

amount of leveraging for all grantees) and a regular allotment of \$3.9 million, and received a leveraging incentive award of \$9,142, which is 0.04 percent of the \$25 million.

However, we recognize the potential for just a few grantees receiving the bulk of the available leveraging incentive funds in the future. In FY 1992, the four grantees with the largest amount of leveraged resources received a total of \$11,924,159, or 47.7 percent of the \$25 million distributed. In FY 1993, the four grantees with the most leveraging received \$11,658,428, or 47 percent of the \$24.8 million distributed. In FY 1994, the four grantees with the most leveraging received \$12,415,467, or 49.7 percent of the \$25 million distributed.

Accordingly, we changed the formula to stipulate that no grantee can receive a leveraging award larger than 12 percent of the total amount of leveraging incentive funds available for distribution in any award period. At a funding level of \$25 million for the leveraging incentive program, that means that no grantee could receive an award of more than \$3 million. We believe this allows for adequate compensation to a grantee that does a large amount of leveraging, while still leaving significant incentive for other grantees. We do not expect a large number of grantees to earn this maximum grant amount. (In FY 1992, FY 1993, and FY 1994, each of two States received more than 12 percent of the available leveraging funds.)

Reexamining the Formula

Public Law 103-252, enacted in May 1994, and the conference report on Public Law 103-252, do not mention the formula for distributing leveraging incentive funds. However, the Senate and House committee reports on predecessor bills do. Senate Report 103-251 states that "it would be appropriate for the Secretary to reconsider the regulations for the fund in order to give greater weight to rewarding initiatives affecting energy regulations, markets, and terms of service to LIHEAP-eligible households." House of Representatives Report 103-483 uses essentially the same language, except that it refers to "rewarding new initiatives affecting energy regulations, markets, and terms of service." We believe the public should have opportunity to comment on reconsideration of the formula based on this report language. We therefore will reexamine the formula based on this language in our forthcoming proposed rule to implement Public Law 103-252.

Uses of Leveraging Incentive Funds

Section 96.87(j) of the interim rule and the final rule concerns allowable and unallowable uses of leveraging incentive funds awarded to grantees by HHS. Regular LIHEAP funds and LIHEAP leveraging incentive funds are separately authorized in the LIHEAP statute—the former at section 2602(b), and the latter at section 2602(d). Section 2607A of the LIHEAP statute directs that leveraging incentive funds must be used to increase or maintain benefits to households—that is, they must be used for LIHEAP heating, cooling, crisis, and/or weatherization assistance, and they cannot be used for some of the purposes for which regular LIHEAP funds can be used.

Comment and Response

We received one comment on this section of the interim rule: a State agreed with the exemption of leveraging incentive funds from the weatherization maximum applied to regular LIHEAP funds, providing flexibility to grantees. We retained this provision in the final rule.

Clarifications

In accordance with the requirements of section 2607A, leveraging incentive funds cannot be used for costs of planning and administration. However, if a grantee receives more than a minimal leveraging fund award, it likely will need to use additional monies to administer these funds. We therefore said in the interim rule that leveraging incentive funds can be counted in the base for calculating the grantee's maximum planning and administrative costs. This is consistent with the treatment of oil overcharge funds under section 155 of Public Law 97-377 (the Warner Amendment) and Exxon oil overcharge funds. However, leveraging incentive funds may be obligated by the grantee either in the award period—the fiscal year in which they were awarded to the grantee—or in the following fiscal year. We believe it would not be appropriate to permit grantees to count the same leveraging incentive funds in the base for calculating administrative costs—thereby reducing the amount of regular LIHEAP grant funds used for benefits—in both years. In response to questions from grantees about the year in which to count incentive funds in the administrative cost calculation base, the final rule clarifies that leveraging incentive funds cannot be counted in the base for calculating maximum administrative and planning costs in both the award period and the following fiscal year. The entire leveraging award

does not have to be counted in the base in the same year—some may be counted in the award year and the remainder in the next. (Presumably they would be counted in the base in the year in which carrying out the activities they support increases the grantee's administrative/planning costs.) While the grantee has the discretion and flexibility to choose how much to count in the base in each year, the total amount from the leveraging award that is included in the base in both years combined cannot exceed the amount of the leveraging award.

As we said in the interim rule's preamble, grantees are to include the uses of their leveraging incentive funds in their LIHEAP plans. Uses must be covered in the plan for the fiscal year in which these funds will be used—either in the plan as originally submitted to HHS or in amendment(s) to the plan. We added this requirement to the final rule at a new § 96.87(j)(2), because of its importance, and to clarify and avoid misunderstanding. If the plan covers the uses of the leveraging incentive funds, it does not have to specify that leveraging incentive funds are involved. If the original plan does not cover these uses, then these uses must be added. For example, if leveraging incentive funds are to be used along with regular LIHEAP funds for cooling assistance that is described in the plan, then the plan need not specify that some of this assistance will be provided with leveraging incentive funds. However, if the grantee does not have a regular LIHEAP cooling assistance component and leveraging incentive funds are to be used for cooling assistance, the plan must include the cooling assistance supported by the leveraging funds.

The interim rule's preamble said that grantees are to document uses of leveraging incentive funds in the same way they document uses of regular LIHEAP funds, and that leveraging incentive funds are subject to the same audit requirements as regular LIHEAP funds. Because of their importance, and to clarify and avoid misunderstanding, we added these requirements to the final rule at section § 96.87(j)(2).

Finally, consistent with Public Law 101-501, which ended grantees' authority to transfer LIHEAP funds effective in FY 1994, the final rule deletes reference to transfers in § 96.87(j).

Period of Obligation for Leveraging Incentive Funds

Section 96.87(k) of the interim rule and the final rule concerns the period of time during which grantees can use