PRESIDENT’S MESSAGE

New Year, New You – the internet is replete with ways to start off the new year by taking charge of your fitness, health, nutrition, organization, and money management. The promise of a clean slate – a second (or third) chance – is hugely appealing and deceptively convincing. In truth, statistics and our personal histories have shown that, by the time you read this Newsletter, you will probably have made your New Year’s resolutions and broken them already – 92% of us do. But, failing to meet our planned objective does not mean that we have lost the battle or the war. The true lesson in setting and trying to achieve goals is experiencing failure and using that failure as an opportunity to learn, adjust, and make a better and more satisfying life.

Regret can be stultifying or, viewed differently, it can inspire renewal. We need failure and disappointment to help us recognize the pitfalls, maneuver around the dangerous curves, and discover a new course. Flexibility and improvisation are the watchwords. Serendipitous discoveries and inventions have changed our way of life, even though the creator originally intended a different result. When the silicon chip that graduate student Jamie Link was working on for her

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2015-2016 WWBA Committee Chairs

Standing Committees

- By-Laws
- Corporate & Commercial
- Criminal Law
- Families, Children & the Courts
- Grievance/Ethics
- Judicial Screening
- Legislation
- Matrimonial
- Real Property
- Real Property
- Insurance
- Breast Cancer Awareness
- Collaborative Law
- Continuing Legal Education
- Community Outreach
- Continuing Education
- Diversity in Membership
- Domestic Violence
- Elder & Health Law
- Employment Law
- Gender Dynamics
- Appellate Practice
- Archive & Historian
- Awards
- Bankruptcy
- Judgment Enforcement & Collections
- Network of Bar Leaders
- Litigation
- Mediation
- Long Range Planning
- Military
- Network of Bar Leaders
- Military
- New Lawyers
- Professional Development
- Programs
- Public Relations
- Real Property
- Sponsorship
- Taxation
- Trusts & Estates

Ad Hoc Committees

- Annual Dinner
- Annual Dinner Souvenir Journal
- Appellate Practice
- Archive & Historian
- Awards
- Bankruptcy
- Breast Cancer Awareness
- Collaborative Law
- Community Outreach
- Continuing Legal Education
- Diversity in Membership
- Domestic Violence
- Elder & Health Law
- Employment Law
- Environmental & Land Use
- Golf & Tennis Outing
- Holiday Party and Boutique
- Intellectual Property
- Insurance
- Judgment Enforcement & Collections
- Long Range Planning
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- Professional Development
- Programs
- Public Relations
- Real Property
- Sponsorship
- Taxation
- Trusts & Estates

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“The true lesson in setting and trying to achieve goals is experiencing failure and using that failure as an opportunity to learn, adjust, and make a better and more satisfying life.”

homework accidentally blew up, she realized that the individual pieces could function as sensors. Today, that “smart dust” is used to detect everything from biological agents to deadly tumors. When eighteen-year old chemist William Perkins was trying to find a cure for malaria, one of his experiments went horribly awry and created what seemed like a muddy mess. But, when Perkins noticed a beautiful purple color emanating from one of the petri dishes, the first synthetic dye was born. While trying to grow bacteria in pursuit of his study of staphylococcus, Alexander Fleming returned from vacation to find that mold was growing in his petri dishes, instead. A byproduct of the mold seemed to inhibit the growth of the staphylococcus, giving rise to the first antibiotic. Anesthesia started as laughing gas. The list is vast, but the theory is the same. Creative, curious, and indefatigable people were willing to be diverted from their quest, manage their disappointment, and see failure as opportunity. Such is the resolve of the Westchester Women’s Bar Association members, who

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“Each year’s regrets are envelopes in which messages of hope are found for the New Year.”
— John R. Dallas, Jr.
Human Trafficking Program Elicits Outrage and Shares Progress

Audrey Stone

At the November 4th, 2015 general membership meeting, women’s bar members gathered for an informative CLE on “Human Trafficking: The Impact on Women, Children and Families.”

