

clients may need to bargain with their vendors over payment agreements, arrearage payments, etc. "They may even have to resolve disputes in a regulatory setting. \* \* \* In these circumstances, the confusion between access to the program and contact with a creditor that could be created by vendor outreach and intake may discourage the very expansion of access that the law intends to encourage." Two commenters asserted that "community-based organizations" must be nonprofit local agencies/organizations.

We continue to encourage cooperation between grantee LIHEAP programs and home energy vendors, and use of vendors to provide LIHEAP outreach as appropriate. But upon further reflection, we agree with these commenters that outreach and/or intake provided by home energy vendors, including utility companies, does not meet assurance 15's requirement for additional outreach and intake services. We agree that the issues with respect to vendors' status as creditors are significant. In addition, "community-based organization"—historically a "term of art" used in Federal anti-poverty programs—generally refers to nonprofit entities; utilities and other home energy vendors generally are for profit. (For example, regulations for the former Community Services Administration at 45 CFR 1076.50–1(c) defined "community-based organization" as "a cooperative or private nonprofit organization at least 50 per centum of whose governing body is composed of local area residents. \* \* \*")

#### *Comment and Response*

A commenter believed that "the statute required States to ensure that all interested organizations, including vendors, engage in outreach. \* \* \*" The statute requires that, "in addition to" outreach and intake offered by State public welfare departments at the local level, there must be outreach and intake for heating, cooling, and crisis assistance "that is administered by additional State and local governmental entities or community-based organizations. \* \* \*" Comparable levels of outreach and intake services should be provided for welfare and non-welfare households and, if feasible, States should use a number of different service providers. However, we do not believe that the statute requires States to ensure that "all interested organizations \* \* \* engage in outreach."

#### *Comments and Response*

A commenter believed that intake functions were "appropriately described in the guidance." Another commenter

thought that intake might be "too narrowly defined, given the legislative history." The statute does not define or otherwise indicate what "intake" includes; both the conference report and the Senate report refer to "intake or application processing." The interim rule's guidance noted functions that are "generally" included as intake (receipt of applications for assistance and the opportunity for applicants to provide any missing information for their applications). It also noted that States have "the discretion to choose whether to include" certain other functions (income determination and verification, and preliminary eligibility or benefit determination). We continue to believe that it is appropriate for grantees to have this degree of flexibility in defining the term—that they should not be required to include all application processing tasks as part of "intake."

#### *Comments and Response*

A State noted that mail-in applications can be acceptable for intake and recommended a similar accommodation for outreach. Information sent by mail about LIHEAP can be an effective part of a grantee's outreach effort. However, outreach by mail will not by itself meet the requirement for alternate outreach services. Many low-income households would not be reached, or adequately served, by outreach-by-mail. As the Senate report explains, outreach efforts should be varied and targeted to the different populations eligible for LIHEAP assistance—such as welfare households, non-welfare households, and the elderly—"to assure that these households have an effective way to learn about the program and how to apply for benefits."

The same State recommended that if "the local welfare office has an established local advisory board represented by those agencies that are listed [in assurance 15] as potential alternative sites, that the outreach requirement is met." However, assurance 15 requires more than participation in an advisory or other board by alternate agencies. It specifically requires that alternative outreach and intake functions be "administered by additional State and local governmental entities or community-based organizations," and is intended to provide information directly to low-income individuals, not just to other agencies.

The State also proposed that a phone-in intake process for households experiencing an energy crisis be considered to meet the statutory requirements for crisis assistance. In

some circumstances, receiving a telephone call by a household experiencing an energy crisis would be an appropriate and effective first step as intake, although information on the crisis and the household's eligibility would need to be verified. However, some low-income households do not have a telephone or reasonable access to a telephone that they can realistically use, and section 2604(c) of the LIHEAP statute specifically requires each entity that administers LIHEAP crisis assistance to accept crisis assistance applications "at sites that are geographically accessible to all households in the area."

A commenter believed that the interim rule's preamble guidance might "inadvertently encourage" welfare departments "to conduct exclusively mail-application intake." The guidance is not intended—and should not be interpreted—as encouragement for exclusively mail-application intake.

#### *Comments and Response*

Two States objected to the requirements of assurance 15. One objected to the increased expenditures needed to provide additional outreach and intake—with reduced funds therefore available for benefits. The State said that the "effort and funds spent" to provide additional services "would be significantly out of proportion to the direct benefits that could be provided to eligible households." Another State defended its effectiveness in reaching nonwelfare households and objected "to the use of limited funding to replicate a function already being administered timely and effectively." The State believed that it would be extremely difficult to meet the requirement in section 2604(c) of the LIHEAP statute that assistance to resolve an energy crisis be provided within 48 hours of an eligible household's application for crisis assistance. This grantee requested that assurance 15 be deleted, or waived for grantees "already serving a broad based population."

Only Congress can "delete" a statutory provision, and HHS does not have authority to waive statutory requirements for States. The conference report states 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."

#### *Guidance Regarding Additional Services*

The preamble to the January 1992 interim final rule included guidance