

OFFICE OF COMMUNITY SERVICES

An Office of the Administration for Children & Families

LIHEAP IM 2000-12 Costs for Planning and Administration - Updated Information

Special Topics

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Audience: Low Income Home Energy Assistance Program (LIHEAP)

Category: Guidance, Policies, Procedures, Information Memorandums (IM)

THIS CONTAINS INFORMATION ISSUED BY THE U.S. ADMINISTRATION FOR CHILDREN AND FAMILIES IN LIHEAP INFORMATION MEMORANDUM TRANSMITTAL NO. LIHEAP-IM-2000-12, DATED 3/15/2000

TO: LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP) GRANTEES AND OTHER INTERESTED PARTIES

SUBJECT: LIHEAP Costs for Planning and Administration - Updated Information

RELATED REFERENCES: Low Income Home Energy Assistance Act, Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193); Temporary Assistance for Needy Families regulations at 45 CFR Parts 263 and 264, with accompanying preamble, 64 Federal Register 69, Part II, published April, 12, 1999 (pages 17808-17857 and 17893-17899); Preamble to the final rule amending the HHS block grant regulations, 52 Federal Register 37961- 37964, published October 13, 1987; FSA-IM-91-19, "Use of Other Federal Funds for Costs Related to LIHEAP Administration", issued on 4/11/91; and FSA- IM-91-8, "LIHEAP Administrative Costs", issued on 12/27/90.

PURPOSE: To respond to requests for information on Temporary Assistance for Needy Families regulations defining administrative costs and how it relates to LIHEAP, and to give grantees previously issued administrative cost discussions in one place for ready reference.

BACKGROUND: The LIHEAP statute limits the amount of LIHEAP funds that grantees may use for planning and administrative costs (referred to in this transmittal for simplicity as "administrative costs") to 10% of funds payable for a fiscal year. Any costs in excess of this limit must be paid from non-federal funds. (By regulation at 45 CFR 96.88, the administrative cost ceiling for tribal and insular area grantees is 20% of the first \$20,000 and 10% of funds in excess of \$20,000. Otherwise, all statutory and regulatory provisions concerning administrative costs apply to all LIHEAP grantees.)

Neither the LIHEAP statute nor federal regulations specify a definition for planning and administrative costs. Instead, grantees are to develop their own definitions, consistent with the statute and regulations; we will defer to the state's definition unless it is based on an interpretation of the statute that is "clearly erroneous". [45 CFR 96.50(e)]

A final regulation and its preamble published in the Federal Register in 1987 (52 Federal Register 37961-37964, dated October 13, 1987) provided guidance and clarification to grantees in defining what constitutes administrative costs for the LIHEAP program. We compiled this and other guidance in a 1990 information memorandum (FSA-IM- 91-8, dated 12/27/90).

CONTENT: LIHEAP Requirements

Section 2605(b)(9) of the LIHEAP statute requires grantees to assure that they will follow these requirements:

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a fiscal year, and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining cost (except for the costs of the activities described in paragraph (16));

The regulations at 45 CFR 96.88(a) state:

Any expenditure for governmental functions *normally associated with administration in a public assistance program* must be included in determining administrative costs subject to the statutory limitation on administrative costs, regardless of whether the expenditure is incurred by the State, a subrecipient, a grantee, or a contractor of the State. [emphasis added]

The preamble to this regulation provided additional guidance (52 Federal Register 37961- 37964, published October 13, 1987), including the following:

While we are not including the list of specific functions in the final rule, nonetheless, we believe that the costs associated with those functions, i.e., taking applications, determining eligibility and benefit levels, and monitoring the assistance provided, are normally administrative in a predominantly cash assistance program, such as LIHEAP. Consequently, we will carefully assess any other categorization of these costs in our compliance reviews and in our reviews of audit findings. We will continue to examine grantee programs on a case-by-case basis, looking in particular to other State programs that provide analogous benefits to determine the appropriateness of the State's definition of administrative costs for LIHEAP.

...We agree that outreach activities are not intrinsically administrative...The term encompasses activities that are administrative and others that are not.

New Information of Interest to Grantees

Under the federal welfare program Aid to Families with Dependent Children (AFDC), all costs other than cash benefit payments were classified as administrative. Since the 1987 LIHEAP regulation was published, AFDC has been replaced by the Temporary Assistance for Needy Families (TANF) program, which now is a primary Federal "public assistance program".

Final TANF regulations were published April 12, 1999, and we have been asked whether those regulations affect guidance for the LIHEAP program relating to what constitutes "...governmental functions normally associated with administration in a public assistance program [that] must be included in determining administrative costs subject to the statutory limitation on administrative costs..." The TANF regulations at 45 CFR 263.0(b) define administrative costs as follows.