Angela Giannini, Esq., of Clark Gagliardi & Miller, P.C., led a panel of experts through an overview of the painful and difficult topics of the child sex trade, prostitution and labor trafficking occurring in Westchester and beyond. A video describing the deeply concerning child sex trade launched the program. The focus of the ensuing discussion involved how courts, service providers, law enforcement, prosecutors and even academics are collaborating to identify victims and hunt down traffickers.

Leading the panel was Judge Sherry Heitler, Supreme Court Justice and Chief of Policy and Planning for the New York State Office of Court Administration. As the Chief of the Court system’s policy initiatives, Judge Heitler oversees all nine of the state’s sex trafficking courts. Judge Heitler described how the courts turn the notion of prostitution as a criminal act on its head by recognizing that prostitutes are often victims of sex trafficking. The mission of these specialized courts is to offer services to help defendants move beyond a life of prostitution, and abuse of camp staff recruited from outside the country. I also shared the path to federal prosecution of a cookbook author who, through the internet, enticed young women to his remote Pound Ridge home as personal assistants and then sexually assaulted them in his home.

Next on the agenda was Phil Goldstein, Director of Program Development for the Westchester County Department of Social Services. Mr. Goldstein works with sexually exploited at-risk youth to meet their myriad needs. The Safe Harbor program he developed and oversees helps children develop a safety plan with options for therapy and other services that provide support in reunification with families or continuing placement in residential treatment centers. Since the program’s inception in June 2013, the Safe Harbor program has received 242 referrals with...
Interactive CLE Gets Rave Reviews

Joy Joseph

On October 14, 2015, the Families, Children and the Courts Committee presented a trial practice seminar entitled, “How to Introduce Documentary and Electronic Evidence at Trial.” This innovative CLE was presented as a hilarious “case” that also incorporated audience participation.

Appellate Division Justice Mark C. Dillon presided over a mock trial featuring a colorful cast of characters in an inventive fact pattern combining issues of custody, family offense and abuse & neglect. The ruling was followed by an interactive discussion led by the panel: Dolores Gebhardt, Neil E. Kozek, Denise O’Connor, and Christopher S. Weddle. They discussed the complexities and confusion that often surround the introduction of evidence, such as medical records and social media pages.

The Families, Children and the Courts Committee is extremely grateful to Justice Dillon for all of the time and effort that he dedicated to developing and producing this very well received program and to Sterling National Bank for donating their facilities for this event.

President’s Message

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strive to alleviate the struggles that women and children confront in the legal system, the workplace, and the community. We are focused on our mission, but, along the way, we are prepared to stumble, almost fall, and march on.

Progress is not always deliberate, nor is it linear. Detours can bring a fresh perspective and new ideas and they can help us reaffirm our resolve. So, revel in your broken New Year’s resolutions. They are not missed opportunities—they are routes to yet un-conceived destinations. Be intrepid, veer off course, but journey forward—the New Year hasn’t yet met the new you!
**Ethics CLE Draws Attorneys Serving on Non-profit Boards**

**Courtney Darts**

Many local lawyers give generously of their time to nonprofit organizations, serving as pro bono counsel, board members, or both. On Thursday, November 12, 2015, the WWBA addressed the ethical concerns for these attorneys in a CLE entitled “Ethics and the Pro Bono Representation of Nonprofits.”

It was a lively presentation, as most of the attendees had served on or represented nonprofit boards and used their personal experiences to inform the questions and discussion.

The CLE was presented by Susan Edwards Colson, Esq., and Courtney Darts, Esq., Director of Education at Pro Bono Partnership. Pro Bono Partnership is a local organization whose mission is to provide free transactional legal assistance to nonprofits in New York, New Jersey and Connecticut.

Ms. Colson, an experienced trusts and estates and tax-exempt attorney, has been a longtime volunteer with Pro Bono Partnership. With Ms. Darts, she has helped two new nonprofits form and then apply for tax-exempt status from the IRS. These projects were an ideal match for Ms. Colson’s professional background. “My clients often inform their charitable giving with volunteering. This sometimes leads to deep involvement in a charitable project, and the logical result is forming their own organization,” noted Ms. Colson, who formed her own law firm in mid-2015.

