Sunshine Act Meetings

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Tuesday, January 21, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issues related to the definition of highly leveraged transactions. (Proposed earlier for public comment; Docket No. R-0734)
2. Issues concerning the treatment of intangible assets for purposes of calculating regulatory capital.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1249 Filed 1-14-92; 9:48 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Tuesday, January 21, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1250 Filed 1-14-92; 9:48 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-92-1]

TIME AND DATE: January 23, 1992 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings
2. Minutes
3. Ratification List
4. Petitions and complaints
   Certain manual resuscitators and component parts thereof (Docket Number 1666).
5. Any items left over from previous agenda
6. FY 92 Expenditure Plan and FY 94 Authorization Request

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205-2000.

Dated: January 13, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1333 Filed 1-14-92; 3:01 pm]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 57, No. 11
Thursday, January 16, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 911192-1292]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

Correction

In notice document 91-31246, beginning on page 67598, in the issue of Tuesday, December 31, 1991, make the following correction:

On page 67598, in the third column, in the second full paragraph, in the ninth line, "Lone" should read "Zone".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0391]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 91-30217 appearing on page 65906 in the issue of Thursday, December 19, 1991, make the following correction:

On page 65906, in the second column, in the ninth line, under **SUPPLEMENTARY INFORMATION**, "*Antioxidants and/or Stabilizers for Polymers*" should read as set forth and in the tenth line, "(21 CFR 178.2010)," should read "(21 CFR 178.2010)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0449]

Polysar Rubber Corp.; Filing of Food Additive Petition

Correction

In notice document 91-30216 appearing on page 65907 in the issue of Thursday, December 19, 1991, make the following corrections:

1. On page 65907, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, "NW." should read "SW.".

2. On the same page, in the same column, in the tenth line, under **SUPPLEMENTARY INFORMATION**, "Rubber Articles Intended for Repeated Use." should read "*Rubber Articles Intended for Repeated Use*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89P-0329]

Eggnog Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

Correction

In notice document 91-30215 beginning on page 65906 in the issue of Thursday, December 19, 1991, make the following correction:

1. On page 65906, in the third column, under **SUMMARY**, in the second line, "(FAD)" should read "(FDA)" and in the third line insert "is" after "it".

2. On page 65907, in the 1st column, in the 2d full paragraph, in the 12th line from the bottom, "14321" should read "13421".

BILLING CODE 1505-01-D

federal register

Thursday
January 16, 1992

Part II

Department of Housing and Urban Development

24 CFR Part 12

Accountability in the Provision of HUD Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

24 CFR Part 12

[Docket No. N-92-3347; FR-3064-N-01]

Accountability in the Provision of HUD Assistance

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of effective date of regulations and additional information.

SUMMARY: This notice gives the public (including applicants for, and recipients of, HUD assistance) additional information on the implementation of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12).

For assistance that HUD makes available to recipients, the notice provides information to the public on:

—How to gain access to the applications and other information upon which the Department bases its decision to provide or deny assistance on a competitive basis (24 CFR 12.14(b));

—How to obtain information on those that receive discretionary or competitive assistance from the Department (24 CFR 12.16(a));

—How to gain access to the material that applicants for HUD assistance for a specific project or activity must disclose under 24 CFR part 12, subpart C; and

—How to gain access to the decisions and other information used in making assistance determinations with respect to specific housing projects under 24 CFR part 12, subpart D.

The notice also provides guidance on the responsibilities of those that receive assistance from the Department and that in turn make the assistance available to subrecipients. These responsibilities include:

—Providing public access to the applications and other information upon which the recipient bases its decision to provide or deny assistance on a competitive basis to a subrecipient (24 CFR 12.14(c));

—Providing information to the public on the subrecipients of assistance they provide on a competitive basis (24 CFR 12.16(b)); and

—Providing public access to the material that subrecipient applicants for assistance for a specific project or activity must disclose to the recipient under 24 CFR part 12, subpart C.

Finally, the notice announces the effective date of 24 CFR 12.14(c) and 12.16(b), and 24 CFR part 12, subpart C.

DATES: Effective dates: The additional information on the implementation of section 102 of the Department of Housing and Urban Development Reform Act (24 CFR part 12) is effective on January 16, 1992.

24 CFR 12.14(c) and 12.16(b), and 24 CFR part 12, subpart C, are effective on January 16, 1992.

Implementation:

—The provisions of section I. 1. of this notice (§§ 12.14(b) and 12.16(a) of the final rule) apply to all decisions to provide or deny assistance made by the Department on or after April 15, 1991.

—The provisions of section III. of this notice (subpart D of the final rule) apply to all determinations made by the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing under 24 CFR part 12, subpart D, with respect to housing projects involving the Low Income Housing Tax Credit.

Applicability:

—24 CFR 12.14(c) and 12.16(b), and the related provisions of section I. 2. of this notice, apply with respect to all decisions by a recipient of HUD assistance to provide or deny assistance on or after March 16, 1992.

—For assistance made available to a subrecipient by a state or a unit of general local government, 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, apply to all applications solicited (in the case of a competition) or otherwise received by the state or unit of general local government on or after March 16, 1992.

—For assistance made available to a recipient by HUD, or to a subrecipient by an entity other than a state or unit of general local government, 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, apply to all applications solicited (in the case of a competition) or otherwise received by HUD or the entity on or after January 16, 1992, except that 24 CFR part 12, subpart C, and the related provisions of section II. of this notice, also apply to all applications solicited by HUD pursuant to Notices of Funding Availability for FY 1992 published in the **Federal Register** for the HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), and the HOPE for Homeownership of Single Family Homes program (HOPE 3).

—24 CFR part 12, subpart D, and the related provisions of section III. of this notice (other than for determinations made by the Assistant Secretary for Housing-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing with respect to housing projects involving the Low Income Housing Tax Credit) will be effective only upon the publication of further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general questions regarding this notice: Arnold J. Haiman, Director, Office of Ethics, Office of Administration, room 2158, telephone (202) 708–3815, TDD (202) 708–1112.

For specific questions regarding programs administered by the Assistant Secretary for Community Planning and Development: Don I. Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, room 7286, telephone (202) 708–3587, TDD (202) 708–2565.

For specific questions regarding programs administered by the Assistant Secretary for Public and Indian Housing: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, room 4228, telephone (202) 708–0713, TDD (202) 708–0850.

For specific questions regarding cross-cutting program areas administered by the Assistant Secretary for Housing-Federal Housing Commissioner: Michael T. Hernandez, Special Assistant to the Assistant Secretary, Office of Housing, room 6106, telephone (202) 708–2495. For questions regarding specific program areas administered by the Assistant Secretary for Housing-Federal Housing Commissioner:

Program area	Contact person	Phone No.
Mortgage Insurance (Valuation)	Edward Winiarski	(202) 708-0624
Mortgage Insurance (Mortgage Credit)	Kerry Mulholland	(202) 708-0283
Section 202 Projects	Bob Wilden	(202) 708-2730
Incentives to Extend Low-Income Use	Kevin East	(202) 708-2300

Program area	Contact person	Phone No.
Transfers of Physical Assets (TPAs)	William Hill	(202) 708-0547
Sales of HUD-Owned Projects	Courtland Wilson	(202) 708-1220
Other Actions on Insured or HUD-Held Projects	William Hill	(202) 708-0547

The TDD number for all Office of Housing contacts is (202) 708-4594.

For specific questions regarding programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity: Laurence Pearl, Director, Office of Program Standards and Evaluation, room 5226, telephone (202) 708-0288, TDD (202) 708-0113.

For specific questions regarding programs administered by the Assistant Secretary for Policy Development and Research: Frederick J. Eggers, Associate Deputy Assistant Secretary, Office of Economic Affairs, room 8204, telephone (202) 708-2770, TDD (202) 708-0770.

All addresses are located at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. None of the telephone numbers listed above is toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0101.

Background

On March 14, 1991, the Department published in the **Federal Register** a final rule entitled, "Accountability in the Provision of HUD Assistance." [1] The final rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989.[2] Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. This notice gives the public (including applicants for, and recipients of, HUD assistance) additional information on the implementation of the provisions of section 102 of the Reform Act set forth below. For the convenience of the reader, appendix E contains a chart describing the provisions discussed in this notice.

[1] 56 FR 11032. For ease of reference, the rule is referred to as the "final rule" in this notice.

[2] Pub. L. 101-235, approved December 15, 1989. For ease of reference, the law is referred to as the "Reform Act" in this notice.

Table of Contents

I. Documentation and Public Access Requirements: Section 102(a) of the Act

1. Requirements for HUD

a. Section 12.14(b) (Subpart B of the Final Rule)

i. *Summary of provision.* In the case of assistance that it makes available through a competition,[3] HUD must ensure that documentation and other information regarding each application are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letter of support, must be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. In carrying out this requirement, the Department may include in the project file supporting material such as competitive ranking sheets, scores on each of the relevant selection criteria, and other information indicating the basis for the Department's decision.

ii. *Effective date of provision.* The final rule made this provision effective with respect to all decisions to provide or deny assistance made by the Department on or after April 15, 1991. This notice prescribes the procedures the public may use to access the material involved.

iii. *Public access.* All applications and related documentation and other information referred to in § 12.14(b) will be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. It should be noted that all the exemptions authorized by § 15.21 apply to the production of material covered by § 12.14(b). This includes the exemption in § 15.21(a)(4) for trade secrets or commercial or financial information that are obtained from a person and are privileged or confidential. It should also be noted that to the extent information in applications for testing under the Fair Housing Initiatives program would identify any of the testers to be used, places to be tested, or otherwise permit someone to deduce that a fair housing test may be occurring, such information will not be disclosed.

[3] The reader should consult appendix A of this notice for the list of programs covered.

All FOIA requests for information must be in writing, and must be submitted in accordance with the FOIA procedures contained in 24 CFR part 15. The requests must include enough information so that the requested files can be identified. This information typically would include one or more of the following: The approximate date or the Federal Register (FR) number (*e.g.*, FR-1234) of the notice of fund availability; the competition involved, the closing date of the competition, or the date of the award; the HUD program office making the award; and the applicant's name and address, if known.

b. Section 12.16(a) (Subpart B of the Final Rule)

i. *Summary of provision.* In the case of assistance that HUD makes available either through a competition or on a discretionary, but non-competitive basis, HUD must publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. For each item, the notice will contain:

(1) The name and address of each recipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such recipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking;

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made; and

(5) The location of the HUD office where the material that is required to be maintained can be inspected and copied, as well as the relevant contact person by name, address, and phone number.

See appendix B of this notice for a list of the programs covered by § 12.16(a).

ii. *Effective date of provision.* The final rule made this provision effective with respect to all decisions by HUD to provide assistance made on or after April 15, 1991. This notice prescribes the procedures the public may use to access the material involved.

iii. *Public access.* Although section 102(a) permits quarterly publication of the notice of funding decisions, the Department generally intends to publish separate notices for each funding decision soon after the decision is made. Notices will be published only for funding decisions: If no decisions are made in a quarter, no notice will be published. The Department has been publishing notices of funding decisions since December 15, 1989—the Reform Act's effective date.

Copies of notices of funding decisions that are published in the **Federal Register** may be obtained free of charge from the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-2084, TDD (202) 708-9300. Requests for additional information about recipient applications may be made under the Freedom of Information Act (24 CFR part 15).

2. Requirements for Recipients of HUD Assistance

a. Summary of Provisions

Both of the following provisions apply to assistance that a recipient receives from HUD through a competition, and in turn makes available on a competitive basis to a subrecipient.

i. *Section 12.14(c) (subpart B of the final rule).* Each HUD recipient [4] must ensure that documentation and other information regarding each application submitted to the recipient by a subrecipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The HUD recipient must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance.

ii. *Section 12.16(b) (subpart B of the final rule).* State and unit of general local government recipients must notify the public of the subrecipients of the assistance. The notification must contain:

(1) The name and address of each subrecipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such subrecipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking; and

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made.

b. Discussion

These requirements essentially call upon HUD recipients to perform functions for their subrecipients that are parallel to those discussed above that HUD is required to perform for its recipients. It should be noted that § 12.14(c) applies to all covered recipients; § 12.16(b) only applies to recipients that are states and units of general local government.

It should also be noted that both of these requirements depend on the existence of a competitive distribution of assistance BOTH at the HUD level [5] AND at the recipient level. For example, if a CDBG Entitlement city receives a CDBG *formula* grant from HUD, and then awards the proceeds of the grant *competitively*, the city is not covered by this aspect of part 12. The result is the same if the HUD assistance is distributed competitively, but the recipient does not use a competition to distribute the assistance to subrecipients.

An example of a situation in which the requisite "dual" competitive process is present involves HUD reallocations of Emergency Shelter Grants to a state or to a unit of general local government, which in turn makes the assistance available to a nonprofit organization pursuant to a competition.

c. Effective Date of Provision

The final rule contained no effective date for these provisions, but stated that their effectiveness would be announced in a subsequent notice published in the **Federal Register**. To give states and other recipients adequate time to implement this provision for their programs, this notice makes this provision effective on March 16, 1992, with respect to all decisions to provide or deny assistance, as appropriate, made by the recipient on or after that date.

d. Recipient Obligations

i. *Section 12.14(c) (subpart B of the final rule).* Section 12.14(c) imposes two requirements on recipients. First, they must ensure that there is sufficient documentation to indicate the basis for each decision. The Department believes that recipients should have broad latitude in developing procedures for complying with this requirement. Accordingly, this notice does not prescribe any compliance standards.

Second, recipients must make the above material available for public inspection for a five-year period. Here again, the Department believes that recipients should be given discretion to establish procedures to meet the statutory requirement. At a minimum, however, recipients must:

—Have a viable system for retaining the material for the required five-year period;

[4] The term includes persons and entities, such as a state, a unit of general local government, a public housing agency (PHA), an Indian tribe, and a non-profit organization.

[5] See appendix A for a listing of the HUD programs involved.

—Have procedures for handling requests for public inspection that ensure prompt and reasonable access to the material requested;
—Retain the original files themselves, and permit subrecipients to keep only copies of them; and
—In the case of states and units of general local government, notify the public as to how material can be accessed.

It should be noted that section 102 and part 12 only preempt state or local law that conflicts with the collection of covered information. They do not preempt state and local laws governing the disclosure of information to the public. Thus, although recipients must collect the required information, their duty to disclose information submitted to it by subrecipients is subject to state and local law.

ii. *Section 12.16(b) (subpart B of the final rule).* Notification under § 12.16(b) must be done at least every six months, and can be accomplished in any way conducive to provide information to the public. Methods may include: Advertisements or notices in major regional or local papers; notices in publications that are the state equivalent of the **Federal Register**; press releases to newspapers, or to radio and television stations; public posting in court houses or other appropriate public buildings; or any other way that effectively reaches the general public.

e. Monitoring and Enforcement

The Department will review recipient performance under §§ 12.14(c) and 12.16(b) in connection with reviews conducted under the underlying assistance program. Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

II. Applicant Disclosures: Sections 102 (b) and (c) of the Reform Act

1. Overview

Subpart C of 24 CFR part 12 requires applicants for assistance for a specific project or activity from HUD, from a state or a unit of general local government, or from certain other entities, to make a number of disclosures if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it is requesting assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to subpart C must disclose the following:
—Assistance from other government sources in connection with the project,
—The financial interests of persons in the project,
—The sources of funds to be made available for the project, and
—The uses to which the funds are to be put.

2. Specific Guidance Regarding Applicability

Applicants for assistance made available for a specific project or activity must make the disclosures described in subsection 3. of the section, if the application meets the test in EITHER paragraph a. or b., below:

a.(1) Nature of Assistance

The applicant submits an application for assistance for a specific project or activity in which:

(A) HUD makes assistance available to a recipient for a specific project or activity; [6]

(B) HUD makes assistance available [7] to a *state or to a unit of general local government,* and the *state or unit of general local government* in turn makes the assistance available for a specific project or activity to a *subrecipient;* or

(C) HUD makes assistance available to *any other entity* (such as a public housing agency (PHA)) for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

(2) Dollar Threshold

The applicant—to HUD or to a state or a unit of general local government, as appropriate—has received, or can reasonably be expected to receive, an aggregate amount of all forms of covered assistance from HUD, states, and units of general local government, in excess of $200,000 during the federal fiscal year (October 1 through September 30) in which the application is submitted. (See 24 CFR 12.32(a) (2) and (3) for detailed guidance on how the threshold is calculated.)

b. Housing Projects With Other Government Assistance

The applicant submits an application for assistance from HUD for a specific housing project that involves other government assistance.[8] There is no dollar threshold for this criterion: Any other government assistance triggers the requirement. For further guidance on this criterion, see 24 CFR 12.50.

3. Specific Guidance Regarding Disclosures

At the time of application, the applicant must disclose:
—Other government assistance to be used with respect to the activities to be carried out with the assistance, or if none, a certification to that effect.
—The pecuniary interest [9] of any developer, contractor, or consultant involved in the application for the assistance (or in the planning, development, or implementation of the project or activity involved) and any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance, whichever is lower.
—The sources of funds to be made available for the activities, and the uses to which the funds are to be put.

In the case of Mortgage Insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the required disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

4. Specific Guidance Regarding Updates

For covered assistance that HUD makes available to a recipient, the recipient must submit updates to the Department to reflect substantial changes in the disclosures required under subpart C.

