its potential to diagnose, rehabilitate and educate recipients who can work, and find appropriate long-term support or programs for those who cannot work.

Response: The Department agrees with the commentators' statement that MPP is an important program and adequate funding maximizes its potential. The Department plans to provide a sufficient number of MPP slots given the availability of funds.

19. Benefits for working individuals.

Comment: One commentator suggested that working TANF recipients should be eligible for Extended TANF. One commentator suggested that allowances be made for heads of households who have been working all along but whose family size is such that they continue to require assistance. Another commentator said that the regulations do not adequately address the needs of families who are working, but due to low wages, large family size or limited available work hours, require ongoing cash assistance to meet their family's basic needs. The commentator suggested that these individuals work in existing Job Retention, Advancement and Rapid Re-Employment

(JRARRE) to get needed help to move up the job ladder, and not be required to perform community service for no wages to maintain their TANF supplement. The commentator also suggested that it is in everyone's interest to assist these Extended TANF participants to use their time to pursue educational and training opportunities that will enhance their employability.

Response: The Department agrees that working TANF recipients should be eligible to receive TANF. The Department also agrees that needy working individuals who have large families or low earnings in relation to family size should be able to qualify for Extended TANF. Section 141.55(a)(1) provides that individuals who are working 30 or more hours per week may be eligible for Extended TANF with no additional work or work activity required. Further, § 141.55(a)(3) provides that individuals working 20 to 29 hours per week, if they can participate in at least 30 hours of work and work-related activities, are referred to a job retention and advancement program to advance their job skills and increase their hours and earnings. Other provisions relevant to mandatory RESET participants are set forth in § 141.55.

The Department also agrees with the commentators' suggestion that individuals in Extended TANF who are working should be assisted in pursuing education and training opportunities that will enhance their employability. Individuals in Extended TANF who are working more than 30 hours per week may volunteer to participate in education and training activities. These activities may be supported with special allowances, as specified in § 141.57. Individuals who are working 20 to 29 hours per week will participate in a job retention and advancement program designed to enhance their earning capacity.

20. Grievance procedure.

Comment: One commentator suggested that the regulations establish a grievance procedure for workers alleging displacement by welfare recipients. The commentator noted that Federal law requires such a procedure. They claimed that a grievance mechanism is especially important if work requirements are increased and workfare is instituted or expanded.

Response: The Department disagrees that a grievance procedure must be set forth in the regulations. Instead, the Department requires its employment and training contractors to develop a Work Site Agreement, which requires an assurance that the work site will not displace its regular workforce with welfare recipients. Displacement includes loss of employment and reduction of overtime, wages or benefits. Further, the work site may not substitute work experience participants for individuals on layoff from the same or substantially equivalent positions. Individuals alleging displacement by a welfare recipient may contact the Department's Bureau of Employment and Training Programs.

21. Work requirement as a condition of eligibility.

Comment: One commentator said that the work requirement should not be stated as a condition of eligibility. The commentator asked the Department to state the specific statutory authority for stating the work requirement as a condition of eligibility.

Response: Although the work requirement is stated as a condition of eligibility, only those who willfully fail, without good cause, to comply with this condition of eligibility are subject to a loss of benefits. After 24 months of cash assistance, section 405.1(a.2)(6) of the code requires a review of eligibility for noncompliance with the minimum 20-hour weekly work requirement.

However, the Department does not agree with the commentator that a review of eligibility is all that is required. Section 141.55 is consistent with sections 405.1(a.2)(6) and 432.3(a) of the code. Under these provisions, an individual who has received assistance for 24 months and is not exempt from RESET must participate for an average of at least 20 hours per week in one or more of the activities enumerated in that paragraph; if he willfully fails to do so, without good cause, he is ineligible for cash assistance under section 432.3(a) of the code (regarding to durational sanctions).

22. Redetermining eligibility.

Comment: One commentator stated that the subtitle of Chapter 133 (relating to redetermining eligibility) does not include Extended TANF, and suggested that it be revised as follows: "REDETERMINING ELIGIBILITY PROVISION FOR TANF, EXTENDED TANF AND GA." The commentator also said that it is unclear what a "complete redetermination" is, and whether this applies to recipients who have recently gone through a redetermination for another reason.

Response: The Department agrees with the commentator's suggestion and has revised the subtitle accordingly. In response to the question regarding what is meant by a complete redetermination, § 133.23(a)(1)(i) provides that a complete redetermination is a comprehensive review of eligibility factors that are subject to change, such as income, household composition, resources and employability status. A complete redetermination generally requires a face-to-face interview.

The Department has reevaluated its decision to require a complete redetermination of eligibility and has determined that a partial review of eligibility is sufficient. Section 133.23(b) has been revised to reflect this decision. The partial redetermination will focus on factors specific to the Extended TANF program, even if the recipient recently had a redetermination for another reason.

23. Definitions. (§ 141.52)

Comment: One commentator stated that program requirements, to be enforceable, must be placed in the body of the regulation, not described in definitions. For example, the commentator said that the definition of "WCA" contains substantive language; therefore, subparagraphs (i)—(iv) should be moved to § 141.51. The commentator also advised that the definitions section be relocated to precede the provisions where the terms appear. Further, the commentator suggested that the scope of the definitions in § 141.52 should apply to all relevant chapters or sections, not just §§ 141.52 and 141.41. Also, the commentator said that the definition of "adult" in § 141.52 is confusing and should be rewritten, perhaps by splitting the definition into two paragraphs: (i) for an individual 19 years of age or older, and (ii) for an individual 18 years of age who is not a full-time student in secondary school, vocational training or technical school. Finally, the commentator stated that the phrase "within the constraints of available funds" does not belong in the definition of RESET, and should be moved to a provision establishing the parameters and requirements for RESET. The commentator reasoned that because funding availability directly impacts on eligibility requirements for the program and the services offered, it is a substantive provision, which is not enforceable where it is located.

Response: The Department agrees with the commentator's suggestion that program requirements should appear in the body of the regulations, rather than be described in definitions. Therefore, the Department has relocated and

reorganized substantive requirements for Extended TANF so that all substantive requirements are in the body of the regulations. For example, revised substantive requirements for the WCA now appear in § 141.54. The Department also revised the definition of RESET by simply cross referencing the definition of "RESET" set forth in § 165.2. In addition, the Department agrees that the definitions should precede the provisions where the terms appear. As revised, the definitions in § 141.52 precede the substantive provisions (§§ 141.53—141.57) where the terms appear.

The Department also agrees that the scope of the definitions in § 141.52 should apply to relevant chapters and sections. The Department has revised § 141.52 to state that "[t]he following words and terms, when used in this Chapter, have the following meanings, unless the context clearly indicates otherwise . . ." In addition, the Department has revised § 133.23 by including a cross-reference to the definition of Extended TANF in § 141.52. Finally, the Department does not agree that the definition of "adult" should be revised. The definition of adult in § 141.52 is consistent with the definition of adult in § 151.42. That definition is particularly relevant to employment and training programs. That definition is designed to distinguish between 18 year olds who are and those who are not subject to work requirements.

24. Potential sources of income. (§§ 141.21(n)(1)(iii), 183.13, 183.13(c)(3))

Comment: One commentator noted that § 183.13(c)(3) (relating to potential sources) excludes the applicant's family from eligibility until the applicant complies, while the identical requirement in § 141.21(n)(1)(iii) excludes both the applicant and the applicant's family from eligibility. The commentator questioned whether § 183.13(c)(3) should also exclude the applicant from eligibility.

Response: In response to the commentator's question whether § 183.13(c)(3) should exclude the applicant from eligibility, the answer is yes. Section 183.13(c)(3) has been revised accordingly.

