

*Waiver*, when used in subpart C of this part, has the meaning specified at § 260.71.

*We (and any other first person plural pronouns)* means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

*Welfare-to-Work* means the new program for funding work activities at section 403(a)(5) of the Act.

*WtW* means Welfare-to-Work.

*WtW cash assistance* has the meaning specified at § 260.32.

[64 FR 17878, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

**§ 260.31 What does the term “assistance” mean?**

(a)(1) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under § 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) It excludes:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help

cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.

(c) The definition of the term assistance specified in paragraphs (a) and (b) of this section:

(1) Does not apply to the use of the term assistance at part 263, subpart A, or at part 264, subpart B, of this chapter; and

(2) Does not preclude a State from providing other types of benefits and services in support of the TANF goal at § 260.20(a).

**§ 260.32 What does the term “WtW cash assistance” mean?**

(a) For the purpose of § 264.1(b)(1)(iii) of this chapter, WtW cash assistance only includes benefits that:

(1) Meet the definition of assistance at § 260.31; and

(2) Are directed at basic needs.

(b) Thus, it includes benefits described in paragraphs (a)(1) and (a)(2) of § 260.31, but excludes benefits described in paragraph (a)(3) of § 260.31.

(c) It only includes benefits identified in paragraphs (a) and (b) of this section when they are provided in the form of cash payments, checks, reimbursements, electronic funds transfers, or any other form that can legally be converted to currency.

**§ 260.33 When are expenditures on State or local tax credits allowable expenditures for TANF-related purposes?**

(a) To be an allowable expenditure for TANF-related purposes, any tax

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credit program must be reasonably calculated to accomplish one of the purposes of the TANF program, as specified at § 260.20.

(b)(1) In addition, pursuant to the definition of expenditure at § 260.30, we would only consider the refundable portion of a State or local tax credit to be an allowable expenditure.

(2) Under a State Earned Income Tax Credit (EITC) program, the refundable portion that may count as an expenditure is the amount that exceeds a family's State income tax liability prior to application of the EITC. (The family's tax liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of a State EITC that the State refunds to a family and that is above the amount of EITC used as credit towards the family's State income tax liability.

(3) For other refundable (and allowable) State and local tax credits, such as refundable dependent care credits, the refundable portion that would count as an expenditure is the amount of the credit that exceeds the taxpayer's tax liability prior to the application of the credit. (The taxpayer's liability is the amount owed prior to any adjustments for credits or payments.) In other words, we would count only the portion of the credit that the State refunds to the taxpayer and that is above the amount of the credit applied against the taxpayer's tax bill.

### **§ 260.34 When do the Charitable Choice provisions of TANF apply?**

(a) These Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State and local funds used to meet maintenance-of-effort (MOE) requirements of the TANF program to directly procure services and benefits from non-governmental organizations, or provides TANF beneficiaries with certificates, vouchers, or other forms of indirect disbursement redeemable from such organizations. For purposes of this section:

(1) *Direct funding or funds provided directly* means that the government or an intermediate organization with the same duties as a governmental entity under this part selects the provider and

purchases the needed services straight from the provider (*e.g.*, via a contract or cooperative agreement).

(2) *Indirect funding or funds provided indirectly* means placing the choice of service provider in the hands of the beneficiary, and then paying for the cost of that service through a voucher, certificate, or other similar means of payment.

(b)(1) Religious organizations are eligible, on the same basis as any other organization, to participate in TANF as long as their Federal TANF or State MOE funded services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government in its use of Federal TANF or State MOE funds shall, in the selection of service providers, discriminate for or against an organization that applies to provide, or provides TANF services or benefits on the basis of the organization's religious character or affiliation.

(c) No Federal TANF or State MOE funds provided directly to participating organizations may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives direct Federal TANF or State MOE funds under this part, and participation must be voluntary for the beneficiaries of those programs or services.

(d) A religious organization that participates in the TANF program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend Federal TANF or State MOE funds that it receives directly to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide TANF-funded services without removing religious art, icons, scriptures, or other symbols.