For assistance that HUD makes available to a state or to a unit of general local government, which in turn makes the assistance available to a subrecipient, the subrecipient must

[6] See appendix C for a list of assistance programs subject to subpart C.

[7] The assistance that HUD makes available to a state or unit of general local government does not have to come from a covered program referred to in appendix C. For this purpose, assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department.

[8] "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the federal government (other than that requested from HUD in the application), a state, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.

[9] "Pecuniary interest" is defined, at § 12.32 of the final rule, as: "any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activities, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activities, or receives compensation for any goods or services provided in connection with the project or activities."

submit similar updates to the state or unit of general local government.

For assistance that HUD makes available to an entity described in section II.2.a.(1)(C), updates must be submitted to the Department.

The period during which updates are required begins when the application is submitted and ends when the applicant has discharged all its obligations under the terms of the assistance (including the submission of any required reports). The precise period for individual programs will be established in the grant or cooperative agreement for the assistance involved. Updates must be submitted within 30 days of the change requiring the update.

All programs administered by the Assistant Secretary for Community Planning and Development are subject to a "lesser of" dollar/percentage update threshold; *e.g.*, an update is required if a change in other government assistance exceeds the amount of such assistance in connection with the project that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower). The other program areas also use these thresholds, with two exceptions. First, all changes in previously disclosed other government assistance must be reported. Second, for covered programs administered by the Assistant Secretary-Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing, all changes in previously disclosed sources or uses of funds involving tax credits must be reported. The reader is urged to review the detailed guidance on updates contained in the final rule at 56 FR 11047.

5. Effective Date of Provision

The final rule provided that subpart C would only take effect upon announcement by subsequent notice in the Federal Register. This notice provides for the following effectiveness for subpart C:

—For assistance made available to a subrecipient by a state or a unit of general local government, 24 CFR part 12, subpart C, and the related provisions of this section, apply to all applications solicited (in the case of a competition) or otherwise received by the state or unit of general local government on or after March 16, 1992.

—For assistance made available to a recipient by HUD, or to a subrecipient by an entity other than a state or unit of general local government, 24 CFR part 12, subpart C, and the related provisions of this section, apply to all applications solicited (in the case of a competition) or otherwise received by HUD or the entity on or after January 16, 1992. The reader should note that these provisions also apply to all applications solicited by HUD pursuant to Notices of Funding Availability for FY 1992 published in the Federal Register for the HOPE for Public and Indian Housing Homeownership program (HOPE 1), the HOPE for Homeownership of Multifamily Units program (HOPE 2), and the HOPE for Homeownership of Single Family Homes program (HOPE 3).

6. Method of Implementation

a. Assistance Requested From HUD

i. *Disclosures.* Appendix F contains the form to be used by applicants for, and recipients of, HUD assistance to make the applicant disclosures and updates required by 24 CFR part 12, subpart C.

ii. *Monitoring and enforcement.* For applicant (initial) disclosures, the Department wishes to make clear its firm intent in no case to commit covered assistance to the applicant, unless all subpart C's disclosures have been provided.

For update disclosures, the Department will review recipient performance in providing updates under section 102(c) of the Reform Act in connection with reviews conducted under the underlying assistance program.

Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

b. Assistance Requested From States and Units of General Local Government

i. *Disclosures.* States and units of general local government are responsible for developing their own mechanisms for collecting the required disclosures and updates. They may—but are not required to—use the procedures that the Department establishes for the program. *In no case* are states and units of general local government, or PHAs or other entities described in section II.2.a.(1)(C), to commit covered assistance, unless all subpart C's disclosures have been provided.

ii. *Monitoring and enforcement.* The Department will review recipient performance with respect to both applicant and update disclosures under section 102 of the Reform Act in connection with reviews conducted under the underlying assistance program. Any violation of these requirements will be treated as a violation of the terms under which the underlying assistance was made available to the recipient.

7. Public Access

a. Assistance Requested From HUD

HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosure and update—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. As above, the exemptions to the production of material under § 15.21 will apply. Although qualification for an exemption will be determined on a case-by-case basis, the reader should note that information such as sources and uses of funds and the percentage of financial interests in a project will generally meet the "trade secrets" exemption contained in § 15.21(a)(4) and, therefore, will generally not be subject to disclosure.

All requests for information must be in writing, and must be submitted in accordance with the FOIA procedures contained in 24 CFR part 15. The requests must include enough information so that the requested files can be identified.

b. Assistance Requested From States and Units of General Local Government

States and units of general local government must make all applicant disclosure reports available to the public for five years in the case of applications for competitive assistance, and for three years in the case of other applications. Update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years.

As noted in connection with the discussion of § 12.14(c) (section I.2.d.i., above), the Department believes that these recipients should be given discretion to establish procedures to provide the required information to the public. At a minimum, however, they must:

—Have a viable system for retaining the material for the required period;

—Have procedures for handling requests for public inspection that ensure prompt and reasonable access to the material requested;

—Notify the public as to how material can be accessed; and
—Retain the original files themselves, and permit subrecipients to keep only copies of them.

As noted above, although states and units of general local government must collect the information required by subpart C, the Reform Act does not override state and local law governing the disclosure of such information. Thus, states and units of general local government must make the information collected pursuant to subpart C available for public inspection, provided that the disclosure is not inconsistent with state or local law.

III. "Subsidy-layering" Determinations: Section 102(d) of the Reform Act

1. Summary of Provision

a. Before Providing the Assistance

Section 12.50 of the final rule requires HUD to certify that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources.

This is the so-called "subsidy-layering" rule—the Reform Act authority permitting HUD to reduce the amount of HUD assistance if the HUD assistance and any other government assistance involved in the project are more than is necessary to make the housing project feasible.

It should be noted that this requirement applies to assistance made available by HUD [10] for a *housing project.* [11] It does not cover the secondary allocation of assistance from a recipient to a subrecipient, unless the subrecipient's application is submitted to HUD for action. It should also be noted that the requirement is triggered only when other government assistance is present in the project. It does not apply to requests for HUD assistance, where no other government assistance is involved. See appendix D for a listing of the programs subject to this requirement.

It should also be noted that the "subsidy-layering" provisions apply without regard to whether the applicant is required to make disclosures under subpart C of the final rule.

b. Subsequent Adjustments

Section 12.52 of the final rule authorizes HUD to make adjustments to assistance already provided for a specific housing project on the basis of update disclosures that are required under subpart C.

2. Public Access

a. Record of Decisions

The preamble to the final rule indicated that the Department will not implement section 102(d) by notice and comment rule making under 24 CFR part 10 at this time, but instead will proceed by decision making on a case-by-case basis with regard to all aspects of section 102(d) that are not covered by existing regulations. The preamble also pointed out that the rationale for each decision will be reduced to writing, and will be made available for public inspection. (56 FR 11038) Copies of these decisions will be available, free of charge, for a three-year period, through the following contacts:

—For programs administered by the Assistant Secretary for Community Planning and Development:
—For Community Development Block Grants, Don I. Patch, Director, Office of Block Grant Assistance, Office of Community Planning and Development, room 7286, telephone (202) 708–3587, TDD (202) 708–2565.
—For McKinney Act homeless assistance programs, James Forsberg, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, room 7262, telephone (202) 708–4300, TDD (202) 708–2565.
—For the Neighborhood Demonstration Program, Syl Angel, Director, Office of Technical Assistance, Office of Community Planning and Development, room 7148, telephone (202) 708–2090, TDD (202) 708–2565.

For programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, see the listing under **FOR FURTHER INFORMATION CONTACT**, above.

For programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity, Lauretta Dixon, Supervisory Equal Opportunity Specialist for Funded Programs, room 5218, telephone (202) 708–0455, TDD (202) 708–0113.

For programs administered by the Assistant Secretary for Public and Indian Housing, Casimir Bonkowski, Director, Office of Management and Policy, room 4228, telephone (202) 708–0713, TDD (202) 708–0850. None of the above telephone numbers is toll-free.

b. Additional Information

Additional information about applications and HUD certifications and assistance adjustments are to be made under the Freedom of Information Act (24 CFR part 15).

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and, therefore, are exempt from further environmental review.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the states (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The rule does provide additional reporting and disclosure requirements on states and units of general local government, but the Department does not believe these requirements will have the requisite federalism implications. In any event, they are almost entirely mandated by statute.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. The reporting and disclosure requirements of the rule should have little or no positive or negative effect on the family.

[10] Section 212 of the Cranston-Gonzalez Affordable Housing Act of 1990 (Pub. L. 101–625) provides an alternative mechanism for complying with section 102(d) of the Reform Act for the HOME program. Therefore, assistance that HUD makes available to participating jurisdictions under the HOME program is not subject to this notice. Of course, HUD would take HOME assistance into account in making section 102(d) certifications with respect to other assistance the HUD may be providing for a project that involves HOME assistance as well.

[11] Section 12.50 of the final rule defines "housing project" as—

(a) Property containing five or more dwelling units that is to be used for primarily residential purposes, including (but not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing, but excluding facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals; and

(b) Residential rental property receiving a tax credit under Federal, State, or local law.

Dated: January 6, 1992.

Jim E. Tarro,

Assistant Secretary for Administration.

Appendix A

Appendix A contains a list of the competitive assistance programs administered by the Department that have elements covered by § 12.14(b) of the final rule (documentation and public access requirements). This is the list that was published as § 12.10 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.10. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).[12]

(2) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).[13]

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F),

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.[14]

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978 and section 802 of the Cranston-Gonzalez National Affordable Housing Act.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homewnership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

Appendix B

Appendix B contains a list of the assistance programs administered by the Department that have elements covered by § 12.16(a) of the final rule (publication of assistance "winners"). The list contains the same competitive assistance programs referred to in appendix A. It also contains programs that provide assistance on a discretionary (non-formula, non-demand, non-competitive basis, including Research and Technology Grants under title V of the Housing and Urban Development Act of 1970, Fair Housing Assistance under 24 CFR part 111, technical assistance under section 105 of the Department of Housing and Urban Development Reform Act of 1989, and assistance for Historically Black Colleges under section 105 of the Department of Housing and Urban Development Reform Act of 1989.

The full list was published as § 12.10 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.10.

Appendix C

Appendix C contains a list of the assistance programs administered by the Department that have elements covered by subpart C of part 12 of the final rule (applicant disclosures). This is the same list that was published in § 12.30 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.30. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.[15]

(2) Applications for grant amounts for a specific project or activity under the Rental Rehabilitation Grant program under 24 CFR part 511 made to:

(i) A state grantee under subpart F;

(ii) A unit of general local government or a consortium of units of general local government receiving funds from a state or directly from HUD (whether or not by formula) under subparts D, F, and G; and

(iii) HUD, for technical assistance under § 511.3.

(Excludes formula distributions to states, units of general local government, or consortia of units of general local government under subparts D and G, within-year reallocations under subpart D, and the HUD-administered Small Cities program under subpart F.)[16]

(3) Applications for grant amounts for a specific project or activity under title I of the Housing and Community Development Act of 1974 made to:

(i) HUD, for a Special Purpose Grant under section 105 of the Department of Housing and Urban Development Reform Act of 1989 for technical assistance, the Work Study program, or Historically Black colleges,

(ii) HUD, for a loan guarantee under 24 CFR part 570, subpart M;

(iii) HUD, for a grant to an Indian tribe under title I of the Housing and Community Development Act of 1974;

(iv) HUD, for a grant under the HUD-administered Small Cities program under 24 CFR part 570, subpart F; and

[12] Note that this program was repealed by section 289(a)(2) of the Cranston-Gonzalez National Affordable Housing Act.

[13] Note that this program was repealed by the Cranston-Gonzalez National Affordable Housing Act.

[14] Note that this program was repealed by section 289(a)(3) of the Cranston-Gonzalez National Affordable Housing Act.

[15] See footnote for appendix A, above.

[16] See footnote for appendix A, above.

(v) A state or unit of general local government under 24 CFR part 570.

(Excludes formula distributions by HUD to states and units of general local government under 24 CFR part 570, and Special Purpose Grants by HUD to Insular Areas or for the correction of formula errors under section 105 of the Department of Housing and Urban Development Reform Act of 1989.)

(4) Applications for grant amounts for a specific project or activity under the Emergency Shelter Grants program under 24 CFR part 576 made to a state or to a unit of general local government, including a Territory.

(Excludes formula distributions to states and units of general local government (including Territories); reallocations to states, units of general local government (including Territories), and non-profit organizations; and applications to an entity other than HUD or a state or unit of general local government.)

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing and Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(10) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(11) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.[17]

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily and non-residential).

(27) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(28) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzales National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(31) Hope for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

The Department will add other programs to this list, as appropriate.

Appendix D

Appendix D contains a list of the assistance programs administered by the Department that have elements covered by subpart D of part 12 of the final rule ("subsidy layering"). This is the same list that was published in § 12.50 of the final rule. The reader should be aware that the Department will update this list periodically through changes to § 12.50. The list is as follows:

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.[18]

(2) Community Development Block Grants under 24 CFR part 570 (only loan guarantees under subpart M, grants to Indian tribes under title I of the Housing and Community Development Act of 1974, and grants under the HUD-administered Small Cities program under subpart F).

(3) Transitional Housing under 24 CFR part 577.

(4) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(5) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(6) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(7) Supportive Housing for the Elderly under section 202 of the Housing Act of 1959, and Supportive Housing for Persons with Disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(11) Low-Rent Housing Opportunities under 24 CFR 904.

(12) Indian Housing under 24 CFR part 905.

(13) Public Housing Development under 24 CFR part 941.

(14) Comprehensive Improvement Assistance under 24 CFR part 968, subpart B.

(15) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(16) Nehemiah Grants under 24 CFR part 280.

(17) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily projects).

(18) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(19) Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(20) Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

Appendix E

To help the reader understand the requirements of the provisions discussed in this notice, the Department is providing the following chart. It contains an overview of the types of assistance covered by each subpart and of the requirements imposed, both in terms of the substantive requirements and the entity that must carry them out:

[17] Note that this program was repealed by section 289(a)(3) of the Cranston-Gonzalez National Affordable Housing Act.

[18] See footnote for appendix A, above.

Subpart	Assistance covered	Requirements; who must comply
Subpart B—Notice and Documentation of Assistance	Assistance made available by HUD through competition.	*HUD:* Ensure that documentation is sufficient to indicate the basis on which the assistance was provided or denied. Five-year period for public inspection of documentation. (§ 12.14(b))
	Assistance made available by HUD through competition or on a discretionary, non-competitive basis.	*HUD:* Publish Notice in **Federal Register** regarding decisions to provide assistance. (§ 12.16(a))
	Assistance made available on a competitive basis by a recipient that received the assistance through a HUD competition.	*Recipient:* Ensure that documentation is sufficient to indicate the basis on which assistance was provided or denied. Five-year period for public inspection of documentation. (§ 12.14(c)) *State or unit of general local government recipient:* Notify public regarding decisions to provide assistance. (§ 12.16(b))
Subpart C—Disclosure of Information	Assistance made available for a specific project or activity by: —HUD —A State or unit of general local government; or —Another entity, where the application must be submitted to HUD for any purpose. *But only if* the applicant has received, or can reasonably be expected to receive, assistance in excess of $200,000 in the fiscal year. *Or* Assistance from HUD for a specific housing project that involves other government assistance.	*Applicant:* 1. Disclose other government assistance, interested parties, and sources and uses of funds. (§§ 12.32 (a) and (b)) 2. Make updates to reflect substantial changes in information. (§ 12.32(c))
Subpart D—Limitation on Housing Assistance	Assistance made available by HUD for a specific housing project where other government assistance is present.	*HUD:* Certify that the amount of assistance is not more than is necessary to provide affordable housing. Make post-assistance adjustments based on updates, above. (Subpart D)

Appendix F

Appendix F contains the form to be used by applicants for, and recipients of, HUD assistance to make the applicant disclosures and updates required by 24 CFR part 12, subpart C. The form is as follows:

BILLING CODE 4210-01-M

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

OMB Approval No. 2525-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code)		Social Security Number or Employer ID Number
2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)		
3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations -- Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature)________________ Date________

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature)________________ Date________

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature)________________ Date________

form HUD-2880 (1/92)
ref. Sec 102, HRA 1989; PL. 101 - 235

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) ____________________ Date ________

Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)____________________ Date__________

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature)____________________ Date__________

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: **any** other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions 1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee

FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses

Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated perodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

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Thursday
January 16, 1992

Part III

Department of Health and Human Services

Office of the Secretary

45 CFR Part 96
Block Grant Programs; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Administration for Children and Families, HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the regulations of the Department of Health and Human Services (HHS) governing the administration of block grant programs; this rule applies specifically to the low-income home energy assistance program (LIHEAP). The rule implements changes to the LIHEAP statute which were made by the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101-501) and which affect grantee administration of the LIHEAP program in fiscal years 1991 and 1992. These changes involve the Department's response to formal complaints, reduction in the percent of LIHEAP funds that grantees may carry forward from one fiscal year to the next, waiver authority to increase the percent of LIHEAP funds that grantees may use for weatherization, a requirement for additional outreach and intake services under certain circumstances, and a leveraging incentive program.

DATES: *Effective Date:* This interim final rule is effective beginning January 16, 1992.

Comment Date: Before adopting final regulations, we will consider all comments we receive by March 16, 1992.

ADDRESSES: Send comments to: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

The comments received in response to this interim final rule may be inspected or reviewed at the above address, Monday through Friday, between 9 a.m. and 5 p.m., beginning one week after the publication of this rule.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, 202-401-9351, or Ann Bowker, 202-401-5308.

