

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). (The block grant regulations provide 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.

Consistent with Conference Report 101-816, HHS used FY 1992 LIHEAP training and technical assistance funds to help thirteen States that previously had provided outreach and intake solely through their public welfare departments, to make the transition required by assurance 15.

Although this preamble modifies and clarifies some of the guidance regarding assurance 15, the final rule makes no change to section 96.86 of the block grant regulations.

#### *Section 96.87 Leveraging Incentive Program*

Public Law 101-501 added a new section 2607A to the LIHEAP statute, establishing a leveraging incentive

program, and amended section 2602 of the LIHEAP statute, authorizing funds for this program. Under the leveraging incentive program, beginning in FY 1992, HHS may allocate supplementary LIHEAP funds—leveraging incentive funds—to grantees that have acquired non-Federal leveraged resources and use these non-Federal resources to expand the effect of Federal LIHEAP dollars.

The interim final rule published January 16, 1992, added a new section 96.87 to the block grant regulations to implement the leveraging incentive program. Consistent with the requirements of section 2607A, the interim final rule included 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.

Discussing the leveraging program, Senate Report 101-421 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."

All LIHEAP grantees—States (including the District of Columbia), Indian tribes, tribal organizations, and territories—may participate in the leveraging incentive program. Grantees are not required to participate in the leveraging program. We encourage grantees to leverage additional resources to supplement their Federal LIHEAP funds, whether or not they choose to request leveraging incentive funds.

Leveraged resources are counted in the "base period" in which their benefits were provided to low-income households. For example, grantee funds added to the LIHEAP program are countable only when the benefits they pay for—such as heating assistance payments or weatherization services—are provided to or on behalf of low-income households.

Under the statute's terms, grantees that want to apply for leveraging incentive funds must submit a report to HHS that quantifies the grantee's leveraged resources for the preceding fiscal year (the base period), less any

costs incurred by the grantee to leverage the resources and any costs imposed on federally eligible households.

Leveraging incentive funds to reward these leveraging activities are awarded in the fiscal year following the fiscal year in which the leveraged resources/benefits were provided to low-income households. In other words, they are awarded later in the fiscal year in which the leveraging reports are submitted, after HHS has reviewed the reports, adjusted claimed resources and their valuation as appropriate, and calculated leveraging incentive grant amounts. The leveraging incentive program's first "base period" was FY 1991, and its first "award period" was FY 1992; leveraging activities in FY 1991 were the basis for the leveraging incentive grant awards HHS made 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."

As the interim rule's preamble explained, consistent with the block grant legislation and legislative history, HHS' policy generally is to provide maximum flexibility to grantees to operate their LIHEAP programs. Grantees are the primary interpreters of the LIHEAP statute and the primary administrators of the LIHEAP program. However, grantees apply "competitively" to HHS for shares of a limited amount of leveraging incentive funds. Shares are determined based on reports submitted by grantees which describe, 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 rules. There must be standard criteria and methods for determining the resources that are countable under the leveraging incentive program and for quantifying the value of these resources. In the interim rule and in this final rule, we have tried to make these criteria and methods as clear and fair as possible, within the limits of the statute and legislative history.

#### *Public Comments, HHS Responses, and Changes: Section-by-Section Discussion*

Twenty-four of the 25 letters we received on the interim final rule included comments on the leveraging incentive program. Several of the commenters addressed the interim rule and its preamble in general. For example, one believed that the complex statutory instructions for the leveraging program require the implementing regulation to be "instructive yet flexible" and said that the interim rule "generally meets these sometimes