Pro Bono Partnership annually recruits and supports hundreds of transactional attorneys from major corporations and law firms to donate their time and expertise on behalf of its nonprofit clients. They offer volunteer opportunities in a wide range of areas, including contract reviews, corporate matters, employment, intellectual prop-

◗
An Interview with Hon. David Everett, J.C.C.

Susan L. Pollet
Chair of the Archive and Historian Committee

Q. Tell us why you joined the Westchester Women’s Bar Association. We are appreciative that you did!
A. Although I was always aware of WWBA’s existence and the programs that it conducts, it was shortly before I became a County Court Judge candidate that I decided to join. Frankly, I had not known that there were male members of the organization until that time. When I attended law school in the mid-1970s, my class was only 20% women, as opposed to over 50% female enrollment in American law schools today. Although much has changed for the better since that time, there are still challenges to women members of the bar that are gender related. I felt that by joining the WWBA, I could demonstrate my solidarity with my sisters in the legal profession – and get to attend some excellent programs and functions, too.

Q. You are now a County Court Judge. Tell us about your career path, and what led you to the judiciary.
A. Even before entering law school, I knew I wanted a career in public service. I started out in the Kings County District Attorney’s Office after graduation and it was then, when I observed first-hand the critical role that judges play in the justice system, that I first thought about becoming a judge. I served as an Assistant D.A. in Brooklyn for a total of eight years and in Queens for four years. I also worked as a trial attorney in private practice for over 23 years, of which almost 19 were as a solo practitioner. While I still thought about serving on the bench over the course of those years, it was not until late 2009, after I had returned from a tour of duty in Afghanistan as an Army Reserve officer, that I began actively pursuing the dream I had when I entered the legal profession. At that point, I was in a personal and career position to pursue a judgeship. I also felt confident that my legal and life experience would be valuable tools as a judge and that, as a member of the judiciary, I could make a positive impact.

Q. What are the most challenging parts of being a judge?
A. In a nutshell? Doing what is right – and often, first figuring out what that is. In the cases that come before me, there are often competing interests – rights of the individual versus the interests of the community, for example. As a judge, listening to legal arguments and reading written submissions with an open mind are essential to seeing that a fair and just result is achieved. Although everyone is entitled to their personal views, a judge must be impartial in deciding all matters. Being conscious of your personal opinions and being careful that they do not improperly affect your application of the law is something about which a judge must always be on guard.

Q. What advice do you have for lawyers who want to become judges?
A. Do not do it unless you feel it is a calling. If you are just doing it for the prestige or the paycheck, you should not be pursuing a judgeship. A judge’s decisions have real impact on the lives of individuals and on the greater community. You should be completely committed to running a courtroom where everyone is treated with dignity and respect and to doing your best every day to see that there is true administration of justice. If you are not that person, you should not be looking to become a member of the judiciary.

Q. How has the practice of law changed, if at all, in Westchester County over the years?
A. Among the changes I have seen is the institution of E-filing in most civil matters in Westchester, a quantum leap forward in efficiency that was put in place by County Clerk Tim Idoni. Another positive change is the increased utilization by District Attorney Janet DiFiore of Superior Court Informations in County Court. This obviates the need for grand jury presentations in a large number of cases and helps keep the criminal calendar moving expeditiously.

Q. What activities do you like to engage in when you are not working?
A. I enjoy working out, reading non-fiction, and traveling, as well as still being involved

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Chief Judge Jonathan Lippman Holds Fourth and Final Public Hearing on Access to Justice through Civil Legal Services

Patricia L. Angley

On October 16, 2015, the Hon. Jonathan Lippman, Chief Judge of the New York State Court of Appeals held the fourth and final public hearing on the continuing need for civil legal services for low-income persons. Such services provide access to justice and protect the “essentials of life:” shelter, family stability and safety, and income security. The hearing for the Second Department was held at the New York State Judicial Institute at Pace University School of Law in White Plains. Judge Lippman chaired a distinguished panel including Presiding Justice Randall T. Eng of the Second Department; Chief Administrative Judge Lawrence K. Marks; and Claire Gutekunst, President-elect of the New York State Bar Association. Judge Lippman described new initiatives in pro bono legal representation, such as the Pro Bono Scholars program, that also will help close the justice gap for low-income New Yorkers.

