

conflicting purposes in an understandable and common-sense fashion." Another appreciated HHS' philosophy of keeping the rules for the leveraging program "within the spirit of a block grant." A third supported HHS' decision to exempt grantees' use of leveraging incentive funds from some requirements that apply to regular LIHEAP funds.

Most comments concerned specific leveraging provisions. These comments, and our responses, are discussed below under the appropriate headings.

The section and subsection headings are essentially the same in the interim final rule and the final rule. While we made some substantive changes, we retained the structure and most of the content of the interim rule. We made some nonsubstantive changes for clarity and consistency, as well. The changes are based on the public comments on the interim rule and on our experience in operating the leveraging incentive program under the interim rule.

#### *Scope and Eligible Grantees*

Subsection (a) of § 96.87 of the interim final rule explained that § 96.87 concerns the leveraging incentive program authorized by section 2607A of the LIHEAP statute. We received no comments on this statement of the scope of the section, and we retained it in the final rule in a new paragraph (1) under § 96.87(a).

After the comment period on the interim rule, we received an informal comment from a tribal grantee about entities eligible to receive leveraging incentive funds. A tribal organization and its member tribes had leveraged resources while the organization received direct regular LIHEAP funding on the tribes' behalf; the tribes wanted to apply for their own direct regular funding—and the leveraging incentive funds to reward the leveraged resources—in the next fiscal year. However, the preamble to the interim rule stated that, in order to 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" (57 FR 1965). We agree with the tribal grantee that credit for leveraging should be "portable" when a tribe enters or leaves a tribal organization when certain conditions are met—for example, a tribe or tribal organization that applies for leveraging incentive funds also must apply for and receive direct regular LIHEAP funding in the award period in order to receive incentive funds. We do not want to

require tribes to continue existing administrative relationships in order to qualify for incentive funds. We modified the statement of entities eligible for leveraging incentive funds accordingly and added the revised statement in a new paragraph (2) under § 96.87(a) in the final rule itself, for clarity and because of its importance.

Under the revised statement, if a tribe leveraged resources while receiving regular LIHEAP services under a directly-funded tribal organization in the base period, and then receives direct regular LIHEAP funding on its own in the award period, the tribe is eligible to receive leveraging incentive funds to reward these resources in the award period. If a tribe leveraged resources while receiving direct LIHEAP funding in the base period and receives LIHEAP services under a tribal organization in the award period, the tribal organization is eligible to receive leveraging incentive funds on the tribe's behalf to reward these resources in the award period. If a directly-funded tribal organization leveraged resources in the base period and one or more of the tribes it had served apply for direct funding in the award period, the tribes and/or the tribal organization should inform HHS in writing about the desired fair and appropriate distribution of leveraging incentive funds in the award period. If the tribes and/or the tribal organization are unable to agree, HHS will determine the distribution of the incentive funds among eligible applicants based on the comparative role of each entity in obtaining and/or administering the resources, and/or their relative numbers of LIHEAP-eligible households.

#### *Definitions*

Section 96.87(b) of the interim final rule defined five terms used in the leveraging incentive program. We received no comments on four of the definitions—of "base period," "home energy," "low-income households," and "weatherization." These definitions remain substantively unchanged in the final rule.

We received several comments relating to the fifth definition—"countable petroleum violation escrow funds." These comments, and the changes we made in response, are discussed later in this preamble, under "Countable Leveraged Resources and Benefits" and "Leveraging Issues Relating to Tribal Grantees."

We added two definitions in the final rule—of "award period" and "countable loan fund." We defined "award period" because—like "base period," which already was defined in the interim

rule—"award period" is an important and basic term whose meaning must be clear. Countable loan funds and issues related to them are discussed later in this preamble, under "Countable Leveraged Resources and Benefits" and "Resources and Benefits That Cannot Be Counted."

#### *LIHEAP Funds Used To Identify, Develop, and Demonstrate Leveraging Programs*

Section 96.87(c) of the interim final rule and of this final rule concern LIHEAP funds used to identify, develop, and demonstrate leveraging programs.

Section 2607A(c)(2) of the LIHEAP statute provided 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. Consistent with § 96.87(g)(5) of the interim rule, in grantees' leveraging reports to HHS, all funds from grantees' regular LIHEAP allotments that are used under the authority of section 2607A(c)(2) to identify, develop, and demonstrate leveraging programs are to be deducted as offsetting costs in the base period in which these funds were obligated, whether or not there are any resulting leveraged benefits.

As we noted in the interim rule's preamble, 0.0008 percent of the largest FY 1991 State LIHEAP allotment was approximately \$1,700; clearly \$35,000 was the larger in all cases, and \$35,000 would be the larger under all foreseeable LIHEAP appropriation levels. Therefore, we determined that if the language were carried out as written, the result would appear to be illogical and inconsistent with reason. We concluded that the figure 0.0008 percent resulted 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. (When calculating 0.08 percent of a State's allotment, one multiplies the allotment by the factor 0.0008.) In the interim final rule, we clarified that the figure is 0.08 percent. This interpretation provided a meaningful result, since 0.08 percent of the FY 1991 State LIHEAP allotments ranged from approximately \$1,200 for the State with the smallest allotment to \$170,000 for the State with the largest allotment; \$35,000 was the larger in some cases, and 0.08 percent was the larger in other cases. We received one comment agreeing with this interpretation and none disagreeing.

Since then, the Human Services Amendments of 1994 (Public Law 103-252) confirmed our interpretation and