SUPPLEMENTARY INFORMATION:

Waiver of Notice and Comment Procedures

The Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101-501, was enacted on November 3, 1990. Title VII contains amendments to the Low-Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97-35), including several changes affecting LIHEAP grantee program administration for FY 1991 and FY 1992. These changes concern the Department's response to formal complaints, reduction in the maximum amount that grantees may carry forward from one fiscal year to the next, waiver authority to increase the statutory weatherization maximum, a requirement for additional outreach and intake services in certain cases, and a leveraging incentive program.

This amendment to the block grant regulations, which implements these statutory changes, is being published in interim final form. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) provides that, if the Department for good cause finds that a notice of proposed rulemaking (NPRM) is unnecessary, impracticable, or contrary to public interest, it may dispense with the NPRM if it incorporates a brief statement in the interim final rule of the reasons for doing so.

The Department finds that there is good cause to dispense with an NPRM with respect to this amendment. We find that publication of this final rule in proposed form would be unnecessary and impracticable for the following reasons. First, it is important that grantees have timely notice of the rules for operating their LIHEAP programs consistent with these new statutory provisions. They must know as soon as possible the rules under which the changes effective in fiscal years 1991 and 1992 will be implemented, so that they can plan properly and adequately for implementation. Second, LIHEAP grantees and interested parties were notified by information memorandum of the opportunity to comment informally on these statutory changes. Further, during the development of this interim rule, we received 21 written comments and met with persons representing more than 15 entities or organizations who responded to the opportunity to comment. We considered these comments while drafting this interim rule. (These written comments, and summaries of these meetings, are available for public inspection and review along with comments received in response to this interim final rule.)

We also are interested in receiving formal comments on this interim final rule. We will review any comments which we receive by March 16, 1992. We will revise the rule, as appropriate, based on the comments we receive and on our experience in the first year of operation.

In addition to the statutory changes affecting LIHEAP program administration beginning in FY 1991 and FY 1992, Pub. L. 101-501 also includes several changes affecting LIHEAP program administration beginning in FY 1993 and FY 1994. These later changes concern forward funding and the end of authority to transfer LIHEAP funds to other HHS block grants. The Department anticipates publishing regulations to implement these changes later this fiscal year.

Section-by-Section Analysis of Changes in the Regulations

Subpart E—Enforcement

Section 96.50 Complaints

Section 708 of Public Law 101-501 amends section 2608(a)(2) of the LIHEAP statute, beginning in FY 1991. Section 2608(a)(2) concerns formal complaints of a substantial or serious nature that a grantee has failed to use funds in accordance with the LIHEAP statute. The new requirement sets a specific time period of 60 days within which the Department must respond, in writing, to complaints that are submitted to it under this provision.

The HHS block grant regulations currently provide at 45 CFR 96.50(d) that HHS "will provide a written response to complaints within 180 days after receipt." Also, section 96.50(c) provides that HHS will "promptly furnish a copy of any complaint" to the grantee against which the complaint was made and that, in responding to the complaint, HHS will consider any comments received from the grantee within 60 days, or a longer period agreed on by the grantee and HHS. Our experience has shown that, because of the serious—and generally complex—nature of the formal complaints we have received, grantees usually require a full 60 days to respond to complaints made against them.

Therefore, we are amending § 96.50(d) to state that, within 60 days after it receives a complaint concerning the low-income home energy assistance program, the Department will provide a written response to the complainant stating the actions it has taken to date and the timetable for final resolution of the complaint. We will continue to provide final resolution as soon as possible, consistent with our responsibility to provide the affected grantee sufficient opportunity to respond and to provide thorough Federal review of the pertinent facts, and we will continue to advise the complainant of the final action taken.

Subpart H—Low-Income Home Energy Assistance Program

Section 96.81 Reallotment Report

As part of the reallotment procedure established by section 2607(b) of the Low-Income Home Energy Assistance Act (title XXVI of Pub. L. 97-35, as amended), LIHEAP grantees must report information annually on funds they plan to hold available for obligation in the following fiscal year. Section 96.81 of the block regulations lists the requirements for these reports. We are amending section 96.81 to reflect a change made by section 706 of Public Law 101-501. This change reduces the maximum amount of LIHEAP funds that grantees may carry forward for obligation in the succeeding fiscal year, from 15 percent to 10 percent of the funds payable to the grantee and not transferred, pursuant to section 2604(f) of the LIHEAP statute, to another HHS block grant. This change is effective beginning with FY 1991 funds carried over to FY 1992.

Section 96.83 Increase in Maximum Amount That May Be Used for Weatherization and Other Energy-Related Home Repair

Section 705 of Public Law 101-501 amends section 2605(k) of the LIHEAP statute, beginning in FY 1991. It provides that grantees may request after March 31 of each fiscal year that the Department grant a waiver for the fiscal year that increases from 15 percent to up to 25 percent of the LIHEAP funds allotted or available to the grantee, the maximum amount of LIHEAP funds the grantee may use for low-cost residential weatherization or other energy-related home repair. Grantees that choose to apply for a waiver may request authority to use for these purposes any amount between 15 percent and 25 percent of their LIHEAP funds.

We are adding a new section 96.83 to the block grant regulations to implement procedures for requesting waivers of the statutory weatherization maximum.

"Standard" and "Good Cause" Waivers

The statute provides that, after reviewing a grantee's waiver request and any public comments, the Department may grant a waiver if it determines that: (1) The number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance (energy crisis intervention) benefits during the fiscal year will not be fewer than the number that received such benefits in the preceding fiscal year; (2) the aggregate amount of LIHEAP benefits that will be received during the fiscal year will not be less than the aggregate amount received in the preceding fiscal year; and (3) the weatherization activities have been demonstrated to produce measurable savings in energy expenditures. The statute also provides that the Department may grant a waiver if, in accordance with regulations to be published by the Department, the grantee's waiver request demonstrates good cause for failing to satisfy the requirements in the preceding sentence.

The waiver criterion requiring that the number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the number that received such benefits in the preceding fiscal year applies to the total, combined, aggregate number of households receiving these types of benefits in each fiscal year. Grantees are to use their best estimates for each fiscal year of (1) the total or combined number of all households receiving each of these types of assistance (which may involve some duplication, e.g., counting a household twice if it received both regular heating assistance and heating crisis assistance); or (2) the unduplicated number of households receiving heating assistance and heating crisis assistance plus the unduplicated number of households receiving cooling assistance and cooling crisis assistance. Grantees must use the same method of calculation for both fiscal years. Numbers for the earlier fiscal year should be consistent with the numbers included in the grantee's official report of the number and income levels of households it assisted during that year (as required by 45 CFR 96.82) or with a revised report.

The criterion requiring that the aggregate amount of LIHEAP benefits will not be less than the aggregate amount of LIHEAP benefits received in the preceding fiscal year applies to the total, combined, aggregate amount, in dollars, of LIHEAP heating, cooling, and crisis assistance benefits in each fiscal year—not to the separate totals for each type of assistance.

Grantees will need to project figures for any households to be served and funds to be obligated from the date the waiver request is submitted until the end of the fiscal year for which the waiver is requested.

The criterion requiring that the weatherization activities have been shown to produce measurable savings in energy expenditures applies to all LIHEAP weatherization activities to be carried out by the grantee during the fiscal year for which the waiver is requested, not just to activities proposed to be carried out with amounts above 15 percent of the grantee's LIHEAP funds. Grantees will not meet this criterion unless all of their LIHEAP weatherization activities for the fiscal year have been shown to produce measurable savings.

The LIHEAP statute and the HHS block grant regulations do not name specific activities which are allowable as weatherization and other energy-related home repair under the LIHEAP program. However, the statute and Federal regulations for the low-income weatherization assistance program (LIWAP) administered by the Department of Energy (DOE) do name certain weatherization measures that are allowable under that program. The statute authorizing LIWAP is the Energy Conservation in Existing Buildings Act of 1976 (title IV of the Energy Conservation and Production Act, Pub. L. 94-385, as amended; 42 U.S.C. 6851 *et seq.*). The final rule implementing DOE's Weatherization Assistance for Low-Income Persons is found at 10 CFR 440. These Federal regulations include "Standards for Weatherization Materials" at appendix A. In addition, DOE has allowed other activities by correspondence or memorandum.

The DOE weatherization statute and regulations apply specifically to LIWAP, and the LIHEAP statute and regulations apply to LIHEAP. However, to promote consistency in their weatherization programs, LIHEAP grantees may choose to use certain DOE weatherization provisions as guidance in administering their LIHEAP weatherization programs, as long as these provisions are consistent with the LIHEAP statute and regulations.

HHS will accept the following as weatherization activities which have been shown to produce measurable savings in energy expenditures, as long as these activities also are consistent with the requirements of the LIHEAP statute and regulations: Installation of the specific materials meeting the specific standards listed in Appendix A of the DOE weatherization regulations at 10 CFR 440; installation of materials meeting the specific standards incorporated by reference in Appendix A; and weatherization activities specifically allowed by official DOE correspondence and memoranda. LIHEAP grantees requesting a waiver of the LIHEAP statutory weatherization maximum who propose to carry out these weatherization activities may cite these sources as the criteria under which they have determined that these activities have been shown to produce measurable savings.

In addition to listing requirements for a "standard" weatherization waiver for grantees that meet the three statutory criteria discussed above, this rule sets criteria for a "good cause" waiver for grantees that wish to use more than 15 percent of their LIHEAP funds for weatherization, but do not meet one or more of the three criteria for a "standard" waiver.

Requests for both "standard" and "good cause" waivers must include comparison of the grantee's best estimates of service and benefit totals for the year for which the waiver is requested with service and benefit totals for the preceding fiscal year. The criteria for a "good cause" waiver include the requirements that grantees explain the reasons they are not maintaining the prior year's service levels, document good cause for failing to maintain these levels, and justify proposing to use additional funds for weatherization. Reasons for failing to maintain service levels might include reduction in need and/or fewer applications for assistance due to improvement in economic conditions and decline in unemployment, warmer than normal winter weather, and/or lower home energy prices and/or costs or expenditures for low-income households. We also will consider arguments and documentation (e.g., cost benefit analysis) that greater benefits will accrue to recipients from use of funds for weatherization than for cash assistance. Further, we will consider arguments that service or benefit levels were higher in the preceding year because of supplemental appropriations enacted in response to unusual conditions, such as the $195 million contingency fund enacted in FY 1991 to deal with unexpected fuel price increases resulting from the Middle East crisis.

In addition, "good cause" waiver requests must include a comparison of the eligibility standards and benefit levels for the fiscal year of the waiver request and the preceding fiscal year, along with an explanation, if appropriate, of why the eligibility standards were lower or the benefit levels were higher in the preceding year. We will review this information to determine whether a waiver would be consistent with congressional intent to maintain benefit and service levels.

"Good cause" documentation should cite measurable, quantified data, and the sources for these data. For example, grantees documenting reduction in need for cash benefits may provide comparison of unemployment statistics, Aid to Families with Dependent Children (AFDC) and other public assistance recipiency data, and the number of applications for LIHEAP assistance, for the current and the preceding fiscal year. Grantees documenting milder weather may cite National Weather Service data comparing heating or cooling degree days for their service area, as appropriate. Grantees documenting decreased home energy prices or costs may specify prices or costs to low-income households, using data from energy vendors or the Department of Energy, for example.

Public Comment

Consistent with the requirements and legislative history of Public Law 101–501, we are requiring that grantees provide opportunity for timely and meaningful public review of, and comment on, their proposed weatherization waiver requests. (Consistent with the conference report on the enrolled bill, published as House of Representatives Conference Report 101–816, this public comment procedure does not require hearings.) We expect grantees to provide notification of waiver requests with sufficient lead time to allow interested parties a reasonable period in which to comment. We also expect grantees to indicate that a LIHEAP weatherization waiver request is the specific topic of a meeting or request for comments, rather than simply indicating that issues of general social services interest are involved. We are requiring that grantees include with their waiver requests a description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies or summaries of public comments received, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments.

Submission and Review of Waiver Requests

Requests for waiver of the weatherization maximum must be made by the grantee's chief executive officer or designee, in writing. They should be sent to the Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

The Department may require additional clarification or documentation as it determines necessary to decide whether a grantee fully satisfies the appropriate waiver requirements.

The Department will review all requests and make a decision within a maximum of 45 days of receipt of a completed request. We expect that most requests will be handled much more quickly than this, but a need for additional information from the grantee could delay the time period.

The Department will approve all waiver requests that, in its judgment, meet all statutory and regulatory requirements for either a "standard" or "good cause" waiver and that demonstrate adequate solicitation and consideration of public comments.

No waivers will be granted after the end of the fiscal year for which the funds are appropriated. Accordingly, waiver requests must be submitted in sufficient time before the end of the fiscal year to allow for Departmental review and grantee obligation of funds that cannot be carried forward.

As noted, the LIHEAP statute specifies that waiver requests are to be submitted after March 31 each fiscal year. This is clearly an appropriate submission date while LIHEAP is administered on the basis of the Federal fiscal year of October 1 through September 30. Six months remain in the fiscal year after March 31, leaving adequate time for HHS to review requests and for grantees to obligate the funds for approved weatherization activities. However, this date may not be appropriate once forward funding, with a program year of July 1 through June 30, begins. Only three months will remain in the program year after March 31 to allow for Departmental review of waiver requests and grantee obligation of those waiver funds that cannot be carried forward. We are interested in comments about whether this date would create problems for administration of grantee programs under forward funding.

Effective Period

Waivers will be effective from the date of the Department's written approval until the funds are obligated in accordance with the LIHEAP statute and regulations.

A grantee that has received a waiver is not required to use the full approved amount for weatherization. If a grantee decides to use less than the approved amount for weatherization, it should amend its LIHEAP plan to reflect this decision.

Funds for which a weatherization waiver is granted may be carried over to the following year, consistent with standard statutory and regulatory requirements for obligation and carryover of LIHEAP funds, and may retain their designation as funds to be used for weatherization, if the grantee so chooses. However, any carried-forward "waiver funds" that retain this designation may not be considered "funds available" or "funds allotted" for the purpose of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

Section 96.84 Miscellaneous

We are amending § 96.84, which formerly contained only a brief provision relating to rights and responsibilities of territories. The revised section includes this provision, as well as a brief provision (formerly section 96.86) concerning applicability of the LIHEAP statutory assurances, and a brief provision (formerly section 96.87) concerning prevention of waste, fraud, and abuse in grantee LIHEAP programs.

We are not changing the substance of these provisions. However, we are amending the provision dealing with applicability of the assurances to indicate that the new assurance 15, discussed below, which was added to the LIHEAP statute as section 2605(b)(15) by Public Law 101-501, applies to heating, cooling, and energy crisis intervention assistance.

We are consolidating these three regulatory provisions in section 96.84 due to space limitations in the LIHEAP portion of the block grant regulations.

Section 96.86 Exemption From Requirement for Additional Outreach and Intake Services

Section 704(a)(4) of Public Law 101-501 adds an additional LIHEAP statutory assurance—assurance 15—to which States must certify in their applications for LIHEAP funding. Under the new section 2605(b)(15), beginning in FY 1992, States that provide outreach and intake for heating and cooling assistance and crisis situations through State departments of public welfare at the local level also must provide outreach and intake for these types of assistance through additional State and local governmental entities or community-based organizations. Examples of community-based organizations listed in the statute are not-for-profit neighborhood-based organizations, area agencies on aging, and community action agencies. In States where such organizations do not administer these functions as of September 30, 1991, preference in awarding grants or contracts for intake services is to be provided to agencies that administer the low-income weatherization or energy crisis intervention programs.

Exemption of Indian-Tribes, Tribal Organizations, and Some Territories

While the new section 2605(b)(15) clearly applies to the States (including the District of Columbia), we believe that it is not relevant to Indian tribes and tribal organizations. In addition, we believe that it would not be appropriate to apply it to territories that receive relatively small LIHEAP allotments.

We have concluded that the new provision concerning alternate outreach and intake services is not appropriate to tribal grantees because of the nature of American Indian tribal governments and their relationship to their service populations. Assurance 15 refers to outreach and intake services "offered by State Departments of Public Welfare at the local level"—that is, entities that administer public welfare programs. The legislative history for Public Law 101-501 refers specifically to agencies that administer the Aid to Families With Dependent Children (AFDC) program. However, Indian tribes do not administer AFDC for their service populations. In accordance with Federal law and regulations, States provide AFDC assistance to eligible American Indians, including Indian people receiving LIHEAP assistance from tribes that receive direct LIHEAP funding. Indian tribes therefore do not have tribal departments or offices directly comparable to State departments of public welfare.

As we noted in the preamble to the block grant regulations as originally published on July 6, 1982 (47 FR 29480), Indian tribes are close to their service populations. "Tribal" and "local" levels of administration are generally the same. Consistent with the Federal government's policy of Indian self-determination, we are exempting tribal LIHEAP grantees from the provision at section 2605(b)(15) of the statute.