25. WCA procedures and protections. (§§ 141.51(a)(2) and 141.52)

Comment: One commentator claimed that the WCA fails to include procedural protections; the commentator also said the regulations do not include protections for families with disabled family members. The commentator recommended that the regulations should require that the examining physician must have particular expertise in functional or vocational limitations. The commentator also expressed concern that the regulations do not require that the examining physician must have expertise in the appropriate specialty (for example, psychiatrist for recipients with mental disorders). Moreover, the commentator questioned the role of the WCA examiner vis-a-vis the recipient's primary care physician who verified disability with an Employability Assessment Form. Even if the appropriate physician is obtained, the commentator asked whether that physician, recipient or representative will be authorized to request further testing, under what circumstances, to whom the requests are made and how quickly they must do so. The commentator asked why the Department is silent in the regulations on the role of the treating physician, in contrast with the Social Security Administration, which relies heavily on treating sources, and affords the evidence of the sources great weight.

In addition, the commentator questioned why the regulations state that "[t]he WCA will always include an

evaluation of existing documentation of the good cause situation." The commentator said that this raises several questions: (1) is this a drafting error or is existing documentation relevant only in good cause cases? Disability is typically the basis for an exemption, not a good cause situation; (2) what does "existing" documentation mean? Does it mean that only information already in the file will be considered, or does it mean that any documents that exist anywhere will be obtained and reviewed? If it is the latter, who will obtain the documents? The commentator stated that it would be inappropriate to require those suffering from mental illness, which they estimate to be at least 28% of the exempt population, to gather the information. The commentator suggested that these matters be clarified in the regulations.

The commentator also questioned why the regulations are silent about a recipient's right to voice disagreement with the WCA decision and request a second opinion, the procedures for doing so and what is to be done when a second opinion is obtained. The commentator asked which opinion controls when the first and second opinions conflict, and whether the only way to challenge a first opinion is with a second opinion.

The commentator suggested that the regulations clarify how to resolve disputes, which evaluation and opinion controls, and whether the recipient may challenge the first and second opinions and have the treating physician offer an opinion (although not retained as part of the WCA). In addition, the commentator asked the Department to clarify what happens if the WCA physician decides that the answer for a recipient's back problem is physical therapy, but the treating physician thinks that would be too dangerous because of the recipient's heart condition. The commentator also asked what happens if the Medicaid HMO refuses to pay for the treatment, or the treating physician will not request it—who then decides? Is the question referred to the MPP team, which does not appear to have medical expertise at its disposal?

Response: The Department disagrees with the commentator's concern that the WCA does not include procedural protections. Instead, the Department submits that the WCA does include appropriate procedural protections described in § 141.54. These protections include the opportunity to request a second opinion WCA and provide information from the individual's treating physician. The Department will contract with an independent medical services provider to conduct ongoing random reviews of the WCA summary results, described under Paperwork Requirements in this Preamble.

The Department agrees with the commentator's suggestion that protections for families with disabled family members should be included in the regulations. Therefore, the Department has added a new provision clarifying that families with disabled members may be eligible for Extended TANF under §§ 141.54 and 141.56.

The Department agrees that the examining physicians should have relevant expertise in the appropriate specialty. The Department disagrees that this should be specified in the regulations. In its contracts, the Department already requires providers to recruit and maintain qualified physicians and psychologists in the appropriate specialties and geographical areas to meet the demand for WCAs.

In response to the commentator's question regarding the role of the WCA examiner vis-a-vis the recipient's primary care physician and the weighting of the evidence, there is no weighting of the evidence. During the WCA,

all records are given equal consideration, unless there is a clear delineation of training, certification and expertise between the treating physician and specialist. The only way to challenge the results of the first WCA is to request a second WCA.

In answer to the commentator's question about whether the treating physician or recipient may request further testing, the answer is yes, but not as part of the WCA. The results of any additional testing may be provided during the WCA or, if requested, during the second WCA. However, with respect to the recipient's representative requesting further testing, the answer is no.

In response to the commentator's question whether the evaluation of existing documentation is relevant only in good cause cases, the answer is no. The WCA will include an evaluation of existing documentation for medical conditions and functional limitations, as specified in § 141.54(b)(3)(i)(B).

With respect to the commentator's questions concerning the definition of "existing" documentation, existing documentation refers to any information that would be relevant to making a determination of the extent of an individual's medical condition, functional limitation or good cause situation. With regard to who will obtain the documents, documentation shall be obtained by the individual and provided to the provider during the WCA process. When necessary, the Department or its agent will assist the individual in obtaining existing documentation, as specified in § 141.54(b)(3)(iii)(A).

The Department agrees with the commentator that regulations should include provisions for a second opinion WCA for individuals who disagree with the findings of the WCA as set forth in the MPP service plan. Therefore, § 141.54(b)(4)(iii) provides for a second opinion WCA. The MPP team, in consultation with the individual, will develop an MPP service plan based on information contained in one or both sets of the WCA findings and recommendations.

In answer to the commentator's question regarding the resolution of conflicting WCA opinions, the Department responds as follows: When reviewing the results of conflicting WCAs, it may become apparent that one opinion is based on additional or more relevant information. If this is the case, the MPP team will consider the additional information, when developing the MPP service plan.

Other factors the MPP team may consider depending on the individual circumstances will include the extent to which the WCAs agree with the recommendations of the treating physician, the degree to which the WCAs are congruent with the nonclinical findings of the MPP team and the ability of the medical services agency to resolve the conflict through its quality control process. The Department notes that, in any case, the WCAs serve to inform the MPP team's development of the MPP service plan but are not determinative of the outcome of the MPP process.

In response to the suggestion that the regulations clarify procedures regarding disputes between the WCA and the treating physician and the resolution of HMO denials of payment for recommended services, the Department disagrees that the specifics of these procedures must be regulated. If the WCA physician recommends a treatment with which the treating physician disagrees, the following procedures apply: When the MPP team receives the WCA results, it will contact the Managed Care Organization's (MCO) Special Needs Coordinator.

The MCO Coordinator will contact the individual's Primary Care Physician (PCP) to discuss the results and recommendations to assure that the PCP has all the information necessary regarding the WCA results and recommendations. If necessary, the MCO Coordinator will obtain further clarification and provide it to the PCP to support the WCA recommendation. The PCP can recommend that the individual request a second WCA and submit additional documentation supporting its finding during the second WCA.

If the recommendations are beyond the PCP's area of expertise, the MCO Coordinator will intervene to assist the individual in obtaining the necessary expert. For example, if the PCP is a general practitioner and the barrier being addressed is a mental health barrier, the MCO Coordinator will facilitate an evaluation by a mental health provider. When the MCO refuses to cover the services identified as necessary medical services by the MPP team, the MPP team will encourage the individual to appeal. During the MCO appeal period, the services will be provided.

For individuals who are covered under the Fee for Service health care plan, the same process applies, except that the MPP coordinator will work with the designated contact person in the Department's Office of Medical Assistance Programs rather than the MCO Coordinator.

With regard to the concern that the Department has not included in the regulations all the procedures related to the MPP program and the WCA, the Department has regulated many components of MPP and the WCA, as previously identified. They include:

- The opportunity to request a second WCA.
- The opportunity to present information from the treating physician.
- The evaluation of existing documentation regarding medical conditions and functional limitations.
- The clarification of who has responsibility for obtaining documentation.

The Department will not regulate terms of the contract or procedures used by the medical service agency nor will the Department regulate internal procedures applicable to CAO staff.

