

Federal tribal funds to purchase firewood from an individual's trust land and gives the wood to low-income households, the wood's fair market value is countable.)

Donated or paid services specifically to cut firewood, mine coal, etc., are not countable under the leveraging incentive program. However, in many cases, the value of these services would be included in the fair market value of donated or purchased firewood, coal, etc., that is obtained from non-Federal land.

Resources Obtained From National Forests and Bureau of Land Management Areas

There are some circumstances under which free firewood can be cut from National Forest land; the Department of Agriculture sometimes issues permits to cut dead or downed trees or "slash" without a charge or fee. Also, there might possibly be situations where there is no charge or fee to cut firewood on Bureau of Land Management (BLM) land. The following two paragraphs discuss the countability of home energy resources obtained for free from National Forest and/or BLM land.

Resources such as firewood that are obtained from National Forests and BLM areas in general are considered Federal resources. Therefore, in general, they are not countable as leveraged resources under the LIHEAP leveraging incentive program. Donated or paid services to obtain such resources (e.g., to cut such firewood) also would not be countable.

In some cases, an Indian tribe might have treaty rights to specified timber or firewood resources on Federal lands administered by the Forest Service or the BLM. Where they exist, such treaty provisions may confer a right to usufruct, that is, a nonpossessory right to use timber, usually for domestic purposes. HHS will recognize such rights where they have been adjudicated by a court of competent jurisdiction or are recognized by the Federal agency administering the land in question. (HHS cannot make such determinations itself.) Where the usufructuary right is so adjudicated or recognized, a resource such as firewood would be considered a tribal or Indian resource—that is, non-Federal. Therefore, a home energy resource like firewood that is obtained in such a case would be countable under the leveraging incentive program, as long as the resource met all applicable statutory and regulatory requirements for leveraged resources.

More often, firewood is cut from National Forest or BLM land for payment, rather than for free. A tribe

might pay for a permit to cut firewood for domestic use, and/or it might pay for the amount of wood actually cut. If, for example, the tribe uses tribal funds to pay for this permit and/or to pay for the wood actually cut, then the tribal funds are the leveraged resource—the resource is cash; and the firewood, which is obtained in return for payment of the cash, is the benefit that is provided to low-income households. In this case, because the resource is non-Federal cash, the resource is countable, as long as all applicable statutory and regulatory requirements for leveraged resources and benefits are met. The value of the resource/benefit would be the amount that was actually paid for the permit and/or for the wood itself. If the wood is paid for with LIHEAP or other Federal funds, it would not be countable under the leveraging incentive program.

Public Law 93-638 Contract and Grant Funds

Several tribal grantees informally asked us whether contract and grant funds provided to them under Public Law 93-638, the Indian Self-Determination and Education Assistance Act, by the Bureau of Indian Affairs/Department of the Interior and the Indian Health Service/HHS are countable under the leveraging incentive program. Also, in its formal comments on the interim rule, a tribal organization requested that these funds be countable.

Contract and grant funds provided to tribes under Public Law 93-638 are considered to be Federal funds. Because they retain their character as Federal funds, they cannot be counted as leveraged resources under the LIHEAP leveraging incentive program.

Under certain circumstances, Public Law 93-638 contract and grant funds can be used as matching shares for other programs. However, the LIHEAP leveraging incentive program is not a matching (cost sharing or cost participation) program for which grantees provide matching shares. (If the Federal Public Law 93-638 funds were used as matching shares for a program other than LIHEAP, they still would not be countable under the leveraging incentive program, because Federal funds, and funds used as matching for other Federal programs, are not countable under the leveraging program.)

Resources That Might Be Claimed by Both a Tribe and a State

In some cases, a leveraged resource might be claimed by both a tribe or tribal organization and the State in

which it is located. For example, countable oil overcharge funds used by a tribe as a subrecipient of a State's LIHEAP program could be claimed by both. (The tribe might count these funds under criterion (iii) of § 96.87(d)(2), and the State might count them under criterion (ii).) Also, donation of weatherization materials might be negotiated with a home energy vendor by a State LIHEAP program (criterion (i)), but then a tribe might install the weatherization materials for its service population through its LIHEAP program (criterion (ii)) or under its LIHEAP plan and integrated with its LIHEAP program (criterion (iii)).

We have concluded that households served by such resources can be counted only once. It would be unfair to other grantees applying for leveraging incentive fund to count some households twice, for both a tribe and a State. We encourage tribes and States themselves to determine which should claim such a resource—or to have one claim some of the tribal households served and the other claim the remainder. (Under the formula for allocating leveraging incentive funds, the tribe, with its smaller regular LIHEAP allotment, would receive a comparatively larger "return" for the resource than the State would. However, as explained later in this preamble, under the final rule, no grantee can receive a leveraging incentive funds award greater than the smaller of its net regular LIHEAP allotment during the base period, or twice the final net value of its countable leveraged resources for the base period.) If a tribe and State cannot resolve the issue, HHS will decide on a case-by-case basis how such a resource should be claimed, depending on the comparative role of each grantee in obtaining and/or administering the resource in question.

Valuation of Leveraged Resources

Section 96.87(g) of the interim rule and the final rule concerns valuation and documentation of leveraged resources and offsetting costs.

The benefits of countable leveraging activities must be measurable and quantifiable in dollars. Using the best data available to them, grantees applying for leveraging incentive funds must quantify the actual value in dollars of countable leveraged resources/benefits provided to low-income households during the base period. Anticipated future benefits—for example, savings expected in home energy bills as a result of weatherization—cannot be counted.

The statute requires that grantees deduct from the gross value of leveraged