

## APPENDIX D

### LIHEAP Statute, as Amended Through August 1, 1999

#### COMPILATION OF THE LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981 As Amended Through August 1, 1999

Prepared by the Division of Energy Assistance  
Office of Community Services/ACF/HHS

#### LOW-INCOME HOME ENERGY ASSISTANCE ACT OF 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended)

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**Section 2601.** This title may be cited as the "Low-Income Home Energy Assistance Act of 1981".

**Section 2602.**

(a) The Secretary is authorized to make grants, in accordance with the provisions of this title, to States to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs.

(b) There are authorized to be appropriated to carry out the provisions of this title (other than section 2607A), \$2,000,000,000 for each of fiscal years 1995 through 1999, such sums as may be necessary for each of fiscal years 2000 and 2001, and \$2,000,000,000 for each of fiscal years 2002 through 2004. The authorizations of appropriations contained in this subsection are subject to the program year provisions of subsection (c).

(c) Amounts appropriated under this section for any fiscal year for programs and activities under this title shall be made available for obligation in the succeeding fiscal year.

(d)(1) There is authorized to be appropriated to carry out section 2607A, \$30,000,000 for each of fiscal years 1999 through 2004, except as provided in paragraph (2).

*(2) For any of fiscal years 1999 through 2004 for which the amount appropriated under subsection (b) is not less than \$1,400,000,000, there is authorized to be appropriated \$50,000,000 to carry out section 2607A.*

(e) There is authorized to be appropriated in each fiscal year for payments under this title, in addition to amounts appropriated for distribution to all the States in accordance with section 2604 (other than subsection (e) of such section), \$600,000,000 to meet the additional home energy assistance needs of one or more States arising from a natural disaster or other emergency. Funds appropriated pursuant to this subsection are hereby designated to be emergency requirements pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, except that such funds shall be made available only after the submission to Congress of a formal budget request by the President (for all or a part of the appropriation pursuant to this subsection) that includes a designation of the amount requested as an emergency requirement as defined in such Act.

(42 U.S.C. 8621)

## **DEFINITIONS**

### **Section 2603. As used in this title:**

(1) The term "emergency" means--

*(A) a natural disaster;*

*(B) a significant home energy supply shortage or disruption;*

*(C) a significant increase in the cost of home energy, as determined by the Secretary;*

*(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;*

*(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the national program to provide supplemental security income carried out under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or the State temporary assistance for needy families program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), as determined by the head of the appropriate Federal agency;*

*(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or*

*(G) an event meeting such criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.*

(2) The term "energy burden" means the expenditures of the household for home energy divided by the income of the household.

(3) The term "energy crisis" means weather-related and supply shortage emergencies and other household energy-related emergencies.

(4) The term "highest home energy needs" means the home energy requirements of a household determined by taking into account both the energy burden of such household and the unique situation of such household that results from having members of vulnerable populations, including very young children, individuals with disabilities, and frail older individuals.

(5) The term "household" means 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;

(6) The term "home energy" means a source of heating or cooling in residential dwellings.

(7) The term "natural disaster" means a weather event (relating to cold or hot weather), flood, earthquake, tornado, hurricane, or ice storm, or an event meeting such other criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate.

(8) The term "poverty level" means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 673(2) of the Community Services Block Grant Act, as applicable to such State.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(10) The term "State" means each of the several States and the District of Columbia.

(11) The term "State median income" means the State median income promulgated by the Secretary in accordance with procedures established under section 2002(a)(6) of the Social Security Act (as such procedures were in effect on the day before the date of the enactment of this Act) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

(42 U.S.C. 8622)

## **STATE ALLOTMENTS**

### **Section 2604.**

(a)(1)(A) Except as provided in subparagraph (B), the Secretary shall, from that percentage of the amount appropriated under section 2602(b) for each fiscal year which is remaining after reserving any amount permitted to be reserved under section 2609A and after the amount of allotments for such fiscal year under subsection (b)(1) is determined by the Secretary, allot to each State an amount equal to such remaining percentage multiplied by the State's allotment percentage.