26. WCA standard for determining medical condition, functional limitation or good cause situation that precludes the individual from meeting work requirements. (§§ 141.51(a)(2), 141.52)

Comment: One commentator expressed concern that the process the Department has chosen for determining an individual's ability to meet work requirements is potentially more adversarial than the current process for verifying exemptions from work requirements. The commentator contended that the standard for determining disability, as stated in the definition of "WCA" (see § 141.52(i) and (ii)) is: (1) unintelligible; (2) based on the *Guides to the Evaluation of Permanent Impairment* (Guides), which deals only with permanent impairments; temporary disability must also be addressed; (3) the Guides, as stated on page 9 of the Guides, is not intended to be used for direct estimates of work disability; and (4) does not specify at what level a recipient is considered unable to work. The commentator argued that the Department's intended practice of leaving the decision of disability to the companies that successfully bid on the WCA contract, using the criteria in the Guides, is an unacceptable delegation of executive power to private entities that have no mechanism for public input. The

commentator also stated that because the standard of disability affects who goes to MPP, who must comply with WPP, and who would be sanctioned for failure to comply, the standard that is used will have serious implications for those being evaluated. The commentator expressed concern that individuals whose level of disability falls below a benchmark would be required to work 30 hours per week. The commentator suggested that the Department adopt a clear-cut standard of temporary and permanent disability, using a rating of 50% or greater as a benchmark.

Response: The Department disagrees with the commentator's assertion that the process for determining an individual's ability to meet work requirements is potentially more adversarial than the current process for verifying exemptions from work requirements. Under TANF rules, the individual's treating physician initially determines the individual's exemption from RESET under § 165.22(b)(1). Under Extended TANF, the WCA is an objective evaluation of an individual's impairment, if any, and the impact of that impairment on the ability to work. It is not intended to be an adversarial process. Instead, it is designed to provide a fresh, independent evaluation of medical conditions, functional limitations and good cause situations that may preclude or limit the individual's ability to work.

The Department also disagrees with the commentator's criticism regarding the appropriateness of using the Guides to determine a temporary disability. In fact, the Guides is appropriate to the evaluation of temporary disabilities. In conducting the WCA, the Guides is the tool physicians and psychologists will use to perform the WCA to evaluate the severity of impairments. The Guides is not intended to be used in a rigid, mechanical manner. Meaningful use of the Guides requires a great deal of professional judgment and consideration of nonmedical factors that may affect permanent or temporary impairment. The Guides provides objective standards for evaluating the nature and extent of impairments. Using the Guides, the evaluating physician or psychologist will consider whether an impairment is likely to be permanent despite treatment. The physician or psychologist also will evaluate whether the impairment may improve with medical treatment. Although the Guides enables medical professionals to evaluate impairments objectively, it is merely a tool. As the Guides itself explains, it cannot provide complete and definitive answers regarding employability. "The impairment evaluation . . . is only one aspect of disability determination. A disability determination also includes information about the individual's skills, education, job history, adaptability, age, and environment requirements and modifications (footnote omitted). Assessing these factors can provide a more realistic picture of the effects of the impairment on the ability to perform complex work and social activities." Guides, 5th ed. at 8.

To arrive at the recommendations in the WCA, physicians and psychologists will use their clinical expertise to consider each individual on a case-by-case basis. The WCA provides additional objective data to be considered in combination with other available information and is considered by the MPP team during the development of the MPP service plan. Verifying the presence and severity of an impairment is but one component taken into consideration by the MPP team for the development of an MPP service plan. Because the WCA informs, rather than controls, the MPP team in developing the MPP service plan, the Department finds that the Guides provides a

legitimate and useful point of reference in the evaluation of temporary and permanent impairments.

The Department emphasizes that the final-form rulemaking reflects a substantial revision from proposed rulemaking. Those revisions include provisions in § 141.56 to defer referral to MPP for certain caretakers and persons with good cause for not meeting RESET participation requirements. Not all individuals with a temporary condition that precludes employment will be referred directly to MPP. An individual who is not exempt from RESET but has a temporary condition that precludes employment may establish good cause and have referral to MPP deferred under § 141.56(a)(2). For example, a person whose job requires standing for prolonged periods may have good cause for not working if he has a broken leg. The CAO will re-evaluate the individual's deferral after 90 days or when circumstances change. Consequently, under the final-form regulations, an individual with a short-term condition might never be referred to MPP.

As to the commentator's assertion that using the criteria in the Guides is an unacceptable delegation of executive power, the Department disagrees. The Department has not delegated the authority to determine eligibility for Extended TANF to medical service providers conducting WCAs. Rather, the Department has contracted with medical experts to perform just the WCA. Although this assessment is important in developing an individual's MPP service plan, it is not determinative of eligibility for Extended TANF. The CAO determines whether an individual qualifies for Extended TANF.

The Department agrees with the commentator's assessment that the Guides is not intended to be used for direct estimates of work disability. Determination of disability is a result of consideration of numerous factors, as previously discussed. The physician's or psychologist's evaluation using the Guides is just one of those factors.

Finally, the Department disagrees with the commentator's recommendation that the Department adopt a 50% standard to determine disability. The Department finds that such a bright-line classification is less favorable to clients served in the MPP program. The result of the WCA will be used by the MPP team to develop an individualized service plan that is not dependent solely on impairment percentages.

27. Procedures for families with disabled family members. (§§ 141.51(a)(2))

Comment: One commentator claimed that the regulations have no mechanism for evaluating and assisting families with a member who is severely disabled. For example, the commentator cited the example of a child who is severely mentally retarded and cannot be left alone because of numerous medical, educational, behavioral and child care problems involved. The commentator complained that the WCA, as written, is not designed to evaluate and assist in such situations. Moreover, the commentator explained that neither a physician nor a psychologist performing the WCA will necessarily be steeped in the availability of child care for a disabled child, and that the extent of physician input in these cases is unclear; if physician input is sought, the regulations do not clarify who is to decide and based upon what standard. The commentator noted that the regulations state only that the WCA may or may not require examination of the client; the regulations say nothing about examination of a child or other disabled family member. In addition, the commentator suggested that the regula-

tions are unclear regarding evaluation of social factors and good cause situations and whether the physician's evaluation of the situation is followed by one conducted by welfare personnel, especially if the evidence given is not medical or psychological in nature. The commentator argued that physicians and psychologists do not have any special expertise in vocational or even functional evaluations.

Response: The Department disagrees with the commentator's claim that the regulations have no mechanism for evaluating and assisting families with a member who is severely disabled. In the proposed regulations, individuals in this circumstance would have been eligible under § 141.51(a)(2)(i). The final-form rulemaking provide that individuals with a disabled family member may be eligible to receive Extended TANF under § 141.56. After 90 days, the individual's situation will be reviewed. If the situation continues to preclude employment or participation with RESET, the individual may be referred to MPP as specified in § 141.56(c)(1). While in MPP, the individual will be required to cooperate with the WCA, but the disabled family member is not subject to a medical examination. The WCA and the MPP team will consider available medical records and other documentation of this disabled family member. The WCA will provide the MPP team with summary results and recommendations for the individual based on the documentation provided by the CAO and the individual. The MPP team, including vocational and behavioral rehabilitation specialists, in consultation with the client, will develop the MPP service plan to help the individual who is caring for a disabled family member address this barrier. The MPP team, based on knowledge of available child and adult day care and other community resources, will explore these options in developing the MPP service plan.

