**I. PURPOSE:** The Earned Eligibility Program provides incarcerated individuals with an incentive for addressing the reason for their incarceration. The program recognizes that incarcerated individuals are motivated to achieve a positive change in their lives and the program increases the likelihood of making a successful transition to the community upon release. Thus, one of the goals of the Earned Eligibility Program is to increase the number of incarcerated with indeterminate sentences who are released at their initial Parole Board Hearings without increasing the risk to the community.

Consideration is given no earlier than six months prior to the incarcerated individual’s eligibility to be paroled or released from Shock, or by facility request for Early Conditional Parole for Deportation Order (ECPDO) or medical parole. Pursuant to the applicable statute and Penal Law §70.40, the Commissioner or designee shall review the individual’s institutional record to determine whether they have complied with the assigned program and has maintained a satisfactory disciplinary record. If the Commissioner or designee determines that the incarcerated individual has met the above criteria, a Certificate of Earned Eligibility may be issued to the individual. Any action by the Commissioner or designee pursuant to the applicable statute and Section 70.40 of the Penal Law shall be deemed a judicial function and shall not be reviewable if done in accordance with the law.

**II. ELIGIBILITY:** Incarcerated individuals eligible for an Earned Eligibility Program Plan include those serving an indeterminate sentence with a minimum term of not more than eight years, those authorized by COR Law §867(4) (Shock), and those eligible pursuant to Executive Law §259-i(2)(d) (ECPDO) or §§259-r, 259-s (medical parole).

Programs may include Academic, Vocational, Work, Substance Abuse, Aggression Replacement Training, Sex Offender Counseling and Treatment, and Transitional Services Phase I, II, and III.

**NOTE:** The term Earned Eligibility Program Plan is used for incarcerated individuals eligible for Earned Eligibility Certificate consideration.

A. **Programmatic Criteria**

1. Satisfactorily pursue the current established Earned Eligibility Program.
2. No unsatisfactory program removals, refusals, or regressions that have not been addressed through appropriate programming.
B. Disciplinary Criteria
   1. Maintained acceptable institutional behavior.
   2. No long-term Special Housing Unit (SHU) or confinement sanctions; periods of SHU or confinement shall be evaluated with respect to degree of impact on program participation.

III. EFFECT ON THE SENTENCE: Consideration is available to incarcerated individuals serving an indeterminate sentence with a minimum term of not more than eight years, or as authorized by COR Law §867(4) (Shock), or by facility request pursuant to Executive Law §259-i (2)(d) (ECPDO) or §§259-r, 259-s (medical parole). Earned Eligibility determinations are made when incarcerated individuals are being considered by the Parole Board for a discretionary release. Attendance, participation, and institutional behavior related to programming are evaluated. Based on the assessment’s outcome, incarcerated individuals are issued certificates, denied certificates, or assigned non-certifiable status.

Non-certifiable status represents neither a positive nor negative recommendation to the Parole Board. It is the status generally granted to eligible incarcerated individuals who, through no fault of their own, have been unable to participate in programs for a significant amount of time. Non-certifiable status may be granted if incarcerated individuals have insufficient time in programs for evaluation, or have been hospitalized, in the infirmary, in protective custody, out-to-court for an extended period of time, or in a reception center or transit unit and have not programmed or will not achieve 90 days in programs at the time of the Parole Board appearance. Each case will require the review of the incarcerated individual’s overall institutional record to determine whether they complied with the assigned recommended programs prior to their mental health/medical restrictions protective custody, or out-to-court status. If the individual is in good standing at the time of the break from programming (i.e., the individual satisfied programming requirements or had sufficient program participation) then the individual may be considered for issuance of a Certificate of Earned Eligibility.

Notwithstanding any other provision of law, an individual who is serving a sentence with a minimum of not more than eight years and who has been issued a Certificate of Earned Eligibility shall be granted parole release at the expiration of the minimum term or successful participation in the Shock Incarceration Program; unless the Board of Parole determines that there is a reasonable probability that if such individual is released, they will not live and remain at liberty without violating the law, and that their release is not compatible with the welfare of society.

IV. PROCEDURE: Persons committed to the custody of the Department under an indeterminate or determinate sentence of imprisonment shall be assigned work and/or treatment programs as soon as practicable.

A. Earned Eligibility Reviews
   1. Upon entering the Department, a preliminary Earned Eligibility Plan is developed for each incarcerated individual.
   2. To ensure each individual has an Earned Eligibility Plan that identifies their needs, an individual will be seen by the assigned Offender Rehabilitation Coordinator (ORC) within five business days of arrival to the facility and the Earned Eligibility Plan will be reviewed on a quarterly basis.
3. Prior to the parole eligibility date, the Earned Eligibility review for eligible incarcerated individuals will be completed using the criteria set forth in Section II. The incarcerated individual’s program history and record will be reviewed by a Supervising Offender Rehabilitation Coordinator and the Deputy Superintendent for Program Services, or their respective designees. Factors which will be viewed negatively include:
   a. Poor program participation.
   b. Disciplinary removals and/or institutional behavior that remains unaddressed through programs.
   c. Refusal to participate in any recommended program.

B. Earned Eligibility Determination

1. Earned Eligibility determinations shall be made by the Commissioner or designee after Central Office review.

2. The decision of the Commissioner or designee to grant or withhold a Certificate of Earned Eligibility is final, except when the incarcerated individual fails to adhere to a recommended program plan and maintain acceptable custodial adjustment as indicated in subsection IV-B-4. In lieu of an appeal mechanism, the Earned Eligibility Program provides ongoing opportunities for incarcerated individuals to review and sign off on their Earned Eligibility Program Plan at the first general confinement facility and on a quarterly basis during the COMPAS Case Plan.

3. When issued, the Earned Eligibility determination notice shall be sent by the ORC to the incarcerated individual. Incarcerated individuals who are denied or granted non-certifiable status shall have their decisions hand-delivered by the ORC. The notice is to be received by the incarcerated individual within one week following the Commissioner’s or designee’s review. Copies shall be placed in the individual’s Guidance and Community Supervision folders with a corresponding entry on the standardized chronological entry sheet.

4. The Certificate of Earned Eligibility may be revoked prior to the Parole Board Hearing if the incarcerated individual fails to continue to perform and actively pursue their assigned Earned Eligibility Plan.