*(B) From the sums appropriated therefor after reserving any amount permitted to be reserved under section 2609A, if for any period a State has a plan which is described in section 2605(c)(1), the Secretary shall pay to such State an amount equal to 100 percent of the expenditures of such State made during such period in carrying out such plan, including administrative costs (subject to the provisions of section 2605(b)(9)(B)), with respect to households described in section 2605(b)(2).*

*(2) For purposes of paragraph (1), for fiscal year 1985 and thereafter, a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98-139 shall have their allotments reduced to the extent necessary to ensure that--*

*(A)(i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and*

*(ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this title for fiscal year 1984 had been \$1,975,000,000, and*

*(B) any State whose allotment percentage out of funds available to States from a total appropriation of \$2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed \$2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of \$2,140,000,000.*

*(3) If the sums appropriated for any fiscal year for making grants under this title are not sufficient to pay in full the total amount allocated to a State under paragraph (1) for such fiscal year, the amount which all States will receive under this title for such fiscal year shall be ratably reduced.*

*(4) For the purpose of this section, the Secretary shall determine the expenditure for home energy by low-income households on the basis of the most recent satisfactory data available to the Secretary.*

(b)(1) The Secretary shall apportion not less than one-tenth of 1 percent, and not more than one-half of 1 percent, of the amounts appropriated for each fiscal year to carry out this title on the basis of need among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. The Secretary shall determine the total amount to be apportioned under this paragraph for any fiscal year (which shall not exceed one-half of 1 percent) after evaluating the extent to which each jurisdiction specified in the preceding sentence requires assistance under this paragraph for the fiscal year involved.

*(2) Each jurisdiction to which paragraph (1) applies may receive grants under this title upon an application submitted to the Secretary containing provisions which describe the programs for which assistance is sought under this title, and which are consistent with the requirements of section 2605.*

(c) Of the funds available to each State under subsection (a), a reasonable amount based on data from prior years shall be reserved until March 15 of each program year by each State for energy crisis intervention. The program for which funds are reserved by this subsection shall be administered by public or nonprofit entities which have experience in administering energy crisis programs under the Low-Income Energy Assistance Act of 1980 or under this Act, experience in assisting low-income individuals in the area to be served, the capacity to undertake a timely and effective energy crisis intervention program, and the ability to carry out the program in local communities. The program for which funds are reserved under this subsection shall--

*(1) not later than 48 hours after a household applies for energy crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;*

*(2) not later than 18 hours after a household applies for crisis benefits, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and*

*(3) require each entity that administers such program--*

*(A) to accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and*

*(B) to provide to low-income individuals who are physically infirm the means--*

*(i) to submit applications for energy crisis benefits without leaving their residences; or*

*(ii) to travel to the sites at which such applications are accepted by such entity.*

The preceding sentence shall not apply to a program in a geographical area affected by a natural disaster in the United States designated by the Secretary, or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974, for so long as such designation remains in effect, if the Secretary determines that such disaster or such emergency makes compliance with such sentence impracticable.

*(d)(1) If, with respect to any State, the Secretary--*

*(A) receives a request from the governing organization of an Indian tribe within the State that assistance under this title be made directly to such organization; and*

*(B) determines that the members of such tribe would be better served by means of grants made directly to provide benefits under this title; the Secretary shall reserve from amounts which would otherwise be payable to such State from amounts allotted to it under this title for the fiscal year involved the amount determined under paragraph (2).*

*(2) The amount determined under this paragraph for a fiscal year is the amount which bears the same ratio to the amount which would (but for this subsection) be allotted to such State under this title for such fiscal year (other than by reason of section 2607(b)(2)) as the number of Indian households described in subparagraphs (A) and (B) of section 2605(b)(2) and residing within the State on the reservation of the tribes or on trust lands adjacent to such reservation bears to the number of all households described in subparagraphs (A) and (B) of section 2605(b)(2) in such State, or such greater amount as the Indian tribe and the State may agree upon. In cases where a tribe has no reservation, the Secretary, in consultation with the tribe and the State, shall define the number of Indian households for the determination under this paragraph.*

*(3) The sums reserved by the Secretary on the basis of a determination under this subsection shall be granted to--*

*(A) the tribal organization serving the individuals for whom such a determination has been made; or*

*(B) in any case where there is no tribal organization serving an individual for whom such a determination has been made, such other entity as the Secretary determines has the capacity to provide assistance pursuant to this title.*

*(4) In order for a tribal organization or other entity to be eligible for an amount under this subsection for a fiscal year, it shall submit to the Secretary a plan (in lieu of being under the State's plan) for such fiscal year which meet[s] such criteria as the Secretary may by regulations prescribe.*

(e) Notwithstanding subsections (a) through (d), the Secretary may allot amounts appropriated pursuant to section 2602(e) to one or more than one State. In determining whether to make such an allotment to a State, the Secretary shall take into account the extent to which the State was affected by the natural disaster or other emergency involved, the availability to the State of other resources under the program carried out under this title or any other program, and such other factors as the Secretary may find to be relevant. Not later than 30 days after making the determination, but prior to releasing an allotted amount to a State, the Secretary shall notify Congress of the allotments made pursuant to this subsection.