The panel first heard testimony from Hon. Thomas P. Zugibe, District Attorney for Rockland County, who thanked the Chief Judge for his efforts in expanding and funding civil legal services for the diverse population of Rockland County. With over 320,000 residents who live in urban, suburban and rural areas, DA Zugibe remarked that civil legal services helped protect the poor and most vulnerable citizens of the county, especially in preventing unlawful evictions, assisting victims of domestic violence to achieve safety and stability, and helping with child support and custody issues. These services complement law enforcement’s duty to maintain social order and a civil society. When asked by Judge Lippman whether a civil legal problem could have as much impact on an individual as a criminal case, DA Zugibe answered in the affirmative and stated that the lasting trauma and consequences of civil litigation often can be greater than those associated with criminal matters, which often are resolved more expeditiously.

The panel next heard from distinguished members of the corporate bar, who testified that the availability of civil legal services helps stabilize and support both users of their products and employees, who may face undue hardships and loss of income and productivity when facing civil legal matters alone. Speakers from IBM, MasterCard and PepsiCo, Inc. stressed that pro se litigants often do not get a speedy resolution to their legal problems. Judge Lippman agreed, and stated that even poor litigants are entitled to their day in court, and that civil legal representation provides a level playing field.

The Veterans’ Services Panel testified next about the special needs of veterans for civil legal representation. The speakers stressed that many veterans have multiple psycho-social needs and suffer from medical conditions such as PTSD. Many veterans have difficulty navigating the various social services providers to get assistance. They need
December/January Litigation Tip

NEW SPOLIATION RULE FRCP 37(e)

Rule 37(e) of the Federal Rules of Civil Procedure (FRCP) has been amended. New Rule 37(e) now provides for curative measures and sanctions where electronically stored information (ESI) is not preserved. The new rule applies only to ESI and not tangible evidence and only to parties in a litigation.

Specifically, new Rule 37(e) addresses ESI that should have been preserved in anticipation of litigation which is lost because a party fails to take reasonable steps to preserve it and it cannot be restored or replaced.

The new rule has two subsections: (e)(1) which requires a finding of prejudice for a curative measure to be imposed and (e)(2) which requires intent to deprive another party of the use of the information in the litigation for imposition of more severe sanctions. Under subsection (e)(2), the court may (A) presume that the lost information was unfavorable to the party; (B) instruct the jury that it may or must presume the information was unfavorable to the party; or (C) dismiss the action or enter a default judgment.

Guidance for attorneys on the application of New Rule 37(e)(1) and (2) can be derived from the Advisory Committee Notes. The Committee explains that Rule 37(e) is based on a common-law duty to preserve, and the court decides whether and when a duty to preserve arose. Once a duty is established, a good starting point for evaluation of whether a party failed to take reasonable steps to preserve lost information would be to examine the routine good faith operation of the party’s ESI system. As noted by the Advisory Committee, most ESI today is located in multiple locations including back-up sites, so the loss may be harmless if substitute information can be located. The new rule therefore may apply in very limited circumstances.

The Comments instruct that care must be taken to ensure that curative measures under subdivision (e)(1) do not have the effect of measures that are permitted under (e)(2). For example, some circuit courts have imposed the adverse inference instruction when spoliation was due to negligence or gross negligence. It now appears that such instruction may only be imposed when there is a finding of intent to deprive another party of the use of the information in litigation.

Lastly, the court “may” impose the curative measure in (e)(1) or the sanctions in (e)(2), but is not required to adopt either of them.

Written by Angela Morcone Giannini, Co-Chair, Litigation Committee
Other Co-Chairs: Jacqueline Hattar & Kimberly Sheehan

An Interview with Hon. David Everett, A.J.C.C.

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in community activities that do not involve fund raising.