We also have concluded that the new provision concerning alternate outreach and intake services is not appropriate to territories with annual LIHEAP allotments of $200,000 or less. (The $200,000 figure applies to each territory's regular LIHEAP allotment for a fiscal year and excludes any leveraging incentive funds received by the territory.) Experience has shown that each grantee incurs certain basic administrative costs in developing and implementing a LIHEAP program. Most tribes and territories receive relatively small LIHEAP allotments. Therefore, by regulation of October 13, 1987 (52 FR 37957-37968), we modified the LIHEAP statutory limitation on planning and administrative expenditures for tribal and territorial grantees, because the flat 10 percent limitation may not be sufficient to cover the basic costs of developing and implementing their LIHEAP programs. Similarly, we have concluded that, for territorial grantees with annual LIHEAP funding of $200,000 or less, the additional resources that would be required to provide alternative outreach and intake services would increase administrative and other non-benefit costs prohibitively. As we noted in the preamble to the regulation of October 13, 1987, the term "outreach" encompasses some activities that are administrative and others that are not. However, whether an "outreach" activity is properly categorized as administrative or not, the expense of providing such additional activities would significantly reduce the heating, cooling, crisis, and/or weatherization benefits that the territory could provide. We doubt that territories with LIHEAP allotments of $200,000 or less would have the ability to provide meaningful LIHEAP benefit levels if they also were required to provide for additional outreach and intake services. The time, effort, and funds spent providing alternate outreach and intake services would be significantly out of proportion to the direct LIHEAP benefits that could be provided to eligible households.

In addition, the territories with current LIHEAP allotments of $200,000 or less that do not consolidate LIHEAP funds under other programs pursuant to Public Law 95-134, commonly referred to as the Omnibus Territories Act, administer LIHEAP entirely at the central territorial level. Because of their relatively small populations, they do not have separate local administering agencies. A requirement for alternative local agencies is not appropriate under these circumstances.

Pragmatically, this means that at current LIHEAP funding levels, all territories except the Commonwealth of Puerto Rico would be exempt from this provision. The allotments of the territories in FY 1991, under the regular LIHEAP appropriation of $1.415 billion, ranged from $14,965 to $68,038 for all territories except Puerto Rico, whose allotment was $1,711,284.

LIHEAP tribal grantees, and territorial grantees with annual LIHEAP allotments of $200,000 or less, should, on an on-going basis, take appropriate steps to assure that they provide optimum outreach and intake services under their LIHEAP programs. All grantees are subject to the requirements in assurance 3—section 2605(b)(3) of the LIHEAP statute—concerning outreach.

We are adding a new § 96.86 to the block grant regulations to exempt Indian tribes and tribal organizations, and territories with an annual LIHEAP allotment of $200,000 or less, from the requirement of section 2605(b)(15) of the LIHEAP statute, as amended. This new § 96.86, "Exemption from requirement for additional outreach and intake services," replaces the former § 96.86, "State plans," whose content we are transferring to § 96.84.

Guidance Regarding Additional Services

As the original block grant regulations and preamble explain, consistent with statements of congressional intent, the Department's philosophy on block grants is that grantees are to be given as much flexibility as possible to implement the programs in their own jurisdictions. We will accept a grantee's interpretation of a statutory requirement unless the interpretation is clearly erroneous.

Grantees have requested guidance on interpretations and implementation of the requirement for additional outreach and intake services. Also, Senate Report 101–421 states that HHS is expected to provide guidance on compliance with this requirement. In response, we are providing the guidance in the paragraphs that follow.

We will review the grantees' compliance with the appropriate legislative and regulatory requirements in carrying out our responsibilities to conduct LIHEAP compliance reviews, application reviews, complaint investigations, and resolution of audit findings. However, consistent with the block grant philosophy, we are not publishing Federal rules on how the requirement for additional outreach and intake services must be implemented by grantees, except to specify that it does not apply to Indian tribes and tribal organizations or to territories receiving $200,000 or less in annual LIHEAP allotments. This is also consistent with our regulatory treatment of other application assurances required by the statute.

The requirement for additional outreach and intake services applies to States (including the District of Columbia) and to any territory with a LIHEAP allotment larger than $200,000 for the fiscal year in question, when the only agencies in all or part of the State or territory that provide outreach and intake for heating, cooling, and/or crisis assistance are local offices of the grantee department or agency that administers AFDC or the territorial equivalent basic cash public assistance program(s). The requirement applies in these cases whether or not that department or agency is named "State Department of Public Welfare" or "Department of Public Welfare." Also, when that department or agency is the only agency providing these outreach and intake services, the requirement applies whether or not the department or agency provides some of these services outside its own offices. (Section 2605(b)(15) requires that grantees "provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations * * *." The provision does not refer to the locations where the welfare department provides services.)

If grantees are already offering alternative services in some areas, they are not required to modify their system in these areas. Consistent with Conference Report 101–816, grantees are required to offer additional outreach and intake services only in areas where these services currently are provided solely by State or territorial departments of public welfare at the local level. In these areas, consistent with Senate Report 101–421 on H.R. 4151, the predecessor to Public Law 101–501, "a reasonable share" of outreach and intake functions is to be administered through alternative agencies, assuring that, to the extent possible, all eligible households in the grantee's service population will have viable access to alternative service sites. However, consistent with this Senate report, if the grantee finds no alternative in an area or areas after engaging in an open solicitation process, the grantee is not required to create new entities.

Also consistent with the Senate report, if such services previously were provided voluntarily, providers should continue to maintain comparable levels of effort voluntarily. The new requirement should not be used as a basis for reducing voluntary efforts. Consistent with the legislative history, we encourage the voluntary participation of utilities and other home energy vendors, churches, and other community groups and organizations, in outreach activities. Such entities often have excellent knowledge of and access to low-income households who may need LIHEAP assistance.

In order to meet the requirement for alternative outreach and intake services, the statute specifies that the alternate service providers must be State or local governmental entities or community-based organizations. Senate Report 101–421 mentions public or nonprofit agencies including other State or local government agencies, and community-based organizations such as community action agencies and aging organizations.

The Senate report emphasizes the importance of providing sufficient access to the LIHEAP program to the non-welfare poor and the elderly, through additional outreach efforts and appropriate intake locations. Grantees should provide varied outreach efforts targeted to the different populations eligible for LIHEAP assistance. Further, grantees should consult with low-income individuals and other interested parties to determine the best ways to implement the requirement for additional outreach and intake services.

"Intake" generally includes receipt of applications for assistance and the opportunity for applicants to provide any missing information that is needed to complete their applications. Each grantee has the discretion to choose whether to include income determination and verification responsibilities, and preliminary eligibility or benefit determination, as "intake." The conference report states that the "conferees believe that intake or application processing" is "best provided by experienced service providers with approved federal and state grant management systems."

If a system of mail-in applications carried out by a welfare department is used for a grantee's hearing and/or cooling assistance programs, and if it is not necessary to designate local administering agencies to carry out intake for these components, then there is no need under section 2605(b)(15) to designate other State and local governmental entities or community-based organizations to carry out intake for these components. In such a case, the grantee should assure that help is available to households that are unable to prepare and/or mail their applications without such assistance.

Section 2604(c) of the LIHEAP statute requires each entity that administers energy crisis assistance "to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served" by the entity and to provide to physically-infirm low-income persons the means to submit applications for energy crisis benefits without leaving their residences or to provide the means to travel to the sites at which the entity accepts applications. The statute thus requires that there be energy crisis intake services at the local level. Therefore, intake for crisis assistance provided solely by welfare departments will not satisfy the requirement in section 2605(b)(15) concerning additional intake services at the local level.

It is our experience that outreach normally is provided through local administering agencies, and therefore additional outreach services would be necessary if outreach currently is provided at the local level only through the welfare department.

In enacting the requirement that additional outreach and intake services be provided in certain cases, Congress has emphasized the importance of adequate and appropriate outreach and intake functions in grantee LIHEAP programs. Congress also has specifically limited the amount of Federal funds that can be used for costs of LIHEAP administration and planning to 10 percent of the funds payable to a State and not transferred to another HHS block grant program (section 2605(b)(9) of the LIHEAP statute). (As noted earlier, the block grant regulations provide for somewhat higher administrative cost limits for Indian tribes, tribal organizations, and territories.) As we stated in the preamble to the block grant regulations of July 6, 1982, "The consistent imposition of limits upon administrative expenditures under the various block grants is indicative of congressional intent that States devote a very high percentage of their block grant funds to direct payments or services" (47 FR 29477). Grantees should make every effort to provide the maximum amount of direct LIHEAP assistance to low-income households, consistent with the provision of adequate support services.

Although grantees subject to the new requirement may categorize some of their additional outreach expenses as non-administrative, many of the additional costs will be administrative. Some grantees may have difficulty providing additional outreach and intake services and remaining within the statutory limitation on use of Federal funds for costs of LIHEAP planning and administration. These grantees, in particular, may need to examine all of their LIHEAP activities and costs to determine ways to increase efficiency, to encourage voluntary efforts, and to use their own funds to supplement Federal LIHEAP funds. HHS does not have authority to waive the statutory limitation on administrative costs. The requirement for additional outreach and intake services does not relieve grantees of the need to comply with this statutory limitation. The conference report indicates that the conferees "recognize the potential for significantly increased administrative expenses for some states to comply with the new alternative site requirements, and intend to monitor possible effects on the program and recipients."

Section 96.87 Leveraging Incentive Program

Section 707 of Public Law 101-501 adds a new section 2607A to the LIHEAP statute, establishing a leveraging incentive program, and amends section 2602 of the LIHEAP statute, authorizing funds for this program. We are adding a new § 96.87 to the block grant regulations to implement this new program. The new § 96.87, "Leveraging incentive program," replaces the former § 96.87, "Prevention of waste, fraud, and abuse," whose content we are transferring to § 96.84.

Under the leveraging incentive program, beginning in FY 1992, HHS may allocate supplementary LIHEAP funds to grantees that have acquired non-Federal leveraged resources for low-income households. These leveraging incentive funds are for those grantees that use their own or other non-Federal resources to expand the effect of the Federal LIHEAP dollars.

Section 2607A defines leveraged resources as benefits made available to the grantee's LIHEAP program or to low-income households that are federally qualified (federally eligible) for LIHEAP that: (1) Represent a net addition to the total energy resources available to State and federally qualified low-income households in excess of the amount of energy resources that these households could acquire by purchasing energy at commonly available household rates; and (2) result from acquisition or development by the grantee's LIHEAP program of quantifiable benefits obtained from energy vendors through negotiation, regulation, or competitive bid; or are appropriated or mandated by the grantee for distribution through its LIHEAP program; or are appropriated or mandated by the grantee for distribution under its LIHEAP plan to federally qualified low-income households and the benefits are determined by the Department to be integrated with the grantee's LIHEAP program.

Senate Report 101-421 on H.R. 4151, the predecessor to Public Law 101-501, notes that, "if the LIHEAP program uses its purchasing power (or 'leverage') to acquire the full economic value of its resources, it can acquire substantial additional energy assistance resources and services for the poor from state energy market sources." This report lists the following examples of leveraged resources: "state-appropriated funds, quantifiable payments, discounts, credits, energy conservation improvements or other measurable benefits to eligible households in excess of the energy that could be purchased by the LIHEAP program at commonly available residential rates."

Under the statutory terms, grantees desiring leveraging incentive funds must submit a report to HHS by July 31 of each year that quantifies the amount of leveraging accomplished by the grantee that year, less any costs incurred by the grantee to leverage such resources and any costs imposed on federally eligible households. Leveraging incentive funds will be awarded for use in the following fiscal year or program year (e.g., leveraging activities in FY 1991 will be the basis for making leveraging incentive grant awards in FY 1992). Section 2607A of the LIHEAP statute requires that grantees use leveraging incentive funds awarded to them only "for increasing or maintaining benefits to households."

Consistent with the requirements of section 2607A, this interim final rule includes requirements for countable leveraged resources and for calculation and documentation of the value of leveraged resources, submission of leveraging reports to HHS, calculation of grantee shares of leveraging incentive funds, and use of leveraging incentive funds.

Entities Eligible for Leveraging Incentive Funds

States (including the District of Columbia), Indian tribes, tribal organizations, and territories may participate in the leveraging incentive program. In order to apply for and receive leveraging incentive funds, grantees must receive regular LIHEAP block grant funding directly from HHS in both the "base" year for which their leveraging activities are reported and the "award" year for which leveraging incentive funds are requested. Grantees are not required to participate in this program. However, whether or not they choose to request leveraging incentive funds, grantees are encouraged to leverage additional resources to supplement their Federal LIHEAP funds.

LIHEAP Funds Used To Develop Leveraging Programs

Section 2607A provides that, each fiscal year, States may spend up to the greater of $35,000 or 0.0008 percent of their funds allocated under the LIHEAP statute to identify, develop, and demonstrate leveraging programs. Since 0.0008 percent of the largest FY 1991 State LIHEAP allotment is approximately $1,700, clearly $35,000 is the larger in all cases, and $35,000 would be the larger under all foreseeable

LIHEAP appropriation levels. Therefore, if the language is carried out as written, the result would appear to be illogical and inconsistent with reason. We therefore conclude that the figure 0.0008 percent results from a typographical error and that 0.0008 was intended to be the actual factor by which the State's allotment is multiplied, rather than the percent (i.e., when calculating 0.08 percent of a State's allotment, one multiplies the allotment by the factor 0.0008). By regulation, we are clarifying that the figure is 0.08 percent. This interpretation provides a meaningful result, since 0.08 percent of the FY 1991 State LIHEAP allotments ranges from approximately $1,200 for the State with the smallest allotment to $170,000 for the State with the largest allotment; $35,000 is the larger in some cases, and 0.08 percent is the larger in other cases.

However, $35,000 would be a disproportionate amount for most tribes, tribal organizations, and territories to spend annually to identify, develop, and demonstrate leveraging programs. (FY 1991 tribal allotments ranged from approximately $1,100 to $1,038,000; the allotments of 84 of the 115 tribal grantees were under $100,000. FY 1991 territorial allotments ranged from approximately $15,000 to $1,711,000; the allotments of five of the six territorial grantees were under $100,000.) Therefore, by regulation, we are limiting to two percent of their annual LIHEAP allotments the amount that these grantees may spend each fiscal year for these purposes. This is approximately the same percent as the territory with the largest allotment would have spent if it had used $35,000 of its FY 1991 allotment for these purposes ($35,000 divided by $1,711,284 equals 0.0204524 or 2.04524 percent).

The 0.08 percent maximum for States, and the two percent maximum for tribes, tribal organizations, and territories, apply to these grantees' funds allocated under the LIHEAP statute. For the purpose of this provision, we define this, by regulation, to mean the grantees' Federal LIHEAP allotments, including any supplemental funds except leveraging incentive funds received by the grantee. (Also, grantees may spend additional monies from their own funds or other non-Federal sources.)

LIHEAP block grant funds that are used to identify, develop, and demonstrate leveraging programs are likely to support both planning and administrative activities and costs, and program (non-planning, non-administrative) activities and costs. Although these funds are regularly appropriated LIHEAP funds, we have decided that they are not subject to the LIHEAP statute's limitation on the maximum percent of Federal funds that grantees may use for costs of planning and administration. We have so stated in this interim rule. We believe that, if these funds were subject to the limitation, it would be a disincentive to grantees to develop leveraging programs. However, Congress established the leveraging incentive program to encourage—to provide an incentive to—grantees to leverage funds. We therefore conclude that LIHEAP funds should be available in addition to the regular LIHEAP planning and administration limits, to identify, develop, and demonstrate leveraging programs.

Basic Requirements for Leveraged Resources

Consistent with the block grant legislation and legislative history, the Department's policy generally is to provide maximum flexibility to grantees to operate their LIHEAP programs; grantees are the primary interpreters of the LIHEAP statute. However, grantees will be applying "competitively" for shares of a limited amount of leveraging incentive funds. Shares will be determined based on reports submitted by grantees to the Department which list and quantify the value of the resources they have leveraged. It is therefore necessary that all grantees applying for leveraging incentive funds use the same assumptions and rules. There must be standard criteria and methods for determining the activities which may be included as leveraging under this program and for quantifying the value of these activities.

In this interim rule, we have tried to make these criteria and methods as clear as possible, while leaving opportunity for grantees to include leveraged resources that we did not anticipate—as long as these resources meet the requirements for leveraged resources specified in the LIHEAP statute and implemented through these regulations. Grantees' experience, and our experience, during the first cycle of the leveraging incentive program, and comments submitted to us on this interim rule, will help us determine any changes which should be made in the final rule.

We believe it is reasonable to define the term "energy," as used in section 2607A, the same as the term "home energy," which is defined in section 2603(3) of the LIHEAP statute as "a source of heating or cooling in residential dwellings." The authorizing language in section 2602(a) of the LIHEAP statute specifies that the purpose of the LIHEAP program is to assist eligible households to meet the costs of home energy. The leveraging incentive program is authorized by the same statute and is to be supported by and coordinated with the LIHEAP program. Consistent with the language authorizing the LIHEAP program, the LIHEAP leveraging incentive program logically should address the same purpose and needs.

As part of the statutory requirements for leveraged resources, section 2607A(b)(1) states that countable leveraged resources or benefits must "represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates." This language could be interpreted to limit countable leveraged resources to energy credits and fuels purchased at discounted prices—to mean, for example, that a grantee could not count leveraged donated funds used to pay low-income households' actual fuel costs at normal rates, because there would be no net addition to the resources these households could acquire at "commonly available household rates," or that a grantee could not count tangible non-fuel items purchased at discounted prices. We did not adopt this narrow interpretation. The purpose of this provision is to encourage grantee efforts which result in additional home energy resources for low-income households. Therefore, consistent with this basic purpose, we believe that the best reading of the provision would allow a more expansive interpretation. We therefore have clarified the language to state that countable leveraged resources and benefits must "represent a net addition to the total home energy resources available to low-income households in excess of the amount of such resources that could be acquired by these households through the purchase of home energy, or the purchase of items that help these households meet the cost of home energy, at commonly available household rates or costs, or that could be obtained with regular LIHEAP allotments provided under section 2602(b) of Public Law 97–35 * * *."