(42 U.S.C. 8623)

## **APPLICATIONS AND REQUIREMENTS**

### **Section 2605.**

(a)(1) Each State desiring to receive an allotment for any fiscal year under this title shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each such application shall contain assurances by the chief executive officer of the State that the State will meet the conditions enumerated in subsection (b).

*(2) After the expiration of the first fiscal year for which a State receives funds under this title, no funds shall be allotted to such State for any fiscal year under this title unless such State conduct[s] public hearings with respect to the proposed use and distribution of funds to be provided under this title for such fiscal year.*

(b) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State agrees to--

*(1) use the funds available under this title to--*

*(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);*

*(B) intervene in energy crisis situations;*

*(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and*

*(D) plan, develop, and administer the State's program under this title including leveraging programs, and the State agrees not to use such funds for any purposes other than those specified in this title;*

*(2) make payments under this title only with respect to--*

*(A) households in which 1 or more individuals are receiving--*

(i) assistance under the State program funded under part A of title IV of the Social Security Act;

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

**(B)** households with incomes which do not exceed the greater of--

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income; except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;

**(3)** conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

**(4)** coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

**(5)** 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 the households described in clauses (2)(A) and (2)(B) of this subsection;

**(6)** to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, to give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that--

**(A)** the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

*(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made;*

*(7) if the State chooses to pay home energy suppliers directly, establish procedures to--*

*(A) notify each participating household of the amount of assistance paid on its behalf;*

*(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;*

*(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and*

*(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;*

*(8) provide assurances that*

*(A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and*

*(B) the State will treat owners and renters equitably under the program assisted under this title;*

*(9) provide that--*

*(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));*

*(10) 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 State under this title, including procedures for monitoring the assistance provided under this title, and provide that the State will comply with the provisions of chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act");*

*(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;*

*(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);*

*(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness;*

*(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610;*

*(15) beginning in fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging, and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer intake functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs; and*

*(16) 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.*

The Secretary may not prescribe the manner in which the States will comply with the provisions of this subsection. The Secretary shall issue regulations to prevent waste, fraud, and abuse in the programs assisted by this title.

Not later than 18 months after the date of the enactment of the Low-Income Home Energy Assistance Amendments of 1994, the Secretary shall develop model performance goals and measurements in consultation with State, territorial, tribal, and local grantees, that the States may use to assess the success of the States in achieving the purposes of this title. The model performance goals and measurements shall be made available to States to be incorporated, at the option of the States, into the plans for fiscal year 1997. The Secretary may request data relevant to the development of model performance goals and measurements.

(c)(1) As part of the annual application required in subsection (a), the chief executive officer of each State shall prepare and furnish to the Secretary, in such format as the Secretary may require, a plan which--

*(A) describes the eligibility requirements to be used by the State for each type of assistance to be provided under this title, including criteria for designating an emergency under section 2604(c);*

*(B) describes the benefit levels to be used by the State for each type of assistance including assistance to be provided for emergency crisis intervention and for weatherization and other energy-related home repair;*

*(C) contains estimates of the amount of funds the State will use for each of the programs under such plan and describes the alternative use of funds reserved under section 2604(c) in the event any portion of the amount so reserved is not expended for emergencies;*

*(D) describes weatherization and other energy-related home repair the State will provide under subsection (k), including any steps the State will take to address the weatherization and energy-related home repair needs of households that have high home energy burdens, and describes any rules promulgated by the Department of Energy for administration of its Low Income Weatherization Assistance Program which the State, to the extent permitted by the Secretary to increase consistency between federally assisted programs, will follow regarding the use of funds provided under this title by the State for such weatherization and energy-related home repairs and improvements;*

*(E) describes any steps that will be taken (in addition to those necessary to carry out the assurance contained in paragraph (5) of subsection (b)) to target assistance to households with high home energy burdens;*