28. Procedures for those with other (not involving disability) employment barriers. (§§ 141.51(a)(2), 141.52)

Comment: One commentator claimed that the procedures are deficient for persons with other barriers to employment; for example, a barrier not involving disability. For example, the commentator contended that the regulations, read literally, require an individual exempt from WPP with a barrier to employment such as lack of child care for child under age 6 (proposed § 141.51(a)(2)(i)(B)) must cooperate with a WCA under § 141.51(a)(2)(ii). The commentator argued that this does not comport with the Department's alleged statement to the commentator that the Department does not intend to use physicians for such determinations, but the regulations do not state when physicians will and will not be used. The commentator argued that, read literally, the regulations indicate that physicians are to be used in all cases and charged with making all final decisions. Likewise, the commentator claimed that it is unclear whether a physician or psychologist will evaluate multiple barriers to employment and their combined effect. They questioned if MPP will have the resources and regulatory authority to offer remedies that address these needs.

Response: The procedures set forth in the final-form regulations for persons with other barriers to employment are sufficient. For example, § 141.54(c)(3)(i)(C) specifies that an examination of an individual with good cause will be required only when it is necessary and relevant to the determination of the good cause situation. The MPP team, which may include vocational and behavioral rehabilitation specialists, will consider the results of the WCA in developing the MPP service plan.

Physicians and psychologists will evaluate multiple barriers to employment and their combined effect. Regarding regulatory authority and funding for MPP, the Department considers MPP a high priority; therefore, the Department has made sufficient provision for anticipated need for MPP in State Fiscal Year 2002—2003. To the extent that funding for MPP is available, the Department expects that MPP will continue to be a high priority. This rulemaking illustrates that MPP is an important component of Extended TANF. Section 141.54 authorizes the MPP team to develop service plans intended to address the needs of MPP participants.

29. *Vocational assessments.* (§ 141.52)

Comment: One commentator suggested that the regulations are unclear regarding vocational assessments for those assigned to WPP. Although the commentator supported the idea of an assessment prior to work assignment, the definitions of assessment and the WPP were criticized as lacking. For example, the commentator said the regulations are silent as to who will perform the assessment and how the recipient's input will be obtained, despite the express command of the Legislature, see section 405.1(a.2)(4) of the code, to involve the recipient in the process of assessment. The commentator also said that assessment is a complex task that should involve measuring literacy or numeracy and other factors for which the regulations do not provide. Further, the commentator submitted that the regulations do not state how any of the factors mentioned will be measured, including mental and physical disabilities, even though the ADA requires consideration of disability. The commentator maintained that even if a person is not fully disabled so as to preclude all employment, the ADA and good public policy require assessment of known disabilities that may affect an individual's ability to perform particular work, health and safety and the need for reasonable accommodation. Finally, the commentator suggested that the assessments be reduced to written form so they can be reviewed, corrected or augmented by recipients.

Response: The vocational assessment is defined at § 141.52 and addresses the factors enumerated by the commentator. The individual participates in the vocational assessment performed by an employment and training contractor, as specified in § 141.55(b)(1). The Department intends to contract with the Work Force Investment Areas to implement WPP. The contractors will perform vocational assessments based on industry standards. Industry standards include protocols grouped into two broad classifications: testing and workplace assessment. Testing measures literacy and numeracy skills, interests and vocational aptitudes as well as other skills. Workplace assessment consists of observation of the individual in a real-world work environment to address issues like punctuality, adherence to work rules, interaction with supervisors and co-workers, communications skills and others. The results of the vocational assessment are evaluated in light of the needs of the local labor market.

Section 141.55(b)(4) provides for reasonable accommodations of program rules and requirements to be made in accordance with the ADA. With respect to the commentator's concern that the results of the assessment be reduced to written form, the contractor will review the results of the assessment with the individual and provide written copies of each of the various assessments upon request.

30. *Design of WPP.* (§ 141.52)

Comment: One commentator claimed that the regulations say virtually nothing about the design and operation of WPP; for example, what work sites will be available, how the 30 hours of work and work activity will be structured, the level of participation ultimately selected and whether the recipient selects the activity or is assigned to existing activities or a prepackaged program. The commentator urged the Department to design WPP to address individual barriers in close consultation with recipients so that individual needs and limitations are accommodated and addressed. The commentator contended that nothing in the regulations speaks to choosing the mix of work and work-related activities that will comprise the WPP assignment, nor did the regulation address how a recipient may have input or voice disagreement regarding proposed activities.

In addition, the commentator suggested that the Department offer existing work opportunity programs such as work experience as part of WPP; the commentator also objected to the Department's unpromulgated policy to limit work experience to 6 months in an individual's lifetime, and argued this policy is inflexible, unwise, legally unauthorized, illegal and relegates all recipients to a costly and ineffectual workfare option.

Another concern the commentator expressed is that finding and scheduling WPP activities should be done in a way that does not interfere with a recipient's current employment, and this should be the highest priority. The commentator suggested that those with existing employment should be in a separate program, given that their needs and time constraints are so different from those of other recipients. According to the commentator, those recipients need a program to give them the skills and support to continue to make progress, not one to give them an intensive work experience. The commentator also suggested that the Department address the interplay between JRARRE and Extended TANF to avoid confusion and conflicting obligations, especially since the Department generally precludes participation in more than one welfare program at the same time.

Response: The Department expects that § 141.55 in the final-form rulemaking will satisfy the commentator's concern that the regulations are too vague regarding WPP. Section 141.55 specifies the requirements for mandatory RESET participants and for WPP. For example, individuals employed in unsubsidized employment 30 or more hours per week may receive Extended TANF without any additional work or work-related activity requirements as specified in § 141.55(a)(1). Individuals participating in an employment and training program approved on an AMR while the individual was receiving TANF may continue that program, as specified in § 141.55(a)(2).

WPP is not limited to one type of work or training; it will offer a range of work, work-related activities and training. WPP is intended to promote self-sufficiency by providing individuals with the combination of work experience and training that most research indicates is most productive. The activities available in WPP may include work experience. However, the Department did not adopt the commentator's suggestion to extend work experience beyond 6 months in the person's lifetime. The Department interprets section 402 of the code as limiting work experience to 6 months in the person's lifetime, unless ADA accommodations are needed. Accordingly, § 165.31(b)(7) and (8) and (c)(3) (relating to RESET participation requirements) reflect this interpretation. The Department's interpretation is neither unwise or

illegal, nor does it relegate recipients to workfare. At the end of the 6-month period, other work and work-related activities are available.

The nature and extent of an individual's work and work-related activities depends on his needs, abilities, limitations and available work sites. Consequently, the Department cannot specify the nature and extent of these varying activities and work sites in these regulations.

An individual's input regarding the activities in WPP will always be considered but is not dispositive. As specified in § 141.58, an individual may appeal the denial or termination of Extended TANF under Chapter 275.

In response to the commentator's concern that finding and scheduling WPP activities should be done in a way that does not interfere with a recipient's current employment, the Department agrees. WPP work or work-related activities are scheduled to not interfere with an individual's unsubsidized work hours. Before and after 60 months of TANF, unsubsidized employment is preferred. Individuals who are working 20 to 29 hours, if they can participate in at least 30 hours of work and work-related activities, must maintain employment and participate in a job retention and advancement program, as specified in § 141.55(a)(3). Employed individuals who establish good cause for not participating in at least 30 hours of work and work-related activities, but can comply with RESET, must maintain employment and are referred to WPP to address the good cause situation, as specified in § 141.55(a)(6). Additional provisions for mandatory RESET participants are set forth in § 141.55.

Fiscal Impact

Commonwealth: The estimated cost in TANF Federal funds for 2002—2003 is \$7.577 million.

Public Sector: No other government entity will incur any costs or realize any savings.

Private Sector: No private sector entity will incur any costs or realize any savings.