Public Law 101–501 and its legislative history set requirements concerning the degree to which leveraging activities must be coordinated or integrated with grantees' LIHEAP programs. Leveraging activities that do not meet these requirements cannot be included in the program authorized under section 2607A of the LIHEAP statute, as established by Public Law 101–501.

As part of the statutory requirements for leveraged resources, section 2607A(b)(2) mandates that leveraged resources or benefits meet least one of the following three criteria: (1) They "result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid"; or (2) they "are appropriated or mandated by the State for distribution * * * through the State program"; or (3) they "are appropriated or mandated by the State for distribution * * * under the plan referred to in section 2605(c)(1)(A) to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program."

The first criterion refers to the role of the grantee's LIHEAP program in the acquisition or development of benefits obtained from energy vendors. Based on the discretion in the statute, we define the phrase "acquisition or development by the State program" to mean that the grantee's LIHEAP program must have substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program must be considerable, important, material, and of real value or effect.

We define the second criterion to mean that the leveraged resources and benefits must be provided to low-income households as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program.

The plan referred to in the third criterion is a part of each grantee's annual application for regular LIHEAP funds; in the plan, the grantee describes how it will carry out statutory assurances to which its chief executive officer has certified and includes other information required by statute. Based on the context in which it appears, we define the phrase, "appropriated or mandated by the State for distribution * * * under the plan * * *", to mean that the leveraged resources and benefits must be identified and described in the plan and distributed as indicated in the plan, but the leveraged benefits are not provided to low-income households as a part of (through or within) the grantee's LIHEAP program. They must be provided to federally eligible low-income households as a supplement or an alternative to the grantee's LIHEAP program. (For example, an alternative would be a fuel fund with maximum income eligibility of 150 percent of the poverty level, to which a grantee's LIHEAP program with maximum income eligibility of 125 percent of the poverty level refers households with incomes between 125 percent and 150 percent of the poverty level.) The leveraged benefits must be provided to eligible households referred by the grantee's LIHEAP program as long as funds are available. The plan's description of these leveraged resources and benefits must be made available for public comment by the grantee, and they must, in effect, be sanctioned in the plan. Grantees may amend their plans to include such resources at any time during the base period—the year in which the resources are provided to low-income households. However, grantees may not amend their plans to include such resources after the end of this period.

The third criterion also requires that the leveraged benefits be "integrated with the State program." We define this to mean that the benefits must be coordinated with the grantee's LIHEAP program, and must be provided in cooperation and in conjunction with the LIHEAP program.

The first and third criteria allow the counting of leveraged benefits that are provided to households with incomes up to the Federal maximum and to categorically eligible households, as described in section 2605(b)(2) of the LIHEAP statute, whether or not the grantee's LIHEAP program has more restrictive eligibility standards. Under the second criterion, leveraged benefits must be provided "through" the grantee's LIHEAP program, to households eligible under the grantee's standards.

Leveraged resources that are provided to households that do not meet the eligibility requirements in section 2605(b)(2) cannot be counted under the leveraging incentive program. If a leveraging program provides benefits to both federally eligible and non-federally eligible households, the grantee should report only the benefits for households that are federally eligible. In accordance with this provision, federally eligible (federally qualified) "low-income households" are:

• Households with incomes that do not exceed the greater of 150 percent of the poverty level for their State, or 60 percent of State median income; and

• Households in which one or more individuals receive Aid to Families with Dependent Children, Supplemental Security Income payments, food stamps, or certain need-tested veterans' and survivors' payments (i.e., payments under sections 415, 521, 541, or 542 of title 38 of the U.S. Code or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978).

The LIHEAP statute allows grantees to set eligibility standards that are more restrictive than the maximums, listed above, that are set by the statute. State eligible (State qualified) households are households that meet the eligibility requirements for a State's LIHEAP program. The LIHEAP statute permits grantees to set their LIHEAP program's income eligibility standard as low as 110 percent of the poverty level. The statute also permits grantees to decide whether to provide categorical eligibility for their LIHEAP program and, if so, to decide which of the programs listed above to include.

We are not requiring that leveraging activities be "new" ones in order to be countable under the leveraging incentive program. We do not want to encourage grantees to stop leveraging activities that are beneficial in order to start new activities that may or may not be beneficial. However, existing leveraging efforts do not automatically qualify as leveraged resources under the leveraging incentive program. We will count leveraging activities that are ongoing, as long as they meet the requirements of the statute and these regulations, and the counted leveraged benefits are provided to low-income households during the base period. For example, as long as the stated requirements for leveraging are met, the amount of reduction in home energy bills resulting from reduced rates for low-income households occurring in the base period may be counted whether or not the initial reduction was made during this period. Similarly, as long as the stated requirements for leveraging are met, benefits provided to low-income households during the base period by fuel funds may be counted whether or not the fund began operation during this period.

Leveraged Resources That Can Be Counted

Resources and benefits that are countable under the leveraging incentive program include certain cash resources, home energy discounts and credits, and third-party in-kind contributions. Countable resources and benefits include but are not limited to the following, as long as they also meet all other applicable requirements. Cash: State, tribal, territorial, and other public and private non-Federal funds, including payments from private fuel funds that meet all applicable statutory and regulatory requirements for leveraged resources, and including certain petroleum violation escrow funds (as discussed later in this preamble), used for:

• Heating, cooling, and energy crisis assistance benefits, including payments toward recipient households' home energy costs;

• Payments toward recipient households' costs of weatherization and other energy-related home repair (hereafter referred to as weatherization);

• Purchase and delivery of fuels used by recipient households for home energy;

• Purchase, delivery, and installation of weatherization materials;

• Purchase and delivery of blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners) that are provided to low-income households to help them meet the cost of home energy;

• Purchase and delivery of other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources; and

• Purchase and rental of supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

Discounts and credits:

• Discounted utility and bulk fuel prices, obtained, for example, by buying in large volume, using leveraged funds, regular LIHEAP funds, or leveraging incentive funds (only the amount of the reduction or discount is countable);

• Reduction in home energy bills, obtained, for example, when a household participates in a percent-of-income or percent-of-bill payment (only the amount of the reduction or discount is countable, not deferred charges);

• Partial or full waivers of utility and other home energy connection and reconnection fees, application fees, and late payment charges (only the amount of the waiver is countable);

• Partial or full waivers of home energy deposits where security deposits are a general requirement for the vendor's customers and the deposits are retained or kept for six months or longer (only the amount of the waiver is countable);

• Partial or full forgiveness of home energy bill arrearages (only the amount of the forgiveness is countable); and

• Discounts or reductions in the cost of certain tangible non-fuel items that help low-income households meet the costs of home energy—specifically, weatherization materials that are installed in recipient households' homes; blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners) that are provided to low-income households; and other tangible items specifically approved by the Department.

Third-party in-kind contributions:

• Donations of fuels used by recipient households for home energy;

• Donations of weatherization materials that are installed in recipient households' homes;

• Donations of blankets, space heating devices and equipment (including furnaces), and space cooling devices and equipment (including fans and air conditioners), that are provided to low-income households to help them meet the costs of home energy;

• Other donations of tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources;

• Donations and loans of supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials;

• Unpaid volunteers' services specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials; and

• Services of paid staff donated by their employer to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

Items that are delivered and/or installed using leveraged services, supplies, and/or equipment must be approved by HHS, but these items do not have to be leveraged resources. Only the leveraged resource/benefit is countable in such cases.

Petroleum violation escrow (PVE or oil overcharge) funds used under LIHEAP may be counted as leveraged funds under certain limited circumstances. Oil overcharge funds result from settlements of cases of overcharges which violated petroleum price controls in effect from 1973 to 1981, under the Emergency Petroleum Allocation Act of 1973. Since 1981, about $4 billion in oil overcharge funds have been distributed by the Department of Energy to the 50 States, the District of Columbia, and most U.S. territories; additional oil overcharge funds are expected to be distributed in the future. LIHEAP is one of the programs under which most of these funds can be used.

Oil overcharge funds obligated and expended under the LIHEAP program may be counted under the LIHEAP leveraging incentive program only by the 50 States, the District of Columbia, and the territories to which they were distributed directly, and only if they were distributed to the entity after October 1, 1990, and they were not previously required to be allocated to low-income households. These requirements are consistent with the guidance in Senate Report 101–421. In order to be counted under the leveraging incentive program, oil overcharge funds must be used for countable leveraged benefits as described in this interim rule.

Because oil overcharge funds are not distributed directly to Indian tribes or tribal organizations, tribal LIHEAP grantees cannot count them under the LIHEAP leveraging incentive program. If a tribe receives oil overcharge funds under a State LIHEAP program, the tribe would be a subgrantee or contractor of the State's program for the administration of these funds, and the funds would be used by the tribe as part of the State's LIHEAP program. If a tribe and State agree that the tribe's direct Federal LIHEAP allotment is to be increased in lieu of the tribe receiving oil overcharge funds under the State's LIHEAP program, the increased tribal funds would be regularly appropriated LIHEAP funds, not oil overcharge funds; the State would retain the actual oil overcharge funds.

Our listing of countable leveraged resources in this preamble and in the interim rule is not all-inclusive. We are not aware of all possible leveraged resources which would meet the requirements of the leveraging incentive program, and we do not want to discourage innovation. We therefore have left the opportunity for grantees to include and describe in their leveraging reports any other resources that they believe meet these requirements. We will evaluate such resources and determine whether to count them when we review these reports. Alternatively, grantees may wish to ask the Department for a determination about whether a resource is countable before preparing their leveraging reports.

Resources That Cannot Be Counted

Congress also has authorized a leveraging incentive program for the Department of Energy's Low-Income Weatherization Assistance Program. The DOE leveraging program will begin in FY 1992 if funds are appropriated for it. Leveraging activities cannot be counted for both the HHS LIHEAP and the DOE LIWAP leveraging incentive programs. (If a grantee requests that DOE count a leveraged resource under the DOE LIWAP leveraging program and DOE declines to count the resource, the grantee may request that HHS count the resource under the LIHEAP leveraging program. The due date for submission of LIHEAP leveraging reports still applies in such a case.)

Also, the following resources and benefits cannot be counted under the LIHEAP leveraging incentive program:

- Deferred home energy obligations (a current reduction in a household's home energy bill cannot be counted if the household will be responsible in the future for full payment, as in a deferred payment plan, because there is no net addition to the household's home energy resources; only the portion of a bill that is actually waived or cancelled can be counted);
- Projected future savings from weatherization;
- Tax deductions and tax credits for donations, rate reductions, etc. (a countable donation or rate reduction would already be counted, as an addition to the energy resources of low-income households; including any deductions or credits claimed by the donor would result in double counting the resource; the deductions and credits are not additions to the energy resources of low-income households);
- Borrowed funds, interest paid on borrowed funds, and reductions in interest paid on borrowed funds (because borrowed funds must be repaid, there is no net addition to households' home energy resources; reduced interest rates do not result in direct, net additions to households' home energy resources, and it would be difficult to demonstrate that they do not simply result from searching for a lower interest rate, rather than from leveraging);
- Funds and other resources that have been or will be used as matching or cost sharing for any Federal program;
- Costs of planning and administration, space costs, and intake costs, even if performed by volunteers or with donated or grantee funds;
- Budget counseling, energy conservation education, or any other outreach activities (the LIHEAP statute requires grantees to conduct outreach activities designed to assure that eligible households are made aware of LIHEAP and similar assistance, and we encourage budget counseling and energy conservation education; however, these activities themselves do not provide quantifiable benefits or quantifiable net additions to the household's home energy resources);
- Volunteer services except for those that are specifically allowed;
- Paid services where payment is not made from countable leveraged resources, except for those that are specifically allowed; and
- All other in-kind contributions except for those that are specifically allowed.

This interim final rule does not allow the counting of certain types of donated material (such as office supplies and equipment), the donation of volunteer or paid services for office or administrative activities or costs or for outreach activities or costs, or the donation of any other volunteer or paid services that do not result in a direct, quantifiable addition to low-income households' total energy resources, as required by section 2607A(b)(1) of the LIHEAP statute. We have taken this position because of our concern over whether such donations result in a net increase in benefits to low-income households and over how to value them. Donated fuel, weatherization materials, blankets, and space heating and cooling devices and equipment are tangible items that provide specific, direct benefits to low-income households. The actual market value of these items should not be difficult to determine. We therefore are including these in-kind contributions as countable leveraged resources. However, donated materials such as office supplies and equipment do not result directly in a specific net addition to low-income households' total energy resources, as required by section 2607A(b)(1) of the LIHEAP statute. The same can be said of donations of time by volunteers or staff to perform office or administrative chores. Even though this may result in the grantee being able to free some of its funds for other uses, it would be extremely difficult to assure and to document that any savings are used for direct benefits to low-income households. Intake and outreach activities themselves do not provide direct, quantifiable benefits to households.

Valuation of Leveraged Resources

The benefits of countable leveraging activities must be measurable and quantifiable in dollars. Using the best data available to them, grantees applying for leveraging incentive funds must quantify the actual value in dollars of leveraged resources provided to low-income households during the base period. For example, consistent with the statutory and regulatory requirements, grantees may count the actual market value of weatherization materials installed in low-income households' residences and the actual amount paid for delivery and installation of these materials in weatherization programs provided with leveraged non-Federal funds. Anticipated future benefits to be derived from weatherization—that is, expected savings in home energy bills—cannot be counted.

The statute requires that grantees deduct from the gross value of leveraged resources any costs the grantee incurred in leveraging the resources and any costs imposed on low-income households. See "Valuation of Offsetting Costs" below for a discussion of this issue.

We are clarifying that only the value of leveraged resources that actually are provided to low-income households during the base period can be counted. For example, leveraged resources made available to the grantee's LIHEAP program, but not actually used for benefits to low-income households by the program in the base period, cannot be counted for that base period. Examples of leveraged resources that would not be counted are oil overcharge funds designated for LIHEAP but not used for countable benefits during the base period; such resources would be counted in the year they are used for countable benefits.

Third-party donations of fuel, weatherization materials, and other countable tangible items must be valued at their fair market value at the time of donation, according to the best data available to the grantee. Third-party loans of countable tangible items must be valued at their fair rental rate at the time of loan.

Unpaid volunteer services must be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subrecipient's organization. If the grantee or subrecipient does not have employees doing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market. Fringe benefits and overhead costs cannot be counted. Valuation of volunteers' services for installation of weatherization materials must vary according to the skill of the volunteer at the task. For example, the services of professional weatherization installers working at a volunteer weatherization project would be more highly valued than the services of unskilled weatherization volunteers.

When an employer other than a grantee or subrecipient furnishes free of charge the services of an employee in the employee's normal line of work, the services must be valued at the employee's regular rate of pay, excluding the employee's fringe benefits and overhead costs. If the services are in a different line of work, the valuation described in the previous paragraph applies.

There are similar requirements for valuation of in-kind contributions in 45 CFR 92, the Department's regulations implementing uniform administrative requirements for Federal discretionary grants and cooperative agreements to State, local, and Indian tribal governments. These administrative rules are not a Federal requirement for grantee administration of the Department's block grants, including LIHEAP. However, LIHEAP grantees applying for leveraging incentive funds need to use consistent, standard methods for quantifying the value of countable in-kind contributions. We therefore are applying to third-party in-kind contributions to be counted as leveraged resources, most of the standards for "fair and reasonable" valuation of donated services, and donated and loaned supplies and equipment found at 45 CFR 92.24 (c), (d), and (e).

The benefits provided by leveraged resources other than in-kind contributions must be valued as explained in the following paragraphs.

Cash benefits for heating, cooling, energy crisis, and weatherization assistance must be valued at their actual amount at the time they were provided to, or on behalf of, the recipient household. Purchased fuel, weatherization materials, and other countable tangible items must be valued at their actual fair market value at the time of purchase, according to the best data available to the grantee. This means the commonly available household rate or cost in the local market area. Rented supplies and equipment must be valued at their actual fair rental rate in the local area at the time of rental. Delivery of fuel and other tangible items and delivery and installation of weatherization materials must be valued at the actual amount paid for these services. Home energy discounts and credits must be valued at their actual value—the actual amount of the discount, reduction, waiver, or forgiveness.

The fair market value of a fuel or tangible non-fuel item is the price or cost normally charged a customer in the same customer class, in the same local area, as the recipient household. For example, fuel purchased with leveraged cash at a reduced rate and provided without charge to low-income households would be valued at the actual fair market value of the fuel—the commonly available household rate or cost—at the time it was purchased. Fuel purchased with leveraged cash at a reduced rate and provided at a discount to low-income households would be valued at the actual fair market value of the fuel—the commonly available household rate or cost—at the time it was purchased, less (minus) the amount paid by the recipients. Only the amount of the net addition to recipient households' home energy resources may be counted.