The term "administrative costs" means costs necessary for the proper administration of the TANF program, or separate State programs.

(1) It excludes direct costs of providing program services.

(i) For example, it excludes costs of providing diversion benefits and services, providing program information to clients, screening and assessments, development of employability plans, work activities, post-employment services, work supports, and case management. It also excludes costs for contracts devoted entirely to such activities.

(ii) It excludes the salaries and benefits costs for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space.

(2) It includes costs for general administration and coordination of these programs, including contract costs and all indirect (or overhead) costs. Examples of administrative costs include:

(i) Salaries and benefits of staff performing administrative and coordination functions;

(ii) Activities related to eligibility determinations;

(iii) Preparation of program plans, budgets, and schedules;

(iv) Monitoring of programs and projects;

(v) Fraud and abuse units;

(vi) Procurement activities;

(vii) Public relations;

(viii) Services related to accounting, litigation, audits, management of property, payroll, and personnel.

(ix) Costs for goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities, and rental of office space and maintenance of office space, provided that such costs are not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section

(x) Travel costs incurred for official business and not excluded as a direct administrative cost for providing program services under paragraph (b)(1) of this section;

(xi) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel or payroll system for State staff); and

(xii) Preparing reports and other documents.

The TANF regulations at 45 CFR 263.13(b) state:

Expenditures on the information technology and computerization needed for tracking or monitoring required by or under part IV-A of the Act do not count towards the limit specified in paragraph (a) of this section [setting a 15% limit on use of TANF funds for administrative costs]."

The preamble to the TANF final rule at 64 FR 17811, published 69 (4/12/99), page 17811, published April 12, 1999 provides this further clarification on distinguishing "case management" and "eligibility determination":

...Note: Here, we would make a distinction between assessment activities designed to identify needs and develop appropriate service strategies versus assessing income, resources, and documentation for eligibility determination purposes; the latter are administrative costs.

Please note that grantees continue to be the primary interpreters of the LIHEAP statute, and we will accept their interpretations of the statute unless they are "clearly erroneous". Grantees should consider whether the new TANF regulations affect their interpretation of what constitutes administrative costs for the LIHEAP program.

Other Common Administrative Cost Issues

For your convenience, the information below summarizes previous guidance on other administrative cost issues.

Use of Other Federal Funds for Administrative Costs

As noted above, the statute requires that administrative costs in excess of the administrative cost ceiling must come from *non-federal funds*.

In 1991, the Government Accounting Office issued a report, "Low Income Home Energy Assistance: HHS Has Not Assured State Compliance with Administrative Cost Restrictions" (GAO/HRD-91-15). The issue raised in the report involved a state's use of Community Services Block Grant funds to supplement the 10% of LIHEAP funds that the state was using for LIHEAP administrative costs. As a result, this office issued FSA-IM- 91-19, in which we reminded grantees that any Federal funds used for LIHEAP administration and planning must be applied to the 10% limit on federal funds. The only exception to this restriction is for costs associated with administering Assurance 16 activities, described below.

This means, for example, that CSBG funds may not be used to administer LIHEAP if that will put total Federal funds used for LIHEAP administration costs over the 10% limit.

Direct and Indirect Costs

Grantees should note that neither the LIHEAP law nor the LIHEAP regulations make any distinction between direct and indirect costs. This distinction is relevant only in determining which activities - administrative or non-administrative - are directly related to LIHEAP and which are shared costs to be allocated among LIHEAP and other programs. All direct costs and all indirect costs attributable to LIHEAP administration must be counted towards the 10% limit.

State vs. Local or Contractor Costs

Grantees should note that the regulation explicitly requires that *all* costs for administrative activities be counted toward the maximum, whether they are incurred by state or local agencies, or by contractors.

Activities Designed to Reduce Dependence on Energy Assistance

Section 2605(b)(16) [Assurance 16] of the LIHEAP statute creates an additional category of limited funds. A State may:

use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

Other Federal funds (such as CSBG funds) may be used to pay for the costs associated with administering Assurance 16 activities, without regard to the 10% limit on the use of federal funds for planning and administration. However, LIHEAP funds used to administer Assurance 16 activities do count against the 10% limit.

INQUIRIES TO: Janet M. Fox, Director Division of Energy Assistance Office of Community Services, ACF, HHS 370 L'Enfant Promenade, S.W. Washington, D.C. 20447 Telephone: (202) 401-9351 Fax: (202) 401-5718.

/s

Janet M. Fox

Director

Division of Energy Assistance

Office of Community Services
