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APPLYING THE 180-DAY NONFINANCIAL ELIGIBILITY POLICIES WHEN DETERMINING W-2 ELIGIBILITY

There are two different nonfinancial eligibility criteria that involve 180-day timeframes. These are two distinctly different policies that *applicants* may be tested against when determining W-2 eligibility.

180 Day Cooperation with W-2 Agency

Policy: In order to be nonfinancially eligible for a W-2 employment position and Job Access Loan for any month, an applicant must have cooperated with the W-2 agency's efforts to assist the individual in obtaining employment if the current application is within 180 calendar days of a previous application for W-2 services.

This eligibility requirement is meant to deter applicants who do not comply with program requirements from cycling on and off assistance. When applying this policy to the many different circumstances surrounding W-2 applicants and participants, the FEP must consider whether the decision to deny someone W-2 eligibility based on this policy meets the intent of the law.

Determining 180-day Timeframe: In order to determine if the current application is within 180 calendar days of the previous application for W-2 services, the agency must use the application dates. An application date is the date that the W-2 agency received a signed copy of the CARES generated registration form or the *W-2 and Related Programs Registration* (DWSP-14880) form. For example, if someone applies for and signs the registration form on October 4, 2007, the agency can look back 180 calendar days to April 7, 2007 to determine if the applicant had submitted another application for W-2 within that timeframe.

Cooperating with W-2 Agency Efforts: Cooperating with the efforts of the W-2 agency to assist the individual in obtaining employment includes:

- Cooperation with specific nonfinancial eligibility criteria that would otherwise result in a denial or case closure¹;
- Cooperation with pre-eligibility requirements; and
- Participation in program activities assigned on the Employability Plan (EP)².

¹Noncooperation with specific types of W-2 eligibility criteria, which may result in a denial or case closure, are identified in Operations Memo 04-34. In addition, this may include cooperation with any other nonfinancial eligibility criteria that requires action on the part of the individual.

² This does not include assigned activities that cannot be sanctioned, e.g., AODA Assessment (AA), Disability and Learning Assessment (AD), Physician's Assessment (AL), Mental Health Assessment (AM), and Domestic Violence Assessment and Supportive Services (AV).

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If an applicant or participant does not cooperate with any of the above requirements, she *may* be denied eligibility if the current application date is within 180 calendar days of a previous application. This is a discretionary policy that requires the FEP to consider all facts surrounding the case and whether a denial would meet the intent of the policy.

During the application process, applicants must be informed of the consequences of not cooperating with the W-2 agency's efforts to assist them in obtaining employment. Specifically, applicants must be informed that if they do not cooperate with the W-2 agency as described above, not only could they be found ineligible for W-2 under the current application, but they may also be ineligible for W-2 for up to 180 days. While the Department will update existing forms and publications to reflect future potential ineligibility for not cooperating with the efforts of the W-2 agency, agencies may want to consider obtaining a signed statement from the applicant. This can be done through a stand alone form or the agency may add language to the up-front Employability Plan.

Documentation of Past Failure to Cooperate as an Applicant: If the FEP is denying assistance to an applicant based on noncooperation under a prior application there must be documentation in CARES or the case file to support the denial. Methods of documentation include:

- A <No> to meeting pre-eligibility requirements on the W-2 Pre-Eligibility Requirements Page CWW screen; or
- A CARES notice outlining an applicable denial or closure reason.

Under either circumstance, there must be other documentation providing details of the noncooperation and good cause information located in CARES or ECF.

If an applicant withdraws the application after failing to cooperate with up-front requirements, the individual may still be found ineligible under future applications.

Documentation of Past Failure to Cooperate as a Participant: If the FEP is denying assistance to an applicant based on the person's failure to cooperate with the W-2 agency's efforts as a *participant* under a prior episode of W-2, it must be documented on CARES screen WPNP and case comments. This will more than likely be nonparticipation in assigned activities, but it may also include noncooperation with ongoing nonfinancial eligibility criteria. In order for nonparticipation to be applicable, the participant must have demonstrated an ongoing pattern of nonparticipation without good cause opposed to isolated incidents of nonparticipation even if there was not good cause for those isolated incidents.

- **NOTE:** Agencies need to keep in mind that in order to apply this policy based on nonparticipation as a participant under a prior episode of W-2, the

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application date for the prior episode of W-2 has to fall within 180 calendar days of the current application date. Therefore, this policy could not apply to anyone who was on W-2 under the prior episode for more than 180 days.