Paperwork Requirements

The following new forms were created for Extended TANF:

(WCA 1)—MPP Case Synopsis for Work Capacity Assessment Form—Provides narrative relating to recipient demographics and addresses hidden barriers and will include the MPP worker's observations. Used to compile information from the individual's CAO record and CIS screens and is provided to the WCA contractor as an introduction to the individual's TANF history.

(WCA 2)—Letter of Explanation and Request for Information Form—CAO letter provided to the individual's treating physician(s) explaining WCA and requesting the individual's medical records to be sent to the WCA contractor. This form also provides the treating physician(s) with the opportunity to become involved in the decision to authorize further diagnostic testing for the individual.

(WCA 3)—Professional Service Invoice for Photocopy Fees Form—Serves as an invoice for reimbursement for costs incurred with the photocopying of the individual's medical records by the treating physician(s).

(WCA 4)—Work Capacity Assessment Transmittal Form—Two-part form used to record information about the MPP client from the CAO case record and then provided to the WCA contractor as an introduction of the individual's case information. The WCA contractor uses

the form to document information and to capture information that will be data entered in the Automated Information Management System.

(WCA 5)—Work Capacity Assessment Summary Results Form—Completed by the WCA contractor upon completion of the WCA. The contractor submits to the MPP team the WCA summary results along with supporting documentation received from the individual's physician, results of the medical assessment and any other testing.

(PA 1724)—MPP Enrollment Form—Completed by the MPP Worker or MPP Case Manager for each individual enrolled in MPP.

(PA 1718)—MPP Medical and Social History Form—Completed in a private face-to-face interview between the MPP Worker or MPP Case Manager and the individual. Used to help identify possible barriers and is intended to help the MPP worker or MPP case manager, the MPP team and the individual in developing an appropriate Service Plan.

(PA 1725)—TANF Work Activity Summary Form—Used to help the MPP worker or MPP case manager identify factors that may have contributed to the individual's lack of progress toward self-sufficiency. The information obtained on the TANF Work Activity Summary Form will be combined with the information obtained from the Medical and Social History Form and other documentation to assist the MPP worker or MPP case manager and appropriate team member(s) in developing a plan that will help the individual move closer to self-sufficiency.

PA/CS 1747—Domestic Violence Verification Form—This form, revised and renamed the "Domestic Violence Verification Form," is used to verify domestic violence when an individual requests a waiver of program requirements (for example, child support, work and time limits) on that basis.

Effective Date

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

Sunset Date

Except for the sunset date specified in Chapter 281, there is no sunset date for the Extended TANF program. TANF regulations are reviewed through the Department's quality control and corrective action review process.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 12, 2002, the Department submitted a copy of this final-form rulemaking to IRRC and to the Chairpersons of the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services.

Under section 5(c) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of the comments received during the public comment period. The Department has also provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request. In preparing the final-form rulemaking, the Department has considered all comments received from the public, IRRC and the Committees.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on September 3, 2002, this final-form rulemaking was deemed approved by the House Committee on Health and Human Services and the Senate

Committee on Public Health and Welfare. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 12, 2002, and approved the final-form regulations.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking is necessary and appropriate for the administration of the code.

Order

The Department, acting under the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 133, 141, 183 and 187, are amended by amending §§ 133.23, 141.21, 141.61, 183.13 and 187.27; and by adding §§ 141.51—141.58 to read as set forth in Annex A, with the ellipses referring to the existing text of the regulations. (*Editor's Note:* This publication does not include conforming amendments to 55 Pa. Code that were previously published in the Department's final-form rulemaking for the TANF Program which appeared at 32 Pa.B. 4435 (September 14, 2002). Also, the following sections, amended in this document, were not included in the proposal at 32 Pa.B. 431: §§ 141.53—141.58 and 187.27.)

(b) The Secretary of the Department has submitted this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law. The Office of General Counsel and the Office of the Attorney General have approved this order and Annex A as to legality and form.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*. Section 141.61(a)(1) is effective March 3, 1997, and § 141.61(c) is effective September 14, 2002.

FEATHER O. HOUSTOUN,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 4788 (September 28, 2002).)

Fiscal Note: Fiscal Note 14-474 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart B. INTAKE AND REDETERMINATION

CHAPTER 133. REDETERMINING ELIGIBILITY

REDETERMINING ELIGIBILITY PROVISIONS FOR TANF, EXTENDED TANF AND GA

§ 133.23. Requirements.

* * * * *

(b) *Partial redetermination.* Partial redetermination procedures are as follows:

(1) A partial redetermination is a review that focuses on specific eligibility factors and need and resource items.

(i) A partial redetermination is required as frequently as indicated by the budget group circumstances, and is always conducted if previously unreported income is first discovered by a quarterly wage match.

(ii) When the partial redetermination focuses on address changes or a change in income or resources, a face-to-face interview is not required if, in the judgment of the worker, the credibility and reliability of the client are such that the client's statements may be accepted. In these instances, the redetermination may be made by telephone or correspondence. If the redetermination is made by telephone or correspondence, verification shall be submitted subsequently by the client.

(iii) When the partial redetermination focuses on an eligibility determination for extended TANF, as defined in § 141.52 (relating to definitions), the CAO will update the existing Agreement of Mutual Responsibility (AMR) as defined in § 165.2 (relating to definitions) or complete a new AMR. The redetermination may be conducted by telephone or in a face-to-face interview. If the redetermination is completed by telephone, the CAO will send a copy of the updated or new AMR to the client. The client shall sign and return the AMR to the CAO. The AMR must be received by the CAO within 30 days of the CAO signature on the AMR. If the AMR is not received within 30 days, the client shall be ineligible for extended TANF.

* * * * *

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 141. GENERAL ELIGIBILITY PROVISIONS

ELIGIBILITY PROVISIONS FOR TANF, EXTENDED TANF AND GA

§ 141.21. Policy.

* * * * *

(n) An applicant or recipient shall cooperate with the CAO in identifying and applying for Federal programs as the primary source of financial assistance, such as, but not limited to, SSI, RSDI, TANF and Extended TANF, in accordance with the following:

(1) An applicant for TANF, Extended TANF or GA who fails, without good cause, to cooperate in establishing eligibility for Federal programs is ineligible for cash assistance as follows:

(i) For TANF, the applicant is ineligible until the applicant complies.

(ii) For GA, the applicant is ineligible for a minimum of 60 days and thereafter, until the applicant complies.

(iii) For Extended TANF, the applicant and the applicant's family are ineligible until the applicant complies.

(iv) For GA, if the applicant has received 60 months of TANF, the applicant and the applicant's family are ineligible for a minimum of 60 days and thereafter until the applicant complies.

(2) A recipient of TANF, Extended TANF or GA who fails, without good cause, to cooperate in establishing eligibility for SSI, RSDI, TANF, Extended TANF or other Federal programs is ineligible for cash assistance until the recipient complies. For Extended TANF and GA, if the recipient has received 60 months of TANF, the recipient's family is also ineligible until the recipient complies.

* * * * *

ELIGIBILITY PROVISIONS FOR EXTENDED TANF

§ 141.51. Policy.

(a) A family that meets the requirements of Chapter 133, § 141.21 and Chapters 142, 177 and 183 may be eligible for Extended TANF under this chapter.

(b) A family otherwise eligible for TANF but for the 60-month time limit on Federally-funded TANF assistance may receive Extended TANF if the eligibility conditions of § 141.53 (relating to eligibility based on domestic violence) are met or the adult head of household or spouse of head of household who received 60 months of TANF meets the requirements of § 141.54, § 141.55 or § 141.56 (relating to maximizing participation project; mandatory RESET participants; and deferred referral).