Q. How have you balanced work and family over the years?
A. I would be less than honest if I did not admit that it was often a real struggle. I refer to working as a solo practitioner as “practicing law without a net.” I was very fortunate to have my current secretary, Roberta Sutherland, working as my paralegal so that was a big help. Just the same, the buck stopped with me. It was difficult to be with my family as much as I would have liked when I had to work at least some part of most weekends and be available to meet potential new clients at any time. However, over time, I was able to develop the ability to better manage that delicate balance more efficiently and spend more time at home while my children were growing up.

Westchester Women’s Bar Association News
Chapter News & Notes on Members

Congratulations to Jacqueline Hattar who was named one of the nineteen 2015 Honorees for the Fifth Annual Women in Business Awards. 914INC, a publication related to Westchester Magazine, presented the honorees at a luncheon on November 20, 2015, from 11:30 am - 2:00 pm at the Doubletree by Hilton, Tarrytown, NY. The Awards celebrate Westchester County’s Top Female Executives, Entrepreneurs, Government, and Non-Profit Leaders. The keynote speaker was Erica Hill, co-anchor of NBC’s Weekend TODAY.

Classifieds

AV rated law firm located on Main Street has two attractive windowed offices (13’6” X 9’6”) available (one office cornered) in Class “A” office building within walking distance to courthouses and train. Use of conference rooms and kitchen included. (914) 681-6006.

Chief Judge Jonathan Lippman Holds Fourth and Final Public Hearing on Access to Justice through Civil Legal Services

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civil legal assistance and advocacy with housing stability, family law issues such as divorce, custody and child support, debt mitigation and credit counseling, and change of discharge status to receive veterans benefits. When asked by Judge Lippman whether veterans deserve special treatment in access to civil legal representation, the panel strongly agreed, stating that veterans have made the sacrifices necessary to preserve our liberties and that it is our patriotic duty to assist them with their civil legal needs.

The final witnesses were three clients who testified how profoundly legal assistance impacted their lives. G. H., a veteran who previously had experienced homelessness, was in danger of losing his veteran housing voucher and his home by a wrongful eviction proceeding. With the help of an experienced housing attorney from Legal Services of the Hudson Valley, Mr. H successfully challenged the basis of the eviction and the landlord withdrew. Next, I. S., a domestic violence victim, testified that legal representation from a bilingual attorney from the Pace Women’s Justice Center helped her secure a divorce from her abuser. She was awarded sole custody and child support as well. She testified that she would not have known how to achieve safety for herself and her children without this assistance. Finally, D. P. S. testified with the aid of an interpreter, that through representation by an attorney from the Legal Aid Society he fought unfair labor practices at the nail salon where he worked. Mr. S. and fellow workers were not being paid minimum hourly wages and were being denied overtime. Without this legal assistance, he would have been unable to seek damages for lost wages and avoid further exploitation and financial abuse.

Judge Lippman concluded the hearing by thanking all the witnesses for their testimony, especially the clients who shared their deeply personal experiences with the panel. He stated that equal access to justice under the law clearly should not depend upon how much income a person has, and that access to civil legal services should continue to be a priority in New York.
The Westchester Women’s Bar Association proudly welcomes our newest members:

TO PROTECT THE PRIVACY OF OUR MEMBERS, THIS INFORMATION IS AVAILABLE TO MEMBERS OF THE WWBA ONLY.

Human Trafficking Program – Outrage and Progress

from page 4

children ranging in age from 11 to 17. Westchester’s protocol for identifying youth has now been adopted as a state-wide model.

Finally, wrapping up the evening was Dr. William Casey King, PhD., Executive Director of the Yale Center for Analytical Sciences, Yale University School of Public Health. As a true academic, Dr. King began his remarks with an historical overview of slavery leading to the topic of trafficking, which is commonly referred to as modern day slavery. From this historical context, Dr. King provided a perspective on how the fall of the Soviet Union, growing global inequality and the greater connectedness of the world at large has led to an explosion in child sex trafficking. To investigate effectively through the volumes of data circulating through what Dr. King calls the “internet crime scene,” he created a method for sorting. His system automates the collection of data and allows law enforcement to search for advertisements that promote child prostitution. Through the use of Dr. King’s model and data, law enforcement in his home state of Connecticut not only track crime activities, they can actually locate victims. Dr. King’s methodology amazed attendees.