When low-income households pay reduced rates on their home energy bills (for example, a household purchases fuel oil at reduced or discounted prices or receives reduced electricity rates), only the amount of the reduction or discount is countable, since this is the amount of the net addition to the households' energy resources and represents the amount in excess of the amount the households would acquire through purchase of energy at regular household rates. When low-income households receive home energy at no cost to themselves (for example, a LIHEAP grantee which has purchased fuel oil with leveraged resources or received donated fuel oil provides the oil to a household at no cost to the household), the amount that oil would have cost the household at "commonly available household rates" is countable. When low-income households receive a leveraged benefit that helps them meet all or part of their home energy costs (for example, a LIHEAP grantee pays a portion of a household's propane bill with countable oil overcharge funds, or a fuel fund pays a portion of a household's natural gas bill with countable funds), then the full amount of the benefit is countable, since this amount represents the net addition to the household's energy resources. Such a benefit is countable regardless of whether the energy is purchased at reduced rates or at "commonly available household rates."

Grantees may use leveraged funds, regularly appropriated LIHEAP funds, and leveraging incentive funds awarded to them, to purchase fuel or other approved tangible items at discounted prices. If the grantee uses leveraged funds, the gross value of the resource/benefit is the amount it would have cost the recipient household at the commonly available household rate or cost—the fair market value for an individual household. This means that a grantee may count as leveraged resources both the amount of money donated or otherwise leveraged and savings obtained through buying at discount rates. For example, a grantee may add $1,000 of its own funds to the LIHEAP program and then use the $1,000 to purchase fuel oil at a discount, so that it obtains oil that would be worth $1,200 at commonly available rates. In such a case, the grantee would have leveraged $1,000 in cash and $200 in discounts. If the grantee uses regular LIHEAP funds or leveraging incentive funds—that is, funds that are not countable leveraged resources—to purchase fuel or other approved tangible items at discounted prices, the gross value of the resource/benefit is the amount of the discount—the difference between the amount the item would have cost the recipient household at the commonly available household rate or cost and the reduced amount actually paid. For example, if the grantee had purchased the same fuel as above at the same price with regularly appropriated LIHEAP funds, it could count as leveraging only the $200 in discounts. In either case, any associated costs to the household, and any costs to the grantee to develop the resource, must be offset to determine the net value.

Valuation of Offsetting Costs

Section 2607A(d) requires that, to determine the net dollar value of grantees' leveraged resources, grantees must subtract from the gross dollar value of leveraged resources they received or acquired during the base period any costs they incurred to leverage such resources and any costs imposed on federally eligible low-income households.

Funds from grantees' regular LIHEAP allotments that are used to identify, develop, and demonstrate leveraging programs must be deducted as offsetting costs in the year these funds are obligated, whether or not there are any leveraged benefits resulting from them. Costs incurred from grantees' own funds to identify, develop, and demonstrate leveraging programs must be deducted in the first year that resulting leveraged benefits are provided to low-income households. If there is no resulting leveraged benefit from the expenditure of the grantee's own funds, the grantee's expenditure will not be counted or deducted.

Any costs assessed or charged to low-income households on a continuing or on-going basis, year after year, specifically for their participation in a counted leveraging program or for receipt of counted leveraged resources must be deducted in the base period these costs are charged. Any one-time costs or charges must be deducted in the first base period the leveraging program or leveraged resource is counted. For example, one-time charges paid by participants to join a discount fuel buying fund must be offset from leveraged benefits received in the first base period the fuel buying fund is counted, even if those charges were made before this base period. Such costs or charges are to be subtracted from the gross value of a counted resource/benefit for low-income households whose benefits are counted, but not for any low-income or other households whose benefits are not counted.

On the other hand, nonspecific costs imposed on low-income households—such as costs resulting from an increase in a utility company's rate base made to pay for or support reduced rates for households in special programs—should not be deducted. In some cases, information on these costs may be available to grantees through utility companies or public utility commissions, etc. However, in most cases, it would be very difficult—if not impossible—to quantify these costs accurately and reliably.

The table below summarizes requirements for valuation of leveraged resources. It describes calculation of the gross and net value of different types of leveraged resources and benefits. Any costs and charges to recipient households whose benefits are counted as leveraged resources, that were paid by these households in order to receive these benefits, and any costs to the grantee to leverage a resource, must be subtracted from the resource's gross value, to calculate the resource's net value.

VALUATION OF LEVERAGED RESOURCES

Resource: Cash.
Benefit: Cash benefits for heating, cooling, energy crisis, and weatherization assistance; payments toward recipient households' home energy costs.
Gross Valuation: Amount of actual benefit (as applied toward actual amount charged recipient).
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash.
Benefit: Purchase of fuel and non-fuel items, and purchase and rental of supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials—with no discount in purchase or rental price.
Gross Valuation: Amount recipient would have had to pay for fuel or item at fair market value, fair rental rate, or commonly available household rate or cost in local area, at the time the fuel or item was purchased or rented.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash and home energy discounts/credits.
Benefit: Purchase of fuel and non-fuel items, and purchase and rental of supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials—with discount in purchase or rental price.
Gross Valuation: Amount recipient would have had to pay for fuel or item at fair market value, fair rental rate, or commonly available household rate or cost in local area, at the time the fuel or item was purchased or rented.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Cash.
Benefit: Payments for delivery of fuel and non-fuel items, and for delivery and installation of weatherization materials.
Gross Valuation: Actual amount paid for service. (This is assumed to be what recipient would have had to pay for service.)
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: Home energy discounts/credits.
Benefit: Discounts, reductions, waivers, and forgiveness applying to fuel and non-fuel items.
Gross Valuation: Discounts and reductions: amount of reduction or discount, i.e., difference between amount recipient would have had to pay (at fair market value or commonly available household rate or cost in local area) and actual reduced amount paid. Waivers and forgiveness: amount of waiver or forgiveness.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind contributions: donated tangible items.
Benefit: Fuel and non-fuel items, and supplies and equipment used to deliver fuel and non-fuel items and to deliver and install weatherization materials.
Gross Valuation: Amount recipient would have had to pay for fuel or item at the time it was donated (fair market value in local area at time of donation).
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind-contributions: loaned tangible items.
Benefit: Supplies and equipment used to deliver fuel and non-fuel items, and to deliver and install weatherization materials.
Gross Valuation: Fair rental rate in local area at time of loan.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Resource: In-kind contributions: unpaid volunteers' services and donated paid services.
Benefit: Delivery of fuel and non-fuel items, and delivery and installation of weatherization materials.
Gross Valuation: Amount that would ordinarily be paid for similar work, by persons of similar skill in this work, by grantee or subrecipient—or by other employers in local area, if grantee and subrecipient have no employee doing similar work. If donated paid services are in employee's normal line of work, use employee's regular rate of pay. In all cases, exclude fringe benefits and overhead.
To Determine Net Valuation: Subtract associated costs/charges to recipient low-income households and costs to grantee to leverage the resource.

Documentation of Resources, Benefits, and Costs

Grantees should have clear, consistent, documented policies and procedures for documenting leveraged resources, benefits, and costs. Grantees are to maintain, or have readily available, records adequate to document leveraged resources and benefits, and offsetting costs and charges, and their valuation. (For example, a grantee—and/or subrecipients—should maintain records to document oil overcharge funds used under LIHEAP. A grantee should maintain and/or have easy access to documentation relating to counted fuel fund benefits.) These records are to consist of written and/or printed papers, etc., furnishing evidence that substantiates the claims made in the grantees' leveraging reports. These records are to be retained for three years after the end of the base period whose leveraged resources they document.

These records should include:

• Documentation of the sources of leveraged resources;

• Documentation of the negotiations, competitive bids, written agreements, legislation, regulations, and mandates through which leveraged resources were acquired or developed and under which they were provided;

• Documentation of recipient households' Federal eligibility, or eligibility for the grantee's LIHEAP program, as appropriate;

• Documentation of the type, amount, and value of leveraged benefits provided, including documentation of commonly available, local market household home energy rates or costs charged;

• Documentation of the type, amount, and value of in-kind contributions;

• Documentation of the costs incurred by the grantee to leverage resources and of the costs imposed on low-income households;

• Documentation of the calculation of the net addition to recipient households' home energy resources; and

• Documentation of the integration of leveraged resources with the grantee's LIHEAP program, as appropriate.

Recipient eligibility documentation, for example, should document each household's income or categorical eligibility. Benefit documentation, for example, should document the delivery and value of each benefit, including the amount or quantity and unit price, as appropriate.

We are requiring submission of some of this documentation with grantees' leveraging reports. We may require submission of additional documentation to clarify or support information submitted in a grantee's leveraging report. Our experience in reviewing reports on FY 1991 leveraging activities, and comments we receive on this interim rule, will enable us to determine whether to include more specific documentation requirements in the final rule.

Leveraging Report

Section 2607A(e) provides that grantees desiring leveraging incentive funds must submit a report to HHS that quantifies the grantee's leveraged resources for the base period. The base period is the fiscal or program year immediately preceding the award period for which the grantee is requesting leveraging incentive funds. These reports are grantees' applications for leveraging incentive funds. This interim final rule lists requirements for these reports. We have included in the list only the information we believe we need to know in order to fulfill our responsibility to evaluate grantee leveraging resources and benefits and to determine appropriate grantee shares of leveraging incentive funds.

LIHEAP grantees may use any format they choose in their annual applications for regular LIHEAP funds. Because of the need to review competitive applications for leveraging incentive funds, however, this interim final rule specifies that leveraging reports must be in a format established by HHS. We will notify grantees as soon as possible of the required format for these reports through an action transmittal.

Grantee leveraging reports must describe the leveraged resources provided to low-income households during the base period, and must indicate the grantee's valuation of these resources and of the costs of leveraging them.

The reports must clearly describe each separate leveraged resource, its benefit(s) to low-income households, and its source, as appropriate. The following are examples of such descriptions:

• Resource—cash: State funds; benefit—payments (cash benefits) for heating and energy crisis assistance; source—State funds;

• Resource—home energy discounts; benefit—reduced prices for fuel oil for low-income customers of ABC Company; source—ABC Company; and

• Resource—cash: XYZ Fuel Fund; benefit—payments (cash benefits) toward recipients' natural gas bills; source—donations by XYZ Gas Company's customers and general public.

It would not be sufficient, for example, to say "pilot project" or "demonstration program" without specifying the benefits the project or program provided, and the source of the funds used.

The reports must indicate the geographical area in which the leveraged benefits were provided to low-income households. For example, a report might indicate the city (or cities), and/or the county (or counties), in which a benefit was provided.

Section 2607A provides that HHS "may request any documentation" that it "determines necessary for the verification" of grantees' applications for leveraging incentive funds. This interim rule therefore establishes requirements for documentation and provides that the Department may require additional documentation and/or clarification as it determines necessary to verify information in a grantee's leveraging report, to decide whether a leveraged resource is countable, and to determine what the net valuation of a resource should be. In this case, we will set a date by which we must receive reported information on the resource that contains sufficient information to document countability and valuation—that is, a cut-off date for receipt of information we need in order to determine countability or valuation of a resource.

Submission Dates

Section 2607A(e) provides that grantees must submit their leveraging reports to HHS by July 31 of each year in order to qualify for leveraging incentive funds. We believe it is reasonable to assume that Congress intended the July 31 date to apply only after "forward funding" begins for the LIHEAP program. The statute provides that, beginning in July 1993, LIHEAP funds will be available for obligation on the basis of a program year of July 1 through June 30. Once forward funding begins, July 31 will be one month after the end of the program year or base period whose leveraging activities are reported; grantees will have adequate time to report leveraging activities for the entire program year. However, LIHEAP funds currently are available for obligation on the basis of the Federal fiscal year of October 1 through September 30. If grantees were required to submit leveraging reports by July 31, they would not be able to include leveraging activities for the last two or three months of the fiscal year.

We therefore are modifying the reporting dates for reports to be submitted before forward funding begins. The deadline for submission of reports while LIHEAP funding is provided to grantees on the basis of the Federal fiscal year of October 1 through September 30 is October 31 of the fiscal year for which leveraging incentive funds are requested. In these cases, October 31 will be one month after the end of the fiscal year or base period for which leveraging activities are reported.

Under forward funding, the deadline for submission of reports will be July 31 of the program year for which funds are requested. The report covering leveraging activities occurring during the nine-month transition period of October 1 to June 30 will be due on July 31, one month after the end of this period.

Reports must be postmarked or hand-delivered by these dates in order for a grantee to be considered for a share of leveraging incentive funds. Reports should be mailed or delivered to the following address: Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447.

Determination of Grantee Shares

The statute requires the Department to develop a formula for the distribution of leveraging incentive funds that takes into account the amount of leveraging acquired by a grantee in relation to the size of the grantee's allotment (allocation) under the regular LIHEAP program. In response to that direction, we have developed a two-part formula.

We will distribute one-half of the funds based on the amount of funds leveraged by a grantee during the base period relative to its net allotment under the regular LIHEAP program during the base period, as a proportion of the total amount of funds leveraged by all grantees in relation to their regular allotments during the same period. We will distribute the remainder of the funds based on the amount of leveraged resources that a grantee leveraged during the base period as a proportion of the total amount leveraged by all grantees. No grantee could receive a leveraging incentive award that is larger than its regular LIHEAP allotment. If the formula results in a grantee receiving an incentive award larger than its regular allotment, the "excess" funds will be reallocated to the other grantees receiving leveraging incentive funds. The leveraging figures used in making these calculations will be based on the net value of the leveraged resources contained in the leveraging reports filed by the grantees, as approved by HHS. The information on regular allocation figures will be based on HHS grant data. States' allocation figures will be net of any funds set aside for direct funding of Indian tribes and tribal organizations.

We believe this formula carries out Congress' intent to give the largest reward to those grantees that are the most successful in leveraging their LIHEAP dollars. Under this formula, if two grantees leverage the same amount of dollars, but one has a much larger regular allotment than the other, then the smaller one will receive a larger proportionate award of incentive funds. An example of how this formula would work is shown below. (Numbers may be affected by rounding.)

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
1	$2,500,000	$111,890,000	0.0223	5.93	$741,543	17.57	$2,196,219	$2,937,762
2	768,000	45,670,000	0.0168	4.46	558,107	5.40	674,678	1,232,786
3	3,022,000	76,890,000	0.0393	10.44	1,304,404	21.24	2,654,790	3,959,194
4	789,000	56,899,000	0.0139	3.68	460,214	5.55	693,127	1,153,341
5	1,250,000	34,333,000	0.0364	9.67	1,208,331	8.78	1,098,109	2,306,440
6	5,900,000	23,800,000	0.2479	65.82	8,227,401	41.46	5,183,077	13,410,477
	14,229,000	349,482,000	0.3766	100.00	12,500,000	100.00	12,500,000	25,000,000

In this chart, the following information is included in the columns:

Column A is an individual grantee.

Column B is the dollar amount of non-Federal leveraged resources that the grantee provided to low-income households during the base period, after deducting offsetting costs, as approved by HHS.

Column C is the amount of the grantee's regular LIHEAP allotment during the base period, net of any set-asides for direct-grant Indian tribes and tribal organizations in the case of a State.

Column D is the amount of a grantee's leveraged resources as a proportion of its regular allotment (Column B divided by Column C).

Column E is the amount of a grantee's leveraged resources divided by its regular allotment, as a proportion of the resources leveraged by all grantees relative to their regular allotment, with the resulting figure expressed as a percentage (Column D divided by the total for Column D).

Column F is the amount of leveraging incentive funds that a grantee would receive under the first part of the formula (Column E multiplied by one-half of the leveraging funds available, in this case $12,500,000).

Column G is the grantee's leveraged resources as a percentage of the resources leveraged by all grantees (Column B divided by the total for Column B).

Column H is the amount of leveraging incentive funds that a grantee would receive under the second part of the formula (Column G multiplied by one-half of the leveraging funds available, in this case $12,500,000).

Column I is the total amount of leveraging incentive funds a grantee would receive under this two-part formula (Column F plus Column H).

In developing this formula, we considered three different formulas. In addition to considering three different formulas before we made our selection, we considered each of the formulas under three different scenarios to determine what grant awards would be under different situations. Under this process, we determined that the formula outlined above is the most fair for a wide variety of circumstances. Our calculations are shown below.

In the first scenario, we considered six different grantees that acquired varying levels of leveraged resources and had different regular allotments. We intentionally used an example in which a relatively small grantee leveraged a large amount of funds (grantee #6). We then calculated incentive grant awards under all three formulas. In the second scenario, all grantees leveraged the same percentage of their regular allotments, so that the grantees with the largest allotments also have the largest dollar amount of leveraged resources. In the third scenario, all grantees leveraged the same dollar amount, so that the percentage in relation to their regular allotment is different. We calculated each of the formulas under all three scenarios.

For the purposes of this discussion, we will call the formula that we have selected "Formula One." Under "Formula Two" that we considered, the incentive funds would be distributed solely on the basis of the amount of funds leveraged by a grantee relative to its net allotment under the regular LIHEAP program, as a proportion of the total amount of funds leveraged by all grantees in relation to their regular allotments. This is the same as Part One of our preferred Formula One, and the column descriptions noted above are the same.

"Formula Three" that we considered uses a more complex weighting equation. This formula applies several weighting factors to determine each grantee's share of the leveraging appropriation. Columns A, B, C, and D are the same as in the description noted above for Formula One. Column E is the amount of all leveraged dollars for all grantees divided by their total allotments (i.e., Column E=the total of Column B divided by the total of Column D for each grantee), and is the same for all grantees. We have included this figure in the total line for Column E as well, rather than adding all the line items for Column E. Column F is a grantee's leveraged resources as a percentage of the resources leveraged by all grantees (Column B divided by the total for Column B), and is the same as Column G in Formula One. The weighted factor in Column D is then divided by the weighted factor in Column E, and that number multiplied by Column F to arrive at the factor in Column G. Each grantee's factor in Column G is then divided by the total for Column G to determine that grantee's percentage share of the leveraging fund (Column H). The percentage in Column H is multiplied by the leveraging appropriation ($25 million in this case) to obtain the grantee's grant award (Column I).