Consideration of Current Circumstances: While it may be that an applicant has not cooperated with the efforts of the W-2 agency in the past, the FEP must take into consideration the intent of the policy as well as any new information that the applicant may have regarding her circumstances. For example, if the person now presents information regarding mental health or chronic physical health issues that may be attributed to past failure to participate. Despite the fact that the individual didn't provide this information at the time of the failure, the agency must take into consideration the impact of the information on past performance. Another example would be if a person presents information regarding a change in her circumstances that now makes W-2 necessary, but was unrelated to past failure to participate. The agency must keep in mind the intent of the policy, which is to prevent individuals who choose not to participate from cycling on and off of assistance. While someone may have not participated in the past, it may not preclude her need for W-2 in the future.

Failure to Cooperate with Other Programs: Sanctions or noncooperation under other programs, such as Food Stamp Employment and Training (FSET), cannot be applied under this policy as the cooperation requirements under this policy are specific to the W-2 program. However, noncooperation with other programs may be applicable to other policies.

Example 1: Jennifer applies for W-2 on September 2, 2007. Her last application for W-2 was February 12, 2007. Jennifer was found eligible under that application and was placed in a CSJ with a job search focus. On May 29, 2007, Jennifer's case closed because she did not participate in assigned job search. When Jennifer returns in September, the FEP sees that Jennifer did not participate in assigned activities without good cause; however, because the current application date is not within 180 days of the prior application for W-2, the FEP determines that Jennifer is **eligible**.

Example 2: John applies for W-2 on September 10, 2007. The FEP sees that John had applied for W-2 on May 7, 2007 and was denied W-2 services for failure to complete up-front job search activities. Case notes indicate, that during the prior application, John expressed concern over the up-front job search requirements and said that he wasn't sure that he wanted to continue with his application for W-2. For that reason, the FEP gave John the opportunity to withdraw that application and explained that if he did continue and did not cooperate with up-front requirements, not only could he be denied under that application, but he may also be denied eligibility for up to 180 calendar days from that application date. Despite this discussion, John continued with that

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application and was assigned up-front activities. The FEP had documented on John's EP that if he did not cooperate, he may be denied eligibility under this application and for up to 180 calendar days. In the end, John did not complete his up-front requirements. Now, after reviewing the circumstances surrounding the failure to complete job search, the W-2 agency determines that John is **not eligible** for the following reasons:

- Under the prior application, John did not cooperate with the W-2 agency's assistance with finding employment and he did not have good cause.
- John had been informed of the consequences of not cooperating with up-front requirements.
- John did not provide any reason for past noncooperation.
- The current application date (September 10, 2007) is within 180 calendar days of the previous application date for W-2 services (May 7, 2007).

Example 3: Lawrence applies for W-2 on August 12, 2007. The FEP sees that he had applied for W-2 on June 1, 2007 and was denied W-2 services for failure to complete up-front job search activities. Case notes indicate, that during the prior application, Lawrence was told of the consequences of not participating and decided to continue with that application, but did not complete the up-front job search requirements. Now, during a review of the circumstances surrounding the past noncooperation, Lawrence explains that he was unable to cooperate because he did not have a place to live. While it was unclear why Lawrence did not share this information under the previous application, the current FEP believes that Lawrence had a valid reason for not participating despite not having shared this with the FEP at the time of the last application. Therefore, the W-2 agency determines that Lawrence is **eligible**.

Example 4: Jacey applies for W-2 on Monday, September 23, 2007. Her last application for W-2 was July 12, 2007 and her case was denied because she failed to cooperate with child support. Case notes indicate, that during the prior application, Jacey was told of the consequences of not participating. When Jacey returns in September, she has now cooperated fully with child support requirements. While Jacey was found not eligible for failure to cooperate with the W-2 agency regarding child support under the prior application, because she has now cooperated, the W-2 agency determines that Jacey is **eligible**.

Example 5: Mary applies for and signs the W-2 registration form on October 10, 2007. Under her prior application dated August 12, 2007, Mary was denied W-2 for failing to cooperate with up-front job search requirements. Case notes indicate, that during the prior application, Mary was told of the consequences of not participating and decided to continue with that application. When Mary returns in October, she has suffered an unexpected blow in that she was involved in a serious car accident weeks after her August application. While the

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car accident had no bearing on her ability to participate in August, it is clear that Mary needs assistance. For that reason, the W-2 agency determines that Mary is **eligible** for W-2.