However, Dr. King joined a common refrain of the presenters—the need to address demand. By the end of the evening everyone concurred that the mission of saving women and children from exploitation depends upon us holding individuals purchasing sex and forced labor accountable.

As always, the Westchester Women’s Bar Association succeeded in providing a night of meaningful legal education with information that furthers its mission.

“Since the program’s inception in June 2013, the Safe Harbor program has received 242 referrals with children ranging in age from 11 to 17. Westchester’s protocol for identifying youth has now been adopted as a state-wide model.”
## WWBA Schedule of Upcoming Events

<table>
<thead>
<tr>
<th>COMMITTEE</th>
<th>DATE/TIME</th>
<th>PLACE</th>
<th>TOPIC</th>
<th>RSVP (also online at <a href="http://www.wwbany.org">www.wwbany.org</a>)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Directors Meeting</td>
<td>1/6/16 5:30-6:00 pm Light Supper</td>
<td>BNY Mellon 701 Westchester Ave. White Plains, New York</td>
<td></td>
<td>Robin Carton <a href="mailto:president@wwbany.org">president@wwbany.org</a> if you are unable to attend</td>
</tr>
<tr>
<td>WWBA General Membership Meeting</td>
<td>1/6/16 5:30 Registration 6:00-8:00 pm Program</td>
<td>BNY Mellon 701 Westchester Ave. White Plains, New York</td>
<td>The ABC’s of Ethics: Advertising, Billing, and Conflicts</td>
<td>Register online at <a href="http://www.wwbany.org">www.wwbany.org</a> or email <a href="mailto:executivedirector@wwbany.org">executivedirector@wwbany.org</a></td>
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<tr>
<td>Elder Law and Health Law Committees</td>
<td>2/11/16 6:00-8:00 pm</td>
<td>Legal Services of the Hudson Valley 90 Maple Ave. White Plains, New York</td>
<td>Aid in Dying</td>
<td>Register online at <a href="http://www.wwbany.org">www.wwbany.org</a> or email <a href="mailto:pangley@lshv.org">pangley@lshv.org</a></td>
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<tr>
<td>Mediation Committee</td>
<td>2/24/16 TBD</td>
<td>Sterling National Bank 21 Scarsdale Road Tuckahoe, New York</td>
<td>Med-Arb: Getting Past the Impasse</td>
<td>RSVP to <a href="mailto:lloscalzo@McCarthyFingar.com">lloscalzo@McCarthyFingar.com</a></td>
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<tr>
<td>Corporate and Commercial, Land Use and Environmental Committees</td>
<td>3/8/16 12:00-12:30 pm Registration 12:30-1:00 pm Program with Lunch Included</td>
<td>Cuddy &amp; Feder 445 Hamilton Ave., 14th FL White Plains, New York</td>
<td>Avoiding Pitfalls in Acquisition and Development of Real Estate</td>
<td>Register online at <a href="http://www.wwbany.org">www.wwbany.org</a> or email <a href="mailto:executivedirector@wwbany.org">executivedirector@wwbany.org</a></td>
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<tr>
<td>Families, Children, and the Courts Committee</td>
<td>3/10/16 12:30-2:00 pm</td>
<td>TBD</td>
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<tr>
<td>Criminal Law Committee</td>
<td>3/30/16 5:30-7:30 pm</td>
<td>Sterling National Bank 21 Scarsdale Road Tuckahoe, New York</td>
<td>The Criminal and Civil Aspects of Title IX</td>
<td>TBD</td>
</tr>
</tbody>
</table>

Unless otherwise indicated, events are for WWBA members and invited guests only.

The opinions expressed by any program presenter are the presenter’s own, and do not reflect the official position of the WWBA.

WWBA is a chapter of WBASNY, which is an approved provider of CLE credit. Full and partial scholarships for CLE programs based on financial need are available. For information on the guidelines and procedures for applying, please contact the person running the program. All requests are strictly confidential. All programs are for transitional credit unless the program states otherwise.