

(i) The sources of both the loaned and the repaid funds meet the requirements of this section, including the prohibitions of paragraphs (f)(1), (f)(2), and (f)(3);

(ii) Neither the loaned nor the repaid funds are Federal funds or payments from low-income households, and the loans are not made to low-income households; and

(iii) The benefits provided by the loaned funds meet the requirements of this section for countable leveraged resources and benefits.

In this definition, "payments from low-income households" do not include normal rent payments. Any interest paid on funds borrowed from a revolving loan fund would not be countable when paid to the fund, but could be countable when borrowed later and used for countable benefits.

An example of a countable loan fund is a resource in which a State used oil overcharge funds in its LIHEAP program to establish a revolving loan fund for landlords to install weatherization materials for low-income households. The funds are used by landlords to provide weatherization that helps the households reduce their home energy needs, with a requirement that the landlords repay the loans to the State. Repaid funds are then used to make loans to landlords for additional weatherization. This has the result of increasing the amount of weatherization carried out, with non-Federal funds and without putting any burden on low-income households. The resources are countable in the base period in which the weatherization takes place. When repaid funds are used again, the additional weatherization is countable in the base period in which it is provided. Such activities are countable if neither Federal funds nor payments from low-income households are used for the loans or to repay the loans, charges to the households (including rent) are neither increased nor imposed as a result, and all other statutory and regulatory requirements are met.

Also, as long as all requirements of § 96.87 for countable leveraged resources and benefits are met, if a grantee or other entity borrows funds (commercially or otherwise, consistent with all applicable laws and regulations), uses these funds to provide benefits that would otherwise be countable, and repays the loan with countable non-Federal funds in the base period in which the benefits were provided, the benefits are countable based on the countable non-Federal character of the repaid funds and the benefits' net addition to low-income households' home energy resources.

Comments and Response

We made several changes in the final rule involving countable petroleum violation escrow (PVE or oil overcharge) funds. Oil overcharge funds result from settlements of cases of overcharges which violated petroleum price controls in effect from 1973 to 1981, under the Emergency Petroleum Allocation Act of 1973. Since 1981, over \$4.5 billion in oil overcharge funds have been distributed by the Department of Energy (DOE) to the 50 States, the District of Columbia, and most U.S. territories; additional oil overcharge funds are expected to be distributed in the future. LIHEAP is one of the programs under which most of these funds can be used.

Senate Report 101-421 on the 1990 LIHEAP reauthorization law states that the Senate Committee on Labor and Human Resources

believes there are very limited circumstances under which Petroleum Violation Escrow Funds should be considered as leveraged resources. Therefore, if the Secretary chooses to count Petroleum Violation Escrow Funds as leveraged resources, he or she may only count funds that are distributed after October 1, 1990, and that were not previously required to be allocated to low-income households.

In the interim final rule, we defined "countable petroleum violation escrow funds" in section 96.87(b) as "petroleum violation escrow (oil overcharge) funds that were distributed to a State or territory after October 1, 1990, were added to and used as a part of the State or territory's LIHEAP program, and were not previously required to be allocated to low-income households." We said in the interim rule's preamble that oil overcharge funds "may be counted under the LIHEAP leveraging incentive program only by the 50 States, the District of Columbia, and the territories to which they were distributed directly * * *." Three States commented on the interim rule's treatment of oil overcharge funds.

Two of these States disagreed with the interim rule's requirement that only PVE funds distributed to States and territories after October 1, 1990, are countable. One of the two States believed that countability of PVE funds should depend on the date a State or territory added them to its LIHEAP program. The second State believed that all PVE funds added to and used as part of a State's LIHEAP program during a base period should be countable.

We do not agree with these comments. We believe that it is consistent with the Senate Report to provide that oil overcharge funds distributed to States and territories by

DOE on or before October 1, 1990, cannot be counted under the leveraging program. Also, we believe that it would be unfair to count remaining oil overcharge funds that were distributed to States and territories by DOE before the LIHEAP leveraging incentive program was established—before grantees knew that they might receive leveraging incentive funds if they used oil overcharge funds in certain ways. This would unfairly penalize grantees that used these funds in a timely way, soon after receiving them—as the terms of distribution encouraged them to do. It would unfairly reward grantees that did not use these funds in a timely way. We therefore retained and clarified the requirement that only PVE funds that were distributed to a State or territory by DOE after October 1, 1990 (and used consistent with all other relevant regulatory and statutory requirements) are countable.

In correspondence relating to its leveraging report on FY 1991 leveraging activities, a third State argued that oil overcharge funds it used for home energy, but not under LIHEAP, should be countable. Under the interim final rule, these funds were not countable because they were not "added to and used as a part of" the State's LIHEAP program. However, after further reflection, we agree that PVE funds that are used under other programs to provide home energy to low-income households should be countable as long as they meet the requirements under section 96.87. Therefore, this final rule changes the definition of countable petroleum violation escrow funds in section 96.87(b)(4) to state, in part, that they must be

* * * used to assist low-income households to meet the costs of home energy through (that is, within and as a part of) a State or territory's LIHEAP program, another Federal program, or a non-Federal program, in accordance with a submission for use of these petroleum violation escrow funds that was approved by DOE * * *.

Because the LIHEAP statute limits the percent of LIHEAP funds that can be used for weatherization, a grantee that wanted to use large amounts of PVE funds for weatherization would use them under DOE's low-income weatherization assistance program or under a non-Federal weatherization program that meets the requirements for use of PVE funds. With this change in the regulations, these PVE funds could be countable under the LIHEAP leveraging incentive program as long as they meet all applicable requirements for countable leveraged resources.

The final rule also specifies the requirements under § 96.87(d)—"Basic