Example 6: Jill applies for and signs the W-2 registration form on June 14, 2007. Under her prior application dated December 20, 2006, Jill was denied W-2 for failing to provide verification information. Case notes indicate, that during the prior application, Jill was told of the consequences of not cooperating. Jill is now applying as she has recently had a baby and is hoping for a CMC placement. While the noncooperation does fall within the 180 calendar day timeframe, the FEP has discretion to determine whether denying Jill meets the intent of the policy. In this situation, the FEP determines that despite Jill's prior noncooperation, she is **eligible** for W-2.

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180 Day Job Quit/Good Faith Effort

Policy: In order to be nonfinancially eligible for a W-2 employment position and Job Access Loan for any month, an *applicant* must have made a good faith effort, as determined by the W-2 agency on a case-by-case basis, to obtain employment and has not refused any bona fide offer of employment *or quit a job without good cause* within 180 calendar days immediately preceding application.

In making a determination as to whether the applicant made a good faith effort to obtain employment and has not refused any bona fide offer of employment *or quit a job without good cause*, the W-2 agency must have already determined through an informal assessment that the individual is more than likely ready for unsubsidized employment. Only if the determination has been captured on CARES screen WPRU, can this policy be applied to the applicant.

Determining 180-day Timeframe: In order to determine the 180 calendar day look back timeframe under this policy, the agency must use the application date. The application date is the date that the W-2 agency received the CARES generated registration form or the *W-2 and Related Programs Registration* (DWSP-14880) form signed by the applicant. For example, if someone applies for and signs the registration form on October 4, 2007, the agency can look back 180 calendar days to April 7, 2007 to determine if the applicant had made a good faith to obtain employment and has not refused any bona fide offer of employment *or quit a job without good cause*.

Good Faith Effort to Obtain Employment: Once it is determined that the applicant is more than likely ready for unsubsidized employment, the FEP must then determine whether she has made a good faith effort to obtain employment. This is determined by the W-2 agency on a case by case basis. It is expected that prior to applying for W-2, an individual who is otherwise determined ready for unsubsidized employment will personally and diligently make a good faith effort to search for work on his or her own behalf. While it would be unlikely that an applicant would have documented her job search efforts during the 180 calendar days immediately preceding the current application date, the FEP must determine through a conversation with the applicant whether or not a reasonable search for suitable work has taken place. Indications of a reasonable search include:

- Applying for jobs with employers who may reasonably be expected to have openings corresponding with the individual's training, experience and abilities;
- Applying for work with former employers (in the event there are former employers);
- Taking civil service examinations;

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- Responding to classified advertisements; or
- Registering with a private employment agency.

If the applicant has not made any attempts to secure employment prior to applying for the W-2 program, the W-2 agency must take into consideration the reasons that the applicant has not sought employment. Unreasonable limitations by an applicant as to salary, hours or conditions of work may indicate that an applicant is not making a good faith effort to search for work. In addition, when considering the reasons, the FEP must also consider whether or not the individual needed a job prior to applying for W-2. If the individual's circumstances precluded the need for a job the policy is not applicable.

Bona Fide Offer of Employment: In making a determination as to whether an applicant has refused a bona fide offer of employment, first the FEP must consider whether the job being offered:

- Paid the equivalent of the state minimum wage;
- Conformed to all applicable federal and state laws;
- Corresponds with the individual's training, experience and abilities;
- Was in a location that was no more than 60 minutes travel time one-way, using available transportation, from the individual's home to the employer (including travel time related to any necessary child care).

If an individual refuses an offer of employment that meets all of the conditions above, it is up to the FEP to determine whether the applicant's reason(s) for refusing the offer of employment were reasonable. The FEP should use the existing W-2 good cause reasons and the FEP has discretion to determine reasons other than those currently identified under the good cause policy as a reason for refusing a job.

Again, unreasonable limitations by an applicant as to salary, hours or conditions of work are not valid reasons for refusing work.

Job Quit: The FEP must make a determination as to whether an applicant had good cause for a job quit and if that job quit occurred in the 180 calendar days prior to the current application date. When determining good cause, the FEP should use the current W-2 good cause reasons. The FEP has the discretion to determine reasons other than those currently identified under the good cause policy as good cause for quitting a job. For example, quitting a job due to being harassed by other co-workers could constitute good cause.