Our calculations are shown below. (Numbers may be affected by rounding.)

First Scenario--Varying Levels of Leveraged Resources and Allotments

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
Formula one:								
1	$2,500,000	$111,890,000	0.0223	5.93	$741,543	17.57	$2,196,219	$2,937,762
2	768,000	45,670,000	0.0168	4.46	558,107	5.40	674,678	1,232,786
3	13,022,000	76,890,000	0.0393	10.44	1,304,404	21.24	2,654,790	3,959,194
4	789,000	56,899,000	0.0139	3.68	460,214	5.55	693,127	1,153,341
5	1,250,000	34,333,000	0.0364	9.67	1,208,331	8.78	1,098,109	2,306,440
6	5,900,000	23,800,000	0.2479	65.82	8,227,401	41.46	5,183,077	13,410,477
	14,229,000	349,482,000	0.3766	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$2,500,000	$111,890,000	0.0223	5.93	$1,483,066
2	768,000	45,670,000	0.0168	4.46	1,116,215
3	3,022,000	76,890,000	0.0393	10.44	2,608,808
4	789,000	56,899,000	0.0139	3.68	920,428
5	1,250,000	34,333,000	0.0364	9.67	2,416,662
6	5,900,000	23,800,000	0.2479	65.82	16,454,801
	14,229,000	349,482,000	0.3766	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total Lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$2,500,000	$111,890,000	0.0223	0.0407	17.57	0.0964	3.27	$818,269
2	768,000	45,670,000	0.0168	0.0407	5.40	0.0223	0.76	189,190
3	3,022,000	76,890,000	0.0393	0.0407	21.24	0.2050	6.96	1,739,909
4	789,000	56,899,000	0.0139	0.0407	5.55	0.0189	0.64	160,272
5	1,250,000	34,333,000	0.0364	0.0407	8.78	0.0786	2.67	666,678
6	5,900,000	23,800,000	0.2479	0.0407	41.46	2.5247	85.70	21,425,681
	14,229,000	349,482,000	0.3766	0.0407	100.00	2.9458	100.00	25,000,000

Second Scenario—Same Leveraging to Allotment Ratio For All Grantees (Column D)

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25 M I
Formula one:								
1	$5,035,100	$111,890,000	0.0450	16.67	$2,083,333	32.02	$4,001,994	$6,085,328
2	2,055,200	45,670,000	0.0450	16.67	2,083,333	13.07	1,633,489	3,716,822
3	3,460,100	76,890,000	0.0450	16.67	2,083,333	22.00	2,750,142	4,833,475
4	2,560,500	56,899,000	0.0450	16.67	2,083,333	16.28	2,035,119	4,118,452
5	1,545,000	34,333,000	0.0450	16.67	2,083,333	9.82	1,227,996	3,311,329
6	1,071,000	23,800,000	0.0450	16.67	2,083,333	6.81	851,260	2,934,593

A	B	C	D	E	F	G	H	I
	15,726,700	349,482,000	0.2700	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$5,035,100	$111,890,000	0.0450	16.67	$4,166,667
2	2,055,200	45,670,000	0.0450	16.67	4,166,667
3	3,460,100	76,890,000	0.0450	16.67	4,166,667
4	2,560,500	56,899,000	0.0450	16.67	4,166,667
5	1,545,000	34,333,000	0.0450	16.67	4,166,667
6	1,071,000	23,800,000	0.0450	16.67	4,166,667
	15,726,700	349,482,000	0.2700	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$5,035,100	$111,890,000	0.0450	0.0450	32.02	0.3202	32.02	$8,003,989
2	2,055,200	45,670,000	0.0450	0.0450	13.07	0.1307	13.07	3,266,978
3	3,460,100	76,890,000	0.0450	0.0450	22.00	0.2200	2.00	5,500,283
4	2,560,500	56,899,000	0.0450	0.0450	16.28	0.1628	16.28	4,070,238
5	1,545,000	34,333,000	0.0450	0.0450	9.82	0.0982	9.82	2,455,992
6	1,071,000	23,800,000	0.0450	0.0450	6.81	0.0681	6.81	1,702,520
	15,726,700	349,482,000	0.2700	0.0450	100.00	1.0000	100.00	25,000,000

Third Scenario—Same Leveraged Dollar Amounts For All Grantees (Column B)

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Part one share F	Grantee percent of lev $ G	Part two share H	Total share of $25M I
Formula one:								
1	$5,000,000	$111,890,000	0.0447	6.74	$842,781	16.67	$2,083,333	$2,926,114
2	5,000,000	45,670,000	0.1095	16.52	2,064,785	16.67	2,083,333	4,148,118
3	5,000,000	76,890,000	0.0650	9.81	1,226,411	16.67	2,083,333	3,309,744
4	5,000,000	56,899,000	0.0879	13.26	1,657,300	16.67	2,083,333	3,740,634
5	5,000,000	34,333,000	0.1456	21.97	2,746,592	16.67	2,083,333	4,829,925
6	5,000,000	23,800,000	0.2101	31.70	3,962,132	16.67	2,083,333	6,045,465
	30,000,000	349,482,000	0.6628	100.00	12,500,000	100.00	12,500,000	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Grantee percent E	Grantee share of $25M F
Formula two:					
1	$5,000,000	$111,890,000	0.0447	6.74	$1,685,561
2	5,000,000	45,670,000	0.1095	16.52	4,129,570
3	5,000,000	76,890,000	0.0650	9.81	2,452,822
4	5,000,000	56,899,000	0.0879	13.26	3,314,601
5	5,000,000	34,333,000	0.1456	21.97	5,493,183
6	5,000,000	23,800,000	0.2101	31.70	7,924,263
	30,000,000	349,482,000	0.6628	100.00	25,000,000

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
Formula three:								
1	$5,000,000	$111,890,000	0.0447	0.0858	16.67	0.0868	6.74	$1,685,561
2	5,000,000	45,670,000	0.1095	0.0858	16.67	0.2126	16.52	4,129,570
3	5,000,000	76,890,000	0.0650	0.0858	16.67	0.1263	9.81	2,452,822
4	5,000,000	56,899,000	0.0879	0.0858	16.67	0.1706	13.26	3,314,601

Grantee Column A	Lev $ B	Allot $ C	Lev $ div. by allot $ D	Total lev $ div. by total allot $ E	Grantee percent of lev $ F	D div. by E times F G	Grantee percent H	Grantee share of $25M I
5	5,000,000	34,333,000	0.1456	0.0858	16.67	0.2828	21.97	5,493,183
6	5,000,000	23,800,000	0.2101	0.0858	16.67	0.4079	31.70	7,924,263
	30,000,000	349,482,000	0.6628	0.0858	100.00	1.2868	100.00	25,000,000

We believe that Formula One provides the fairest distribution of the incentive funds under the wide range of situations outlined in the three scenarios above. The other scenarios would skew the results too heavily in favor of one or another of the grantees. We therefore will distribute the leveraging incentive funds under Formula One.

Uses of Leveraging Incentive Funds

Regular LIHEAP grant funds and LIHEAP leveraging incentive funds are separately authorized in the LIHEAP statute—the former at section 2602(b), and the latter at section 2602(d). Leveraging incentive funds cannot be used for some of the purposes for which regular LIHEAP funds can be used. Section 2607A directs that leveraging incentive funds must be used to increase or maintain benefits to households—that is, they must be used for LIHEAP heating, cooling, crisis, and/or weatherization assistance.

While section 2607A limits the types of activities for which leveraging incentive funds can be used, it does not limit the amount of leveraging incentive funds that can be used for each of the allowable activities. We have determined that the 15 percent limitation on the use of regular LIHEAP funds for weatherization does not apply to leveraging incentive funds. If most of a grantee's leveraged resources come from weatherization activities, the grantee should have the option to use most of the resulting leveraging incentive funds for weatherization. However, leveraging incentive funds cannot be counted in the base for calculation of maximum grantee weatherization obligations and expenditures for regular LIHEAP funds.

In accordance with the requirements of section 2607A, leveraging incentive funds cannot be used for costs of planning and administration. However, if a grantee receives more than a minimal leveraging incentive fund award, it likely will need to use additional monies to administer these funds. We therefore have determined that leveraging incentive funds can be counted in the base for calculating the grantee's maximum planning and administrative costs. This is consistent with the treatment of oil overcharge funds provided under section 155 of Pub. L. 97-377 (the Warner Amendment) and Exxon oil overcharge funds.

Consistent with the statutory emphasis on increasing the amount of LIHEAP heating, cooling, crisis, and weatherization assistance, leveraging incentive funds cannot be used for transfer to other HHS block grants, and they cannot be counted in the base for calculation of maximum grantee transfers to other HHS block grants.

Leveraging incentive funds cannot be counted in the base for calculation of maximum grantee carryover of regular LIHEAP funds. (However, see below for "Peroid of Obligation of Leveraging Incentive Funds.")

Grantees are to include the uses of leveraging incentive funds in their LIHEAP plans. Since leveraging incentive funds will be awarded during a fiscal or program year, rather than at the beginning, grantees probably will wish to cover the uses of these funds in amendments to their plans.

Grantees are to document uses of leveraging incentive funds in the same way they document uses of regular LIHEAP funds. Leveraging incentive funds are subject to the same audit requirements as regular LIHEAP funds.

Period of Obligation for Leveraging Incentive Funds

Leveraging incentive funds will be awarded during the course of each fiscal or program year, rather than at the beginning, since grantees' leveraging reports are to be submitted a month after each new fiscal or program year begins, and since the necessary Federal review and approval of leveraging reports will follow. We therefore have determined that leveraging incentive funds are not subject to the statutory and regulatory carryover and reallotment requirements that apply to regular LIHEAP funds. (Section 2607(b) of the LIHEAP statute provides that grantees may carry forward for use in the succeeding fiscal year no more than 10 percent of their regular LIHEAP funds payable for the prior fiscal year and not transferred to another HHS block grant.) Instead, all leveraging incentive funds will be available for obligation from the date they are awarded to a grantee until the end of the succeeding fiscal or program year. Grantees may use these funds during the remainder of the fiscal or program year in which they were awarded, and throughout the following fiscal or program year. Any leveraging incentive funds not obligated for allowable purposes by the end of this obligation period must be returned to the Department.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Paperwork Reduction Act

Section 96.87 of this interim final rule contains information collection requirements relating to applications for leveraging incentive funds. Section 2607A of the Low-Income Home Energy Assistance Act of 1981 requires grantees to submit these leveraging reports in order to qualify for leveraging incentive funds; these reports are the only source of the information HHS needs in order to allocate leveraging incentive funds among grantees. ACF estimates the reporting burden on applicants for leveraging incentive funds to be 40 hours per applicant. As required by the Paperwork Reduction Act of 1980, the Department will submit these requirements to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on this information collection requirement should direct them to (1) Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, and (2) the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC

20503, Attention: Desk Officer for Administration for Children and Families, Department of Health and Human Services. After OMB approval is obtained, we will publish the OMB control number in the **Federal Register**.

Section 96.83 requires grantees to submit a waiver request if they wish to obligate more than 15 percent of their LIHEAP funds allotted or funds available in any fiscal year for weatherization activities. We expect to receive less than 10 waiver requests per year, and thus this provision is not subject to the Paperwork Reduction Act. We received only one waiver request for FY 1991, even though the total FY 1991 LIHEAP appropriation exceeded the FY 1990 appropriation by more than $165,000,000, and thus grantees could be expected to meet the requirements for a standard waiver.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these interim rules is on State, tribal, and territorial governments. Therefore, the Department of Health and Human Services certifies that these rules will not have a significant economic impact on a substantial number of small entities because they affect payments to States, tribes, and territories. Thus, a regulatory flexibility analysis is not required.

Catalog of Federal Domestic Assistance Program Number

The Catalog of Federal Domestic Assistance program number for the low-income home energy assistance program (LIHEAP) is 93.028.

List of Subjects in 45 CFR Part 96

Energy, Grant programs-energy, Grant programs-Indians, Income assistance, Leveraging incentive program, Low and moderate income housing, Reporting and record keeping requirements, Weatherization.

Approved: November 25, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is amended as set forth below:

PART 96—[AMENDED]

1. The authority for part 96 of title 45 is revised to read as follows:

Authority: 42 U.S.C. 300w et seq.; 42 U.S.C. 300x et seq.; 42 U.S.C. 300y et seq.; 42 U.S.C. 701 et seq.; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 et seq.; 42 U.S.C. 1397 et seq.; 31 U.S.C. 1243 note.

Subpart E—Enforcement

2. Section 96.50 is amended by adding a new sentence to the end of paragraph (d) to read as follows:

§ 96.50 Complaints.

* * * * *

(d) * * * Under the low-income home energy assistance program, within 60 days after receipt of complaints, the Department will provide a written response to the complainant, stating the actions that it has taken to date and the timetable for final resolution of the complaint.

* * * * *

Subpart H—Low-Income Home Energy Assistance Program

3. Section 96.81 is revised as follows:

§ 96.81 Reallotment report.

As a part of the reallotment procedure established by section 2607(b) of Public Law 97–35 (42 U.S.C. 8626(b)), beginning with funds to be held available for fiscal year 1992, each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(a) The amount of funds that the grantee desires remain available for obligation in the succeeding fiscal year, not to exceed 10 percent of the funds payable to the grantee and not transferred pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f));

(b) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(c) A description of the types of assistance to be provided with the amount held available; and

(d) The amount of funds, if any, to be subject to reallotment.

4. A new section 96.83 is added to read as follows:

§ 96.83 Increase in maximum amount that may be used for weatherization and other energy-related home repair.

(a) *Scope.* This section concerns requests for waivers increasing from 15 percent to up to 25 percent of LIHEAP funds allotted or available to a grantee for a fiscal year, the maximum amount that grantees may use for low-cost residential weatherization and other energy-related home repair for low-income households (hereafter referred to as "weatherization"), pursuant to section 2605(k) of Public Law 97–35 (42 U.S.C. 8624(k)).

(b) *Public comment.* Before submitting waiver requests to the Secretary, grantees must make proposed waiver requests available for public inspection within their jurisdictions in a manner that will facilitate timely and meaningful review of, and comment upon, such requests.

(c) *Waiver request.* After March 31 of each fiscal year, the chief executive officer (or his or her designee) may request a waiver of the weatherization obligation limit if the grantee meets criteria (i), (ii), and (iii) in paragraph (c)(2) below, or can show "good cause" for obtaining a waiver despite a failure to meet one or more of these criteria. All waiver requests must be in writing and must include the following information:

(1) A statement of the total percent of its LIHEAP funds allotted or available in the fiscal year for which the waiver is requested, that the grantee desires to use for weatherization.

(2) A statement of whether the grantee has met each of the following three criteria:

(i) In the fiscal year for which the waiver is requested, the combined total (aggregate) number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the combined total (aggregate) number that received such benefits in the preceding fiscal year;

(ii) In the fiscal year for which the waiver is requested, the combined total (aggregate) amount of LIHEAP heating, cooling, and crisis assistance benefits will not be less than the combined total (aggregate) amount received in the preceding fiscal year; and

(iii) All LIHEAP weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested have been shown to produce measurable savings in energy expenditures.

(3) With regard to criterion (2)(i) above, a statement of the grantee's best estimate of the appropriate household totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(4) With regard to criterion (2)(ii) above, a statement of the grantee's best estimate of the appropriate benefit totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(5) With regard to criterion (2)(iii) above, a description of the weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested (with all LIHEAP funds proposed to be used for weatherization, not just with the amount over 15 percent), and an explanation of the specific criteria under which the

grantee has determined whether these activities have been shown to produce measurable savings in energy expenditures.

(6) A description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies and/or summaries of public comments received on the request, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments.

(7) If the request is made by the chief executive officer's designee and the Department does not have on file written evidence of the designation, the request must also include evidence of the appropriate delegation of authority.

(d) *"Standard" waiver.* If the Department determines that a grantee has met the three criteria in paragraph (c)(2) above, has provided all information specified in paragraph (c) above, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "standard" waiver.

(e) *"Good cause" waiver.* If a grantee does not meet one or more of the three criteria in paragraph (c)(2) above, then the grantee may, in accordance with the provisions in paragraphs (e)(1) and (e)(2) below, submit documentation that demonstrates good cause why a waiver should be granted despite the grantee's failure to meet this criterion or these criteria. "Good cause" waiver requests must include the following information, in addition to the information specified in paragraph (c) above:

(1) For each criterion under paragraph (c)(2) above that the grantee does not meet, an explanation of the specific reasons demonstrating good cause why the grantee does not meet the criterion and yet proposes to use additional funds for weatherization, citing measurable, quantified data, and stating the source(s) of the data used.

(2) A statement of the grantee's LIHEAP heating, cooling, and crisis assistance eligibility standards and benefit levels for the fiscal year for which the waiver is requested and for the preceding fiscal year; and, if eligibility standards were lower and/or benefit levels were higher in the preceding fiscal year, an explanation of the reasons demonstrating good cause why a waiver should be granted.

