

interim rule amended 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 received no comments on this consolidation. The final rule makes no change to section 96.84.

#### *Section 96.86 Exemption From Requirement for Additional Outreach and Intake Services*

Public Law 101-501 added a new 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 entities or organizations did 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*

The January 1992 interim final rule established a new section 96.86 that exempted Indian tribes and tribal organizations from this requirement. This new section also exempted territories with annual LIHEAP allotments of \$200,000 or less from the requirement.

In the preamble to the interim rule, we explained the reasons for this exemption. We concluded that the provision concerning alternate outreach and intake services is not appropriate to American Indian tribal grantees because of the nature of 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, by 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. We also noted that Indian tribes are close to their service populations. “Tribal” and “local” levels of administration generally are the same. Consequently, requiring tribes to provide for alternative outreach and intake services by additional governmental entities or community-based organizations would be inappropriate as well as inconsistent with the Federal government’s policy of Indian self-determination.

We also concluded that the new provision concerning alternate outreach and intake services is not appropriate to territories with regular LIHEAP allotments of \$200,000 or less annually. Experience has shown that each grantee incurs certain basic administrative costs in developing and implementing a LIHEAP program. Most territories (and tribes) receive relatively small LIHEAP allotments. We 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 and would significantly reduce the heating, cooling, crisis, and/or weatherization benefits that the territory could provide. We doubted 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. We concluded that a requirement for alternative local

agencies would be inappropriate under these circumstances.

This means that at current LIHEAP funding levels, all territories except the Commonwealth of Puerto Rico are exempt from this provision. The allotments of the territories in FY 1994, under the regular LIHEAP appropriation of \$1.437 billion, range from \$14,937 to \$68,807 for all territories except Puerto Rico, whose allotment is \$1,708,030.

We received one comment, from a tribal organization, supporting the exemption of tribal and small territorial grantees from this requirement. We received no comments opposing the exemption.

Consistent with our previously stated rationale and with this comment, we are continuing to exempt Indian tribes and tribal organizations, and territories with annual regular LIHEAP allotments of \$200,000 or less, from the requirement of section 2605(b)(15) of the LIHEAP statute, as amended.

Although these tribal and territorial grantees are exempt from this requirement for additional outreach and intake services, they are still subject to the requirements in section 2605(b)(3) of the LIHEAP statute—assurance 3—concerning outreach. Under this assurance, all grantees must “conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of” LIHEAP and similar energy-related assistance.

#### *Other Comments and HHS Responses*

The interim final rule provided guidance to States on interpretation and implementation of the requirement for additional outreach and intake services. The interim rule’s preamble noted that grantees had requested such guidance and that Senate Report 101-421 said that HHS is expected to provide guidance on compliance with this requirement.

However, we did not provide detailed requirements on interpretation and implementation in the regulation itself. The preamble stated:

“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.

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“We will review the grantees’ compliance with the appropriate legislative and regulatory requirements in carrying out our