(c) A family may receive extended TANF under more than one section in this chapter. The months during which a family receives Extended TANF need not be sequential.

§ 141.52. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Adult—An individual who is 19 years of age or older or who is 18 years of age and not a full-time student in a secondary school or in the equivalent level of vocational or technical training.

Extended TANF—Federally-funded TANF cash assistance for eligible families in which an adult head of household or spouse of head of household has received 60 cumulative months of TANF assistance.

MPP—Maximizing Participation Project—As defined in § 281.2 (relating to definitions).

MPP assessment—An evaluation of medical conditions, functional limitations and good cause situations that may preclude or limit an adult's compliance with RESET.

MPP service plan—A document developed by the MPP team in consultation with the individual to outline the steps and services necessary to enable the adult to increase self-sufficiency. This may include one or more of the following:

- (i) Attending English-as-a-Second Language (ESL) classes.
- (ii) Attending mental health counseling.
- (iii) Attending general equivalency diploma (GED) classes.
- (iv) Receiving substance abuse treatment.
- (v) Compliance with a family service plan or family court recommendations.

MPP team—A multidisciplinary group consisting of a CAO worker or an agent authorized by the Department and professionals from various disciplines, which may include physicians, psychologists and vocational or behavioral rehabilitation specialists.

RESET—Road to Economic Self-Sufficiency Through Employment and Training—As defined in § 165.2 (relating to definitions).

Self-employment—Operating one's own business, trade or profession for profit equal to or greater than the hourly Federal or State minimum wage, whichever is higher.

Vocational assessment—An evaluation of the factors that impact an individual's ability to perform work, including educational level, employment preferences, work history, skills, abilities and life circumstances.

WCA—Work capacity assessment—An independent evaluation performed by a contractor, of medical conditions, functional limitations or good cause situations that may preclude or limit an individual's compliance with RESET.

WPP—Work Plus Program—An employment and training program providing work and work-related activities for at least 30 hours per week for individuals eligible for Extended TANF.

§ 141.53. Eligibility based on domestic violence.

(a) *Eligibility.* A family may receive Extended TANF if the individual or other family member is or has been a victim of domestic violence, as defined in § 187.22 (relating to definitions) or is at risk of further domestic violence. Eligibility for Extended TANF under this section is subject to the following:

(1) *Verification of domestic violence not required.* No further verification of domestic violence is required if the individual or other family member has met one of the following:

- (i) A current or past good cause waiver of child support cooperation requirements.
- (ii) A current or past waiver of RESET requirements under Chapter 165 (relating to Road to Economic Self-Sufficiency Through Employment and Training (RESET)).
- (iii) Received time-out benefits under Chapter 281 (relating to time-out benefits) based on domestic violence.

(2) *Verification or self-affirmation of domestic violence required.* If the individual is not excused from providing verification of domestic violence under paragraph (1), the individual shall meet one of the following conditions:

- (i) Provide one of the types of verification specified in § 187.27(b)(1)(iv)—(vi) (relating to waiver of cooperation for good cause).
- (ii) Affirm in writing that the individual or other family member is at risk of domestic violence and unable to safely obtain other evidence.

(3) *Completion of form.* The CAO and the individual shall complete the Domestic Violence Verification Form under § 187.27(b)(1)(vii), except that the 6-month limitation in § 187.27(b)(1)(vii)(c) does not apply. The perpetrator or alleged perpetrator of the domestic violence is prohibited from completing the Domestic Violence Verification Form.

(b) *Domestic violence services plan.* The individual shall have a domestic violence services plan that meets the requirements of 45 CFR 260.55(c) (relating to what are the additional requirements for Federal recognition of good cause domestic violence waivers).

(c) *Duration.* If otherwise eligible, a family may receive Extended TANF based on domestic violence for as long as necessary.

(d) *Review of eligibility.*

(1) *Review of eligibility.* The CAO will review eligibility for Extended TANF based on domestic violence at least every 6 months.

(2) *Additional verification.* No additional verification of domestic violence is required if circumstances have not changed.

(e) *Ineligibility.* If the individual fails to comply with this section, the family is ineligible for Extended TANF under this section until the individual complies.

(f) *Other bases for eligibility.* A family ineligible for Extended TANF based on domestic violence may be eligible for Extended TANF under § 141.54, § 141.55 or § 141.56 (relating to maximizing participation project; mandatory RESET participants; and deferred referral).

(g) *Definition.* As used in this section, the following word has the following meaning, unless the context clearly indicates otherwise:

Individual—The adult head of household or spouse of head of household.

§ 141.54. Maximizing participation project.

(a) *Eligibility.* A family may be eligible for Extended TANF under this section if the individual who has received 60 months of TANF assistance meets the requirements of paragraph (1), (2) or (3). The individual is:

(1) Exempt from participation in RESET because the individual is mentally or physically disabled as verified by a physician or licensed psychologist and the disability temporarily or permanently precludes any form of employment or work-related activity.

(2) Not exempt from RESET but has good cause for not complying with RESET and referral to MPP, WPP or another employment and training program was deferred under § 141.56(a)(2) (relating to deferred referral).

(3) Exempt from participation in RESET because the individual is the parent or specified relative who is providing care for a child under 6 years of age and for whom alternate child care arrangement is unavailable, and referral to MPP, WPP or another employment and training program was deferred under § 141.56(a)(3).

(b) *Requirements.*

(1) *General.* Except as provided in paragraph (2), as a condition of eligibility under this section, the individual shall:

(i) Agree on an AMR to enroll in MPP, cooperate in obtaining a WCA, sign and comply with the MPP service plan.

(ii) Enroll in MPP, cooperate in obtaining a WCA, sign and comply with the MPP service plan.

(iii) Authorize the release of information and cooperate in obtaining information relevant to the WCA, MPP assessment or MPP service plan, whichever applies.

(2) *Exceptions to WCA requirement.*

(i) An individual whose current enrollment in MPP began before the individual received 60 months of TANF assistance, or who is grandfathered under this section, as described in subparagraph (ii), may continue in MPP without a WCA if one of the following applies:

(A) The individual has received an MPP assessment.

(B) The individual has agreed on an AMR to receive an MPP assessment.

(ii) An individual is grandfathered under this section if the individual's current enrollment in MPP began before implementation of this section.

(3) *The WCA.*

(i) *Purpose and scope.*

(A) The WCA will seek to identify:

(I) The nature and extent of medical conditions, functional limitations and good cause situations that preclude or limit the individual from complying with RESET participation requirements.

(II) The individual's range of ability to engage in work and work-related activities, with and without appropriate treatment.

(B) The WCA will include an evaluation of existing documentation regarding medical conditions and functional limitations. The WCA will also include consideration of previously undiagnosed conditions and limitations.

(C) For evaluation of a medical condition or functional limitations, the WCA will require an examination of the individual. For evaluation of a good cause situation, the WCA may require an examination of the individual if necessary and relevant to the determination of the good cause situation.

(D) The WCA may include additional testing as needed to facilitate diagnosis and appropriate treatment recommendations.

(E) The findings and recommendations of the WCA will be provided to the MPP team.

(ii) *Standards for review of medical conditions and functional limitations.*

(A) If the individual has a medical condition or functional limitation that precludes or limits compliance with RESET, the WCA will be conducted based upon accepted medical standards for the evaluation of impairments, using a standard framework and method of analysis.

(B) The standard framework and method of analysis used for the evaluation of temporary and permanent impairments will be the most recent edition of the American Medical Association, "Guides to the Evaluation of Permanent Impairment."

