

Implications of LIHEAP's Status as a Block Grant



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Block Grants Generally

2

- Block grants are used to provide state, tribes, and local governments with a specified funding amount, generally allotted according to a statutorily-mandated formula, to address a broad purpose, such as home energy assistance.
- Federal legislation appropriates funds and sets parameters for the program. Within these parameters, grantees administer their own programs according to their own laws, rules, and procedures.

LIHEAP as a Block Grant

- The Low Income Home Energy Assistance Program (LIHEAP) was enacted as Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (OBRA '81).
- LIHEAP's parameters are generally set forth as 16 assurances in Section 2605(b) (42 U.S.C. § 8624(b)(1)-(16)).
- Assurance (10) requires states to: “provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the States under this title, including procedures for monitoring the assistance provided under this title and provide that the State will comply with the provisions of ... [the Single Audit Act]”. *See also* 45 C.F.R. § 96.30(a).
- Section 2605(b) provides that the HHS Secretary “may not prescribe the manner in which the States will comply with the provisions of this subsection.” (42 U.S.C. § 8624(b))

Deference to State Interpretation

- “The Department recognizes that under the block grant programs the States are primarily responsible for interpreting the governing statutory provisions. As a result, various States may reach different interpretations of the same statutory provisions. This circumstance is consistent with the intent of and statutory authority for the block grant programs. In resolving any issue raised by a complaint or a Federal audit the Department will defer to a State’s interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous.” (45 C.F.R. § 96.50(e))
- It is HHS policy to “accept any reasonable State interpretation in connection with an audit or the evaluation of a complaint ... the Department will not seek to establish a uniform interpretation of any particular assurance or statutory provision in those proceedings. ... Departmental policy and legal interpretations that affect the conduct of outside parties should appear in regulations and not be issued informally.” HHS Policy on Interpretation of Block Grant Statutes, October 15, 1982.
- Be sure to note regulations applicable to Block Grants at 45 C.F.R. Part 96, and especially regulations applicable to LIHEAP at Subpart H (45 C.F.R. §§ 96.80-96.89).

Areas of State Flexibility in LIHEAP

5

- The following slides provide examples of significant areas of State flexibility in their administration of LIHEAP funds.
 1. Income Eligibility (Assurance 2)
 2. Prioritizing Benefits (Assurance 5)
 3. Administrative Costs (Assurance 9)
 4. Obligation and Expenditure (Assurance 10)
 5. Reducing Home Energy Needs (Assurance 16)

Areas of State Flexibility in LIHEAP

Example 1 - Income Eligibility (Assurance 2)

6

- Assurance 2 of the LIHEAP statute (42 U.S.C. § 8624(b)(2)) limits eligibility for LIHEAP to certain categorical households (receiving SSI, SNAP, etc.) and to households with incomes not exceeding the greater of 150% of poverty or 60% of State median income.
- Income is not defined. Therefore States may develop their own definitions of income that include or exclude various items. States may also review income over varying periods of time.
- Household is defined as “any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.” (42 U.S.C. § 8622(5)) Although defined in statute, States are empowered to make the ultimate decision regarding who is “living together as one economic unit.”
- See LIHEAP regulations regarding income eligibility at 45 C.F.R. § 96.85 .

Areas of State Flexibility in LIHEAP

Example 2 - Prioritizing Benefits (Assurance 5)

7

- Assurance 5 requires States to “provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between [categorically eligible and income eligible households].” (42 U.S.C. § 8624(b)(5))
- Although the statute requires States to provide the highest level of assistance to those with the greatest need, it does not specify who has the greatest need or even what is the highest level of assistance. These determinations are left to the discretion of the States.
- Don’t forget the “clearly erroneous” standard. Interpretations must be reasonable.

Areas of State Flexibility in LIHEAP

Example 3 - Administrative Costs (Assurance 9)

8

- Assurance 9 limits State expenditure of LIHEAP funds for “planning and administering the use of [LIHEAP] funds” to 10% of the funds payable to the State for a fiscal year. (42 U.S.C. § 8624(b)(9))
- 45 C.F.R. § 96.88(a) provides, “Any expenditure for governmental functions normally associated with administration of 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.”
- What are “governmental functions normally associated with administration of a public assistance program” is left to State discretion and any reasonable application of these provisions will be accepted.
- States have flexibility in deciding how to split caseworker time / salary between administrative costs and non-administrative direct services costs.

Areas of State Flexibility in LIHEAP

Example 4 - Obligation and Expenditure (Assurance 10)

9

- As noted above, Assurance (10) requires states to establish and follow their own fiscal control and accounting procedures.
- 45 C.F.R. § 96.30(a) requires these fiscal control and accounting procedures be sufficient to (a) permit preparation of reports required by the statute authorizing the block grant and (b) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant.
- 45 C.F.R. § 96.30(a) also requires States to “obligate and expend block grant funds in accordance with the laws and procedures applicable to the obligation and expenditure of its own funds.”
- For fiscal control and accounting purposes, States should treat the funds as they would their own funds and follow their own procedures. This applies to determinations of obligation and liquidation, accounting for funds and activities, complaints, appeals, and the like.

Areas of State Flexibility in LIHEAP

Example 5 - Reducing Home Energy Needs (Assurance 16)

10

- Assurance 16 allows States the option of using up to 5 percent of their LIHEAP funds of such funds “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.”
- As with administrative expenses, States have discretion in allotting non-benefit funds among administrative expenses, Assurance 16 expenses, and direct service costs, within reason. Every State does not have to account for these expenses in the exact same way.
- Please contact ACF with any questions regarding how to account for various expenses.