If the Department determines that a grantee requesting a "good cause" waiver has demonstrated good cause why a waiver should be granted, has provided all information specified in paragraph (c) above and in this paragraph, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "good cause" waiver.

(f) *Approvals and disapprovals.* After receiving the grantee's completed waiver request, the Department will respond in writing within 45 days, informing the grantee whether the request is approved on either a "standard" or "good cause" basis. The Department may request additional information and/or clarification from the grantee. If additional information and/or clarification is requested, the 45 day period for the Department's response will start when the additional information and/or clarification is received. No waiver will be granted for a previous fiscal year.

(g) *Effective period.* Waivers will be effective from the date of the Department's written approval until the funds for which the waiver is granted are obligated in accordance with title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable regulations. Funds for which a weatherization waiver was granted that are carried over to the following fiscal year and used for weatherization shall not be considered "funds allotted" or "funds available" for the purposes of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

5. Section 96.84 is revised as follows:

§ 96.84 Miscellaneous.

(a) *Rights and responsibilities of territories.* Except as otherwise provided, a territory eligible for funds shall have the same rights and responsibilities as a State.

(b) *Applicability of assurances.* The assurances in section 2605(b) of Public Law 97–35 (42 U.S.C. 8624(b)), as amended, pertain to all forms of assistance provided by the grantee, with the exception of assurance 15, which applies to heating, cooling, and energy crisis intervention assistance.

(c) *Prevention of waste, fraud, and abuse.* Grantees must establish appropriate systems and procedures to prevent, detect, and correct waste, fraud, and abuse in activities funded under the low-income home energy assistance program. The systems and procedures are to address possible waste, fraud, and abuse by clients, vendors, and administering agencies.

6. Section 96.86 is revised as follows:

§ 96.86 Exemption from requirement for additional outreach and intake services.

The requirement in section 2605(b)(15) of Public Law 97–35 (42 U.S.C. 8624(b)(15)), as amended by section 704(a)(4) of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501)—concerning additional outreach and intake services—does not apply to:

(a) Indian tribes and tribal organizations; and

(b) Territories whose annual LIHEAP allotments under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)) are $200,000 or less.

7. Section 96.87 is revised as follows:

§ 96.87 Leveraging incentive program.

(a) *Scope.* This section concerns the leveraging incentive program authorized by section 2607A of Public Law 97–35 (42 U.S.C. 8626a).

(b) *Definitions.* (1) *Base period* means the period for which a grantee's leveraging activities are reported to the Department; grantees' leveraging activities during the base period or base year are the basis for the distribution of leveraging incentive funds during the succeeding fiscal year (the award period or award year). Leveraged resources are counted in the base period during which their benefits are provided to low-income households.

(2) *Countable petroleum violation escrow funds* means petroleum violation escrow (oil overcharge) funds that were distributed to a State or territory after October 1, 1990, were added to and used as a part of the State or territory's LIHEAP program, and were not previously required to be allocated to low-income households.

(3) *Home energy* means a source of heating or cooling in residential dwellings.

(4) *Low-income households* means federally eligible (federally qualified) households meeting the standards for LIHEAP income eligibility and/or LIHEAP categorical eligibility as set by section 2605(b)(2) of Public Law 97–35 (42 U.S.C. 8624(b)(2)).

(5) *Weatherization* means low-cost residential weatherization and other energy-related home repair for low-income households. Weatherization must be directly related to home energy.

(c) *LIHEAP funds used to identify, develop, and demonstrate leveraging programs.* (1) Each fiscal year, States (excluding Indian tribes, tribal organizations, and territories) may spend up to the greater of $35,000 or 0.08 percent of their Federal LIHEAP allotments allocated under title XXVI of Public Law 97-35 (42 U.S.C. 8621 *et seq.*) to identify, develop, and demonstrate leveraging programs under section 2607A(c)(2) of Public Law 97-35 (42 U.S.C. 8626a(c)(2)). Each fiscal year, Indian tribes, tribal organizations, and territories may spend up to two (2.0) percent of their Federal LIHEAP allotments allocated under title XXVI of Public Law 97-35 (42 U.S.C. 8621 *et seq.*) to identify, develop, and demonstrate leveraging programs under section 2607A(c)(2) of Public Law 97-35 (42 U.S.C. 8626a(c)(2)). For the purpose of this paragraph, Federal LIHEAP allotments include funds from regular and supplemental appropriations, with the exception of leveraging incentive funds provided under section 2602(d) of Public Law 97-35 (42 U.S.C. 8621(d)).

(2) LIHEAP funds used under section 2607A(c)(2) of Public Law 97-35 (42 U.S.C. 8626a(c)(2)) to identify, develop, and demonstrate leveraging programs are not subject to the limitation in section 2605(b)(9) of Public Law 97-35 (42 U.S.C. 8624(b)(9)) on maximum percent of Federal funds that may be used for costs of planning and administration.

(d) *Requirements for leveraged resources and benefits.* (1) In order to be counted under the leveraging incentive program, leveraged resources and benefits must meet all of the following four criteria:

(i) They are from non-Federal sources.

(ii) They are provided to the grantee's low-income home energy assistance program, or to federally qualified low-income households as described in section 2605(b)(2) of Public Law 97-35 (42 U.S.C. 8624(b)(2)).

(iii) They are measurable and quantifiable in dollars.

(iv) They represent a net addition to the total home energy resources available to low-income households in excess of the amount of such resources that could be acquired by these households through the purchase of home energy, or the purchase of items that help these households meet the cost of home energy, at commonly available household rates or costs, or that could be obtained with regular LIHEAP allotments provided under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)).

(2) Also, in order to be counted under the leveraging incentive program, leveraged resources and benefits must meet at least one of the following three criteria:

(i) They result from the acquisition or development by the grantee's LIHEAP program of quantifiable benefits for low-income households that are obtained from energy vendors through negotiation, regulation, or competitive bid. The grantee's LIHEAP program has substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program is considerable, important, material, and of real value or effect.

(ii) They are appropriated or mandated by the grantee for distribution through the grantee's LIHEAP program. They are provided to low-income households eligible under the grantee's standards, as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program.

(iii) They are appropriated or mandated by the grantee for distribution under the grantee's LIHEAP plan (referred to in section 2605(c)(l)(A) of Public Law 97-35) (42 U.S.C. 8624(c)(l)(A)) to low-income households, and are determined by the Secretary to be integrated with the grantee's LIHEAP program. They are identified and described in the plan and distributed as indicated in the plan; however, they are not provided to low-income households as a part of (through or within) the grantee's LIHEAP program. They are coordinated with the grantee's LIHEAP program and are provided in cooperation and in conjunction with the LIHEAP program.

(e) *Countable leveraged resources and benefits.* Resources and benefits that are countable under the leveraging incentive program include but are not limited to the following, provided that they also meet all other applicable requirements:

(1) Leveraged cash resources: State, tribal, territorial, and other public and private non-Federal funds, including countable petroleum violation escrow funds as defined in paragraph (b)(2) above, that are used in the base period for:

(i) Cash benefits to or on behalf of recipient households, for heating, cooling, energy crisis, and weatherization assistance, including payments toward recipient households' home energy costs;

(ii) Purchase and delivery of fuels used by recipient households for home energy (such as fuel oil, liquefied petroleum gas, and wood);

(iii) Purchase, delivery, and installation of weatherization materials;

(iv) Purchase and delivery of blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners) that help low-income households meet the costs of home energy;

(v) Purchase and delivery of other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources; and

(vi) Purchase and rental of supplies and equipment used to deliver fuels and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

(2) Home energy discounts and credits that are provided in the base period to low-income households and apply to fuels used for home energy by these households, in the amount of the discount, reduction, waiver, or forgiveness, or that apply to certain tangible non-fuel items that are provided in the base period to low-income households and help these households meet the costs of home energy, in the amount of the discount or reduction:

(i) Discounts or reductions in utility and bulk fuel prices, rates, or bills;

(ii) Partial or full waivers of utility and other home energy connection and reconnection fees, application fees, and late payment charges;

(iii) Partial or full waivers of home energy security deposits where security deposits are a general requirement for the vendor's customers and the deposits are kept for six months or longer;

(iv) Partial or full forgiveness of home energy bill arrearages; and

(v) Discounts or reductions in the cost of the following tangible items:

(A) Weatherization materials that are installed in recipients' homes;

(B) Blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners), that are provided to low-income households; and

(C) Other tangible items that are specifically approved by the Department.

(3) Certain third-party in-kind contributions that are provided in the base period to low-income households:

(i) Donated fuels used by recipient households for home energy (such as fuel oil, liquefied petroleum gas, and wood);

(ii) Donated weatherization materials that are installed in recipients' homes;

(iii) Donated blankets, space heating devices and equipment (such as furnaces), and space cooling devices and equipment (such as fans and air conditioners), that help low-income households meet the costs of home energy;

(iv) Other donated tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department as countable leveraged resources;

(v) Donated and loaned supplies and equipment used to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials;

(vi) Unpaid volunteers' services specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials; and

(vii) Paid staff whose services are donated by their employer specifically to deliver fuel and other tangible items that help low-income households meet the costs of home energy and are specifically approved by the Department, and to deliver and install weatherization materials.

(f) *Resources and benefits that cannot be counted.* The following resources and benefits are not countable under the leveraging incentive program:

(1) Leveraged resources counted under the leveraging incentive program(s) for the Low-Income Weatherization Assistance Program administered by the Department of Energy, or for any other Federal leveraging incentive program;

(2) Deferred home energy obligations;

(3) Projected future savings from weatherization;

(4) Tax deductions and tax credits for donations, rate reductions, etc.;

(5) Borrowed funds, interest paid on borrowed funds, and reductions in interest paid on borrowed funds;

(6) Funds and other resources that have been or will be used as matching or cost sharing for any Federal program;

(7) Costs of planning and administration, space costs, and intake costs;

(8) Budget counseling, energy conservation education, and all other outreach activities;

(9) Paid services where payment is not made from countable leveraged resources, unless these services are donated as a countable in-kind contribution by the employer;

(10) All in-kind contributions except those described in paragraph (e)(3) above; and

(11) All other resources that do not meet the requirements of section 2607A of Public Law 97-35 (42 U.S.C. 8626a) and this section.

(g) *Valuation and documentation of leveraged resources and offsetting costs.* (1) Leveraged cash resources will be valued at the fair market value of the benefits they provided to low-income households during the base period, as follows. Payments to or on behalf of low-income households for heating, cooling, energy crisis, and weatherization assistance will be valued at their actual amount or value at the time they were provided. Purchased fuel, weatherization materials, and other countable tangible items will be valued at their fair market value (the commonly available household rate or cost in the local market area) at the time they were purchased. Rented supplies and equipment will be valued at their fair rental rate (in the local area) at the time of rental. Delivery of fuel and other tangible items and delivery and installation of weatherization materials will be valued at the actual amount paid for these services.

(2) Home energy discounts and credits will be valued at their actual amount or value.

(3) Donated fuel, donated weatherization materials, and other countable donated tangible items will be valued at their fair market value (the commonly available household cost in the local market area) at the time of donation. Loaned supplies and equipment will be valued at their fair rental rate (in the local area) at the time of loan.

(4) Donated unpaid services, and donated third-party paid services that are not in the employee's normal line of work, will be valued at rates consistent with those ordinarily paid for similar work, by persons of similar skill in this work, in the grantee's or subrecipient's organization in the local area. If the grantee or subrecipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. Fringe benefits and overhead costs will not be counted. Donated third-party paid services of employees in their normal line of work will be valued at the employer's regular rate of pay, excluding the employee's fringe benefits and overhead costs.

(5) Offsetting costs and charges will be valued at their actual amount or value.

(i) Funds from grantees' regular LIHEAP allotments that are used to identify, develop, and demonstrate leveraging programs will be deducted as offsetting costs in the base period in which these funds are obligated, whether or not there are any resulting leveraged benefits. Costs incurred from grantees' own funds to identify, develop, and demonstrate leveraging programs will be deducted in the first base period that resulting leveraged benefits are provided to low-income households. If there is no resulting leveraged benefit from the expenditure of the grantee's own funds, the grantee's expenditure will not be counted or deducted.

(ii) Any costs assessed or charged to low-income households on a continuing or on-going basis, year after year, specifically for their participation in a counted leveraging program or for receipt of counted leveraged resources will be deducted in the base period these costs are charged. Any one-time costs or charges to low-income households will be deducted in the first base period the leveraging program or resource is counted. Such costs or charges, will be subtracted from the gross value of a counted resource or benefit for low-income households whose benefits are counted, but not for any households whose benefits are not counted.

(6) Only the amount of the net addition to recipient low-income households' home energy resources may be counted in the valuation of a leveraged resource.

(7) Leveraged resources and benefits, and offsetting costs and charges, will be valued according to the best data available to the grantee.

(8) Grantees must maintain, or have readily available, records sufficient to document leveraged resources and benefits, and offsetting costs and charges, and their valuation. These records must be retained for three years after the end of the base period whose leveraged resources and benefits they document.

(h) *Leveraging report.* (1) In order to qualify for leveraging incentive funds, each grantee desiring such funds must submit to the Secretary a report on the leveraged resources provided to low-income households during the preceding fiscal year or base period. These reports must contain the following information in a format established by the Secretary.

(i) For each separate leveraged resource, the report must:

(A) Briefly describe the specific leveraged resource and the specific benefit(s) provided to low-income households by this resource, and state the source of the resource;

(B) State whether the resource was acquired in cash, as a discount/credit, or in kind;

(C) Indicate the geographical area in which the benefit(s) were provided to recipients;

(D) State the month(s) and year(s) when the benefit(s) were provided to recipients;

(E) State the total dollar value of the resource or benefit(s) as determined in accordance with paragraph (g) above, indicate the source(s) of the data used, and describe how the grantee quantified the value and calculated the total amount;

(F) State the number of low-income households to whom the benefit(s) were provided, and state the eligibility standard(s) for the low-income households to whom the benefit(s) were provided;

(G) Indicate the agency or agencies that administered the resource or benefit(s); and

(H) Explain how the resource and benefit(s) meet at least one of the criteria for leveraged resources in paragraph (d)(2) above.

(ii) State the total dollar value of the leveraged resources and benefits provided to low-income households during the base period (the sum of the amounts listed pursuant to paragraph (h)(1)(i)(D) above).

(iii) State in dollars any costs incurred by the grantee to leverage resources, and any cost and charges imposed on low-income households to participate in a counted leveraging program or to receive counted leveraged benefits, as determined in accordance with paragraph (g)(5) above. Include the amount of the grantee's LIHEAP allotment under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)) that the grantee used during the base period to identify, develop, and demonstrate leveraging programs.

(iv) State the net amount of leveraged resources and benefits for the base period. (Subtract the amount in paragraph (iii) above from the amount in paragraph (ii) above.)

(2) Leveraging reports must be postmarked or hand-delivered not later than July 31 of each year, with the following exceptions: While LIHEAP funding is provided to grantees for use on the basis of the Federal fiscal year, reports must be postmarked or hand-delivered not later than October 31 of the fiscal year for which leveraging incentive funds are requested.

(3) The Department may require submission of additional documentation and/or clarification as it determines necessary to verify information in a grantee's leveraging report, to determine whether a leveraged resource is countable, and/or to determine the net valuation of a resource. In such cases, the Department will set a date by which it must receive information sufficient to document countability and/or valuation.

(i) *Determination of grantee shares of leveraging incentive funds.* Allocation of leveraging incentive funds to grantees will be computed according to a formula using the following factors and weights:

(1) Fifty (50) percent based on the net amount of countable non-Federal leveraged resources provided to low-income households during the base period by a grantee relative to its net allocation of funds under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)), as a proportion of the non-Federal leveraged resources provided by all grantees relative to their net allocation of funds under that section; and

(2) Fifty (50) percent based on the net amount of countable non-Federal leveraged resources provided to low-income households during the base period by a grantee as a proportion of the total non-Federal leveraged resources provided by all grantees;

except that no grantee may receive an award larger than its current regular allotment under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)). The calculations will be based on data contained in the leveraging reports submitted by grantees under paragraph (h) above as approved by the Department, and allocation data developed by the Department.

(j) *Uses of leveraging incentive funds.* Funds awarded to grantees under the leveraging incentive program must be used to increase or maintain heating, cooling, energy crisis, and/or weatherization benefits as a part of the grantee's LIHEAP program. These funds can be used for weatherization without regard to the weatherization maximum in section 2605(k) of Public Law 97-35 (42 U.S.C. 8624(k)). However, they cannot be counted in the base for calculation of the weatherization maximum for regular LIHEAP funds authorized under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)). Leveraging incentive funds cannot be used for costs of planning and administration, or for transfer to other HHS block grants pursuant to section 2604(f) of Public Law 97-35 (42 U.S.C. 8623(f)). They can be counted in the base for calculation of maximum grantee planning and administrative costs under section 2605(b)(9) of Public Law 97-35 (42 U.S.C. 8624(b)(9)). They cannot be counted in the base for calculation of maximum grantee transfers or carryover of regular LIHEAP funds authorized under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)).

(k) *Period of obligation for leveraging incentive funds.* Leveraging incentive funds are available for obligation from the date they are awarded to a grantee until the end of the fiscal year following the fiscal year in which they were awarded, without regard to limitations on carryover of funds in section 2607(b)(2)(B) of Public Law 97-35 (42 U.S.C. 8626(b)(2)(B)). Any leveraging incentive funds not obligated for allowable purposes by the end of this period must be returned to the Department.

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