(iii) *Evidence of medical conditions and functional limitations.*

(A) *Existing documentation.* The individual shall obtain existing documentation regarding medical conditions and functional limitations that may preclude or limit compliance with RESET, including available records of the treating physician and psychologist. If necessary, the Department or its agent will assist the individual in obtaining existing documentation.

(B) *Treating physician opinions.* The WCA will include consideration of available opinions of the treating physician.

(4) *Results of the WCA or MPP assessment.*

(i) If the results of the WCA or MPP assessment reveal a medical condition, functional limitation or good cause situation that precludes the individual from complying with RESET, the MPP team will develop an MPP service plan in consultation with the individual.

(ii) If the results of the WCA or MPP assessment do not reveal a medical condition, functional limitation or good cause situation that precludes the individual from complying with RESET, the individual will be referred to an appropriate employment and training activity. If the results indicate that there is a medical condition, functional limitation or good cause situation that limits but

does not preclude the individual's ability to participate in RESET, the relevant WCA findings and recommendations will be provided with the referral.

(iii) An individual who disagrees with the findings or recommendations of the WCA may request a second opinion WCA.

(c) *Ineligibility.* If the individual fails to comply with this section, the family is ineligible for Extended TANF under this section until the individual complies.

(d) *Definition.* As used in this section, the following word has the following meaning, unless the context clearly indicates otherwise:

Individual—The adult head of household or spouse of head of household.

§ 141.55. Mandatory RESET participants.

(a) *General.* A family may qualify for Extended TANF under this section if the individual who has received 60 months of TANF meets the requirements of this section, as follows:

(1) *Employed 30 or more hours per week.* If the individual is employed at least 30 hours per week in unsubsidized employment, including self-employment, no additional work or work activity is required. The individual may volunteer for employment and training programs that are designed to increase the individual's earning capacity.

(2) *Participating in an employment and training program.* The individual is continuing participation in an employment and training program approved on an AMR while the individual was receiving TANF.

(3) *Employed 20–29 hours per week.* An individual who is employed 20–29 hours per week in unsubsidized employment, including self-employment, shall maintain employment. Except as specified in paragraph (6), the individual shall also enroll and participate in a job retention and advancement program, funded or approved by the Department, to bring the combined total number of hours to at least 30 hours per week.

(4) *Employed less than 20 hours per week.* An individual who is employed less than 20 hours per week in unsubsidized employment shall maintain employment. Except as specified in paragraph (6), the individual shall also enroll and participate in WPP, to bring the combined total number of hours to at least 30 hours per week.

(5) *Not employed.* Except as specified in paragraph (6), an individual who is not employed in unsubsidized employment shall enroll and participate in WPP for at least 30 hours per week.

(6) *Special good cause provision.* If the individual establishes good cause for not participating in at least 30 hours per week of combined work and work-related activities but is required to comply with RESET, the following rules apply:

(i) If the individual is employed 20–29 hours per week in unsubsidized employment, the individual shall maintain employment.

(ii) If the individual is employed less than 20 hours per week in unsubsidized employment, the individual shall maintain employment. The individual shall also agree on an AMR to comply with RESET by participating in WPP for a combined total of at least 20 hours per week.

(iii) If the individual is not employed in unsubsidized employment, the individual shall agree on an AMR to

comply with RESET by participating in WPP for at least 20 hours per week.

(iv) The individual who establishes good cause for not participating in at least 30 hours per week of combined work and work-related activities shall also agree on an AMR to address the good cause situation. The AMR will set forth the steps the individual shall undertake to address the good cause situation including cooperation with a WPP contractor.

(b) *WPP.*

(1) An individual enrolled in WPP shall cooperate in obtaining a vocational assessment, performed by an employment and training contractor.

(2) If the results of the vocational assessment indicate that the individual is not precluded from complying with RESET, the individual shall participate a minimum of 30 hours per week in a combination of work and work-related activities, in accordance with the Fair Labor Standards Act (29 U.S.C.A. §§ 201–219). Work-related activities may include English-as-a-Second Language (ESL) classes. If the individual establishes good cause for not participating in at least 30 hours per week of work and work-related activities, the individual shall comply with RESET in accordance with subsection (a)(6).

(3) If the results of the vocational assessment reveal a medical condition, functional limitation or good cause situation that precludes the individual from complying with RESET requirements, the individual shall be referred to MPP.

(4) If the results of the vocational assessment indicate that the individual is not precluded from complying with RESET but, because of disability, needs a reasonable accommodation of program rules and requirements, that accommodation shall be made, in accordance with Title II of the Americans With Disabilities Act (42 U.S.C.A. §§ 12131–12165). Findings and recommendations provided with a referral from MPP will be considered in providing accommodation.

(c) *Sanctions.* If the individual fails to comply with § 141.55 (relating to mandatory RESET participants), a compliance review is conducted in accordance with § 165.51 (relating to compliance review). If the individual willfully fails, without good cause, as described in § 165.52 (relating to good cause), to comply with § 141.55, a sanction is imposed on the budget group under § 165.61 (relating to sanctions).

(d) *Definition.* As used in this section, the following word has the following meaning, unless the context clearly indicates otherwise:

Individual—The adult head of household or spouse of head of household.

§ 141.56. Deferred referral.

(a) *General.* A family may qualify for Extended TANF if the individual meets one of the eligibility criteria of paragraphs (1)–(4) and complies with an AMR. The individual is:

(1) A parent in a one-parent household who is caring for a child who has not attained the age of 12 months and the parent is exempt from RESET under § 165.21(c)(4) (relating to exemptions from RESET participation requirements).

(2) Caring for a disabled child or adult for whom appropriate care is unavailable within a reasonable distance from home or otherwise establishes good cause for not complying with RESET under § 165.52 (relating to good cause).

(3) The parent or specified relative who is providing care for a child under 6 years of age and for whom alternate child care arrangement is unavailable.

(4) In the process of a compliance review under § 165.51 (relating to compliance review) or receiving TANF assistance pending timely appeal under § 275.4(a)(3)(v)(c)(i) (relating to procedures).

(b) *Redetermination.*

(1) The CAO will redetermine eligibility under subsection (a)(1) every 6 months or on the date the 12-month limit on the parent's exemption from RESET under § 165.21(c)(4) expires, whichever is sooner.

(2) Except for eligibility under subsection (a)(1), the CAO will determine eligibility under this section when circumstances change and no less often than every 90 days.

(c) *Outcome of redetermination.*

(1) If circumstances have changed so that the family no longer meets the requirements of subsection (a), the CAO will determine if the family is otherwise eligible for extended TANF under § 141.53, § 141.54 or § 141.55 (relating to eligibility due to domestic violence; maximizing participation project; and mandatory RESET participants).

(2) If circumstances have not changed, the CAO will refer the individual to MPP unless the basis for deferred referral is expected to be resolved in less than 90 days from the date of redetermination.

(d) *Definition.* As used in this section, the following word has the meaning, unless the context clearly indicates otherwise:

Individual—The adult head of household or spouse of head of household.

§ 141.57. Special allowances.

(a) An individual who receives Extended TANF as specified in §§ 141.53—141.55 (relating to eligibility based on domestic violence; maximizing participation project; and mandatory RESET participants) may receive special allowances under § 165.41 (relating to eligibility for special allowances for supportive services).

(b) An individual who is eligible for Extended TANF may receive special allowances, including allowances for child care and transportation necessary to enable the individual to participate in programs and activities that are part of the individual's MPP service plan, domestic violence services plan or employment and training activities listed on the AMR.

§ 141.58. Appeal rights.

An individual may appeal the denial or termination of Extended TANF under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

ELIGIBILITY PROVISIONS FOR GA

§ 141.61. Policy.

