

this commenter said that criterion (iii) "is somewhat of a 'catchall' for independently initiated activities, so long as they are then 'integrated with' the state program. The advantage of this approach is that the program does not have to assure that it is aware of every instance when a CAP negotiates an arrearage forgiveness or a waived fee for a LIHEAP client in time to amend its state plan to include such activity." This commenter believed that resources under this criterion "may clearly be available independently of state activity."

However, the statute requires that resources countable under both criterion (ii) and criterion (iii) be "appropriated or mandated by the State for distribution." We therefore do not believe it is appropriate to conclude that criterion (ii) requires that a State entity provide the resource for distribution by the LIHEAP program, but that under criterion (iii), the resource may be available independent of State activity. Also, criterion (iii) requires that the resource/benefits be integrated with the grantee's LIHEAP program, and we do not believe that a resource can be both integrated with the LIHEAP program and "available independently of State activity."

We agree that "independently initiated" resources/benefits that are appropriated or mandated by the grantee for distribution in a way that is integrated with the LIHEAP program can be countable under criterion (iii) as long as all other relevant statutory and regulatory requirements are met. However, we believe that, in order to be distributed under the grantee's LIHEAP plan—as required by the statute for criterion (iii)—the resource/benefits must be identified and described in the plan. Also, because the statute requires that resources countable under criterion (iii) be "appropriated or mandated by the State for distribution" under the LIHEAP plan and "integrated" with the LIHEAP program, we believe that the grantee needs to be aware of these resources. The grantee cannot legitimately claim that it appropriated or mandated a resource and the resource was integrated with the LIHEAP program—but the grantee did not know about or document the resource during the base period in which the benefits were provided to recipients. The identification and description of the resource/benefits in the plan provides formal documentation of the mandate by the grantee that the resource/benefits be distributed "under the plan" and "integrated" with the LIHEAP program. We therefore continue to require that resources to be counted under criterion

(iii) must be included in the grantee's plan.

The preamble to the interim rule required (at 57 FR 1967) that the resource be included in the plan during the base period for which the resource is claimed—the period in which the resource/benefits are provided to low-income households. For clarity, we added this requirement to the final rule itself. As we stated in the interim rule's preamble, grantees that did not identify and describe all of their leveraging activities for a base period in their initial plans covering this period may amend their plans to include such resources at any time (before or) during the base period, but they may not amend their plans to include such resources retroactively, after the base period has ended. For clarity, the final rule requires that any LIHEAP plan amendments needed to cover leveraging activities counted under criteria (ii) and (iii) of section 96.87(d)(2) must be submitted before the end of the base period. Resources/benefits provided under the criterion (ii) must be distributed consistent with the grantee's LIHEAP plan and program policies that were in effect during the base period. The plan must identify and describe resources/benefits provided under criterion (iii) before the base period ends.

In addition, the final rule reiterates the requirement in the interim rule that the plan identify and describe the resources/benefits to be counted under criterion (iii), and now also requires that the plan identify and describe their sources, and the way in which they are integrated/coordinated with the grantee's LIHEAP program. We added the latter requirements because several grantees' plan "descriptions" of leveraged resources were so vague (e.g., "donations") that they were virtually meaningless. Each individual resource does not necessarily need to be separately identified; similar resources may be grouped together. For example, similar donations from a number of churches might be covered as follows in the plan: "In-kind contributions by approximately five churches, of blankets, space heaters, and fans that will be distributed by these churches to low-income households referred by the LIHEAP program because the households' LIHEAP benefits do not meet their need for these items." (Such related donations also could be combined as one resource in the grantee's LIHEAP leveraging report.)

There have been several questions and comments about the statutory requirement that resources countable under criterion (iii) must be "integrated

with the State program." A commenter said that "integration" should be defined "to clearly require a higher form of relationship than merely serving the same income-class of households. An integrated program should have coordinated administrative procedures, cooperative targeting of benefits and benefit levels, and an integrated set of aims and purposes that rely on LIHEAP as the keystone to fulfilling those common purposes." Another said that "[t]here must be a direct connection [with the LIHEAP program] through a set of mutual, explicit obligations and formalized arrangements."

The statutory requirement that resources counted under criterion (iii) be "integrated" with the grantee's LIHEAP program has been difficult for HHS and grantees to implement. In the interim rule, criterion (iii) required that resources/benefits be "integrated" and "coordinated" with the grantee's LIHEAP program, and "provided in cooperation and in conjunction" with the LIHEAP program. A number of grantees were confused about what constituted integration and coordination. In practice, these terms were not sufficiently clear or measurable, and they were subject to differing understandings and interpretations. We needed a more objective way to determine whether a resource was integrated with the LIHEAP program.

We therefore added eight "conditions" ("A" through "H") in the final rule, describing specific circumstances that demonstrate that a resource is integrated with the grantee's LIHEAP program—that the resource and LIHEAP function cooperatively and in coordination with each other to provide an interrelated larger unit or whole. If a leveraged resource meets at least one of these eight conditions, we will consider it to be integrated and coordinated with the grantee's LIHEAP program.

Based on the comments we received and on our experience in the first three cycles of the leveraging program, we clarified requirements for criteria (ii) and (iii) of § 96.87(d)(2) in the final rule. We amended criterion (ii) as follows:

The grantee appropriated or mandated the resource/benefits for distribution to low-income households through (that is, within and as a part of) its LIHEAP program. The resource/benefits are provided through the grantee's LIHEAP program to low-income households eligible under the grantee's LIHEAP standards, in accordance with the LIHEAP statute and regulations and consistent with the grantee's LIHEAP plan and program policies that were in effect during the base period, as if they