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Failure to Cooperate with Other Programs: An individual has received a sanction or some other type of penalty within 180 calendar days prior to the current application date for not cooperating with other employment programs, e.g., FSET, UI, etc., can be found ineligible for W-2 under this policy.

Example 1: Mary applies for and signs her W-2 registration form on October 4, 2007. During the application process, it is determined through an informal assessment that Mary is not ready for unsubsidized employment as she has barriers that would likely prevent her from obtaining employment until they can be addressed through appropriate services. For that reason, the W-2 agency determines that Mary is **eligible**.

Example 2: Joan applies for and signs her W-2 registration form on October 4, 2007. Joan has a newborn child and would like to receive a CMC payment until her child turns 12 weeks of age. While Joan states that she has not refused a job, but she also has not looked for a job in the last 180 calendar days. While Joan does not present any barriers to employment and doesn't give a good cause reason for not looking for a job, the FEP takes into consideration the unlikelihood of Joan successfully obtaining employment while pregnant, particularly in the later stages of her pregnancy. For that reason, the agency determines that Joan is **eligible**.

Example 3: Susan applies for and signs the W-2 registration form on October 4, 2007. During the application process, Susan explains that she has been out of the workforce for five years as she left her last job immediately following the birth of her child. She and her husband had been living on his salary as janitorial assistant at the local university. Her husband was injured on the job earlier in the year and cannot return to work. The couple had hoped that he would be found eligible for SSI, but has not yet. In the meantime, they have lived on their savings, which has all but run out. Susan also states that she has not looked for a job and now needs financial assistance as well as help looking for a job. Based on Susan's circumstances, despite not having medical or physical barriers to employment, Susan's life circumstances have precluded her from making a good faith effort to obtain employment. For that reason, the W-2 agency determines that Susan is **eligible**.

Example 4: Jim applies for and signs his W-2 registration form on October 4, 2007. In discussing Jim's work history, he reveals that he has held a number of jobs over the past year. His most recent job was three months ago and he quit because he didn't like his boss. Jim further states that he hasn't looked for another job because he and his son moved in with his Mom after he quit his job, but now his Mom has asked him to move out. Based on the information provided by Jim, the agency determines that Jim is **ineligible** based on the following:

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- During the application process, Jim is determined ready for unsubsidized employment through an informal assessment.
- Jim did not have good cause for quitting his prior job;
- Jim has not made a good faith effort to find employment.

The agency staff does inform Jim, however, that he has available to him the use of the Job Center resources to assist him in finding a job and the FEP reviews the various resources with Jim.

Example 5: Jim returns to the W-2 agency one month later to reapply for W-2. During the application process, Jim discusses his job search efforts with W-2 agency staff. Jim explains what he has been doing to find a job and why he thinks he has been unable to do so. Based on that information as well as other information gathered during the informal assessment, it is determined that Jim is not ready for unsubsidized employment and, therefore, the agency determines that Jim is **eligible** even though the job quit was still within 180 calendar days of the current application date.

Example 6: Sandy applies for and signs the W-2 registration form on October 10, 2007. During the application process, Sandy explains that she had a job at a local retailer, but she quit her job on September 9, 2007, because she did not get promoted to lead worker because her boss did not like her. She has looked for jobs since then, but she has not found one yet. The FEP continues to explore why Sandy has not yet found a job and discovers that she feels she is ready for a supervisory position, but has not yet found an opening for one. The W-2 agency determines that Sandy is **ineligible** because:

- During the application process, Mary is determined ready for unsubsidized employment through an informal assessment;
- Mary quit her job without good cause; and
- While Mary has looked for a job, she has limited her job search to supervisory positions only and she has no experience supervising other people.

The agency staff does inform Sandy, however, that she has available to her the use of the Job Center resources to assist her in finding a job and the FEP reviews the various resources with Sandy.

Example 7: Jocelyn applies for and signs the W-2 registration form on October 11, 2007. During the application process, Jocelyn says that she has applied for numerous jobs and was offered a job, but could not take it because it would require her to stand for too long. The FEP asked Jocelyn if she had any documentation regarding a physical condition that would prevent her from standing and Jocelyn said that she did not. While it appears that Jocelyn may be ready for some level of unsubsidized employment, the FEP determines that this Jocelyn is **eligible** because:

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- Jocelyn has made a good faith effort to look for employment;
- Turning down an offer of employment was based on a valid reason in that it appears that Jocelyn has barriers that prohibit her from some types of employment; and
- Due to Jocelyn's potential barriers, she is determined not ready for unsubsidized employment.