(a) *Conditions of eligibility.* The following relates to eligibility for GA:

(1) A person is eligible for GA under the requirements established in subsection (d) and if the appropriate eligibility conditions in the following chapters are met:

* * * * *

(xii) Furthermore, eligibility for GA requires that the person be ineligible for TANF and Extended TANF because of failure to meet TANF and Extended TANF definitive conditions. An applicant or recipient who does not qualify for TANF or Extended TANF solely because of a refusal or failure, without good cause, to establish eligibility for TANF or Extended TANF is ineligible for GA. A person meeting definitive conditions but ineligible for TANF because of income, resources or participation in a strike is not eligible for GA. A person who refuses without good cause to cooperate in establishing paternity or support as required in the TANF or Extended TANF program is ineligible for GA. A family in which an adult refuses or fails, without good cause, to cooperate in establishing and maintaining eligibility for Extended TANF as provided in §§ 141.53—141.56 is also ineligible for GA.

* * * * *

(b) *Social Security number required.* A Social Security number is required for each family member for whom assistance is to be granted or is being received. If a Social Security number is needed and no application has been made, it is the responsibility of the CAO to complete and submit the SSA-5 application form.

(c) *Determining GA categorical eligibility.* An applicant for, or recipient of, GA is determined to be eligible in accordance with the following:

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Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 183. INCOME

INCOME

§ 183.13. Potential sources.

* * * * *

(b) A recipient of TANF, Extended TANF or GA who fails, without good cause, to cooperate in establishing and maintaining eligibility for SSI, RSDI, TANF, Extended TANF or other Federal programs is ineligible for cash assistance until the recipient complies. For Extended TANF and GA, if the recipient has received 60 months of TANF, the recipient's family is also ineligible until the recipient complies.

(c) An applicant for TANF, Extended TANF or GA who fails, without good cause, to cooperate in establishing eligibility for Federal programs is ineligible for cash assistance as follows:

(1) For TANF or Extended TANF, the applicant is ineligible until the applicant complies.

(2) For GA, the applicant is ineligible for a minimum of 60 days and thereafter, until the applicant complies.

(3) For Extended TANF, the applicant and the applicant's family are also ineligible until the applicant complies.

(4) For GA, if the applicant has received 60 months of TANF, the applicant and the applicant's family are ineligible for a minimum of 60 days and thereafter until the applicant complies.

(d) An individual who is eligible for TANF or Extended TANF and SSI may choose to receive a benefit from one of these programs. The individual may not receive SSI and TANF or Extended TANF simultaneously.

CHAPTER 187. SUPPORT FROM RELATIVES NOT LIVING WITH THE CLIENT

SUPPORT PROVISIONS FOR CASH ASSISTANCE

§ 187.27. Waiver of cooperation for good cause.

(a) *Good cause circumstances.* Cooperation requirements may be waived for good cause. Good cause circumstances include the following:

(1) The child was conceived as a result of incest or rape.

(2) Legal proceedings for the adoption of the child are pending before a court.

(3) The applicant or recipient of cash assistance is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption and the discussions have not progressed for more than 3 months.

(4) Action to establish paternity or obtain child or spousal support would make it more difficult for the individual or family member to escape domestic violence, as defined in § 187.22 (relating to definitions), or unfairly penalize the individual who has been victimized by the violence, or who is at risk of further violence.

(b) *Proving the good cause claim.* The applicant or recipient of cash assistance shall provide relevant verification.

(1) A good cause claim may be verified with the following types of evidence:

(i) A birth certificate or medical or law enforcement records which indicate that the child was conceived as the result of incest or rape.

(ii) Court documents or other records which indicate that legal proceedings for adoption are pending.

(iii) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to relinquish the child for adoption.

(iv) Medical records which indicate emotional health history and present emotional health status of the applicant or recipient or the child for whom support would be sought; or, written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the applicant or recipient or the child for whom support would be sought. Supportive evidence submitted from a mental health professional will be defined as statements written by individuals who have obtained licensure or certification, if applicable, or have received a degree in defined areas of mental health including psychiatry, social work, psychology, nursing, occupational therapy or recreational therapy.

(v) Court, medical, criminal, child protective services, social services, psychological or law enforcement records which verify domestic violence, as defined in § 187.22.

(vi) Statements from individuals other than the applicant or recipient with knowledge of the good cause circumstances, including a domestic violence service provider, a medical, psychological or social service provider, a law enforcement professional, a legal representative, an acquaintance, friend, relative or neighbor of the claimant or other individual.

(vii) *Domestic Violence Verification Form.* The CAO and applicant or recipient will complete this form for all good cause claims based on domestic violence in accordance with one of the following circumstances:

(A) To accompany acceptable verification as specified in subparagraph (iv), (v) or (vi) that an applicant or recipient has provided.

(B) To grant good cause upon written consent of the applicant or recipient based on verification of the good cause claim provided by a third party on the form.

(C) To grant good cause for up to 6 months when an applicant or recipient affirms she is at risk of domestic violence and unable to safely obtain other evidence to verify the claim of domestic violence within the established time frames for providing verification.

(2) When the applicant or recipient of cash assistance initiates a claim of good cause, the CAO, court or the DRS may provide assistance with obtaining verification. If requested by the applicant or recipient, the CAO, court or DRS will provide assistance in securing the needed evidence by advising how to obtain specific documents that may be available and by undertaking to obtain specific documents the applicant or recipient is not able to obtain. The CAO may not contact the putative father or noncustodial parent to verify good cause based on a claim of domestic violence.

(3) An applicant or recipient shall provide verification of the good cause claim, as specified under paragraph (1)(iv)—(vii)(A) and (B), within 30 days from the date the claim is made, except when the applicant or recipient cannot otherwise provide verification of the good cause claim as specified in paragraph (1)(vii)(C).

(i) In the case of an applicant, assistance will be authorized no later than 30 days following application when the applicant is claiming good cause and verification is not readily available or pending from a third party.

(ii) In the case of a recipient, the CAO will continue assistance if verification is not provided within 30 days and the delay is due to a third party.

(c) *Good cause determination.* The CAO, court or the DRS will make a determination within 45 days from the day the claim was initiated by the applicant or recipient of cash assistance. The CAO, court or the DRS may approve additional days for the determination to be completed.

(1) If the CAO makes a determination on a good cause claim, the CAO will notify the applicant or recipient of cash assistance in writing of the final determination regarding the claim of good cause and the basis therefor and of the right to appeal under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). If the good cause claim is denied, neither the Department nor the Bureau of Child Support Enforcement will attempt to establish paternity or obtain support for at least 30 days after the individual has been informed orally and in writing of the denial of the good cause claim.

(2) If the court of common pleas or DRS makes a determination on a good cause claim, the DRS will notify the applicant or recipient of cash assistance and the CAO of the final determination and the basis therefor and of the right to appeal under Chapter 275.

(3) When the CAO, court of common pleas or the DRS approve a waiver of the cooperation requirement based on

a claim of good cause, the DRS will not attempt to establish paternity or obtain support.

(4) When good cause is determined to exist, the CAO will review the circumstances upon which the good cause determination is based, at least every 6 months.

(i) If the good cause waiver was granted based on verification, no additional verification is required if circumstances have not changed since approval of the initial waiver.

(ii) If the good cause waiver was granted based on the recipient's affirmation under subsection (b)(1)(vii)(C), and

she is unable to provide verification as specified in subsection (b)(1)(iv)—(vii)(A) and (B), the CAO will make a determination of good cause based on a current assessment of the recipient's circumstances. This assessment will be completed by an individual with domestic violence training and substantiated by completion of the verification of good cause based on the domestic violence form under subsection (b)(1)(vii).

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