*(F) describes how the State will carry out assurances in clauses (3), (4), (5), (6), (7), (8), (10), (12), (13), and (15) of subsection (b);*

*(G) states, with respect to the 12-month period specified by the Secretary, the number and income levels of households which apply and the number which are assisted with funds provided under this title, and the number of households so assisted with--*

*(i) one or more members who had attained 60 years of age;*

*(ii) one or more members who were disabled; and*

*(iii) one or more young children; and*

*(H) contains any other information determined by the Secretary to be appropriate for purposes of this title. The chief executive officer may revise any plan prepared under this paragraph and shall furnish the revised plan to the Secretary.*

*(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for public inspection within the State involved in such a manner as will facilitate timely and meaningful review of, and comment upon, such plan or substantial revision.*

*(3) Not later than April 1 of each fiscal year the Secretary shall make available to the States a model State plan format that may be used, at the option of each State, to prepare the plan required under paragraph (1) for the next fiscal year.*

**(d) The State shall expend funds in accordance with the State plan under this title or in accordance with revisions applicable to such plan.**

**(e) Each State shall, in carrying out the requirements of subsection (b)(10), obtain financial and compliance audits of any funds which the State receives under this title. Such audits shall be made**

public within the State on a timely basis. The audits shall be conducted in accordance with chapter 75 of title 31, United States Code.

(f)(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible house-hold under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

*(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))--*

*(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and*

*(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.*

(g) The State shall repay to the United States amounts found not to have been expended in accordance with this title or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

(h) The Comptroller General of the United States shall, from time to time (but not less frequently than every three years), evaluate the expenditures by States of grants under this title in order to assure that expenditures are consistent with the provisions of this title and to determine the effectiveness of the State in accomplishing the purposes of this title.

(i) A household which is described in subsection (b)(2)(A) solely by reason of clause (ii) thereof shall not be treated as a household described in subsection (b)(2) if the eligibility of the household is dependent upon--

*(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act by reason of being in an institution receiving payments under title XIX of the Social Security Act with respect to such individual;*

*(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(i) of the Social Security Act applies; or*

*(3) a child described in section 1614(f)(2) of the Social Security Act who is living together with a parent, or the spouse of a parent, of the child.*

(j) In verifying income eligibility for purposes of subsection (b)(2)(B), the State may apply procedures and policies consistent with procedures and policies used by the State agency administering

programs under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under subtitle B of title VI of this Act (relating to community services block grant program), under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act, or under other income assistance or service programs (as determined by the State).

(k)(1) Except as provided in paragraph (2), not more than 15 percent of the greater of--

*(A) the funds allotted to a State under this title for any fiscal year; or*

*(B) the funds available to such State under this title for such fiscal year; may be used by the State for low-cost residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.*

*(2)(A) If a State receives a waiver granted under subparagraph (B) for a fiscal year, the State may use not more than the greater of 25 percent of--*

*(i) the funds allotted to a State under this title for such fiscal year; or*

*(ii) the funds available to such State under this title for such fiscal year; for residential weatherization or other energy-related home repair for low-income households, particularly those low-income households with the lowest incomes that pay a high proportion of household income for home energy.*

*(B) For purposes of subparagraph (A), the Secretary may grant a waiver to a State for a fiscal year if the State submits a written request to the Secretary after March 31 of such fiscal year and if the Secretary determines, after reviewing such request and any public comments, that--*

*(i)(I) the number of households in the State that will receive benefits, other than weatherization and energy-related home repair, under this title in such fiscal year will not be fewer than the number of households in the State that received benefits, other than weatherization and energy-related home repair, under this title in the preceding fiscal year;*

*(II) the aggregate amounts of benefits that will be received under this title by all households in the State in such fiscal year will not be less than the aggregate amount of such benefits that were received under this title by all households in the State in the preceding fiscal year; and*

*(III) such weatherization activities have been demonstrated to produce measurable savings in energy expenditures by low-income households; or*

*(ii) in accordance with rules issued by the Secretary, the State demonstrates good cause for failing to satisfy the requirements specified in clause (i).*

*(l)(1) Any State may use amounts provided under this title for the purpose of providing credits against State tax to energy suppliers who supply home energy at reduced rates to low-income households.*

*(2) Any such credit provided by a State shall not exceed the amount of the loss of revenue to such supplier on account of such reduced rate.*

*(3) Any certification for such tax credits shall be made by the State, but such State may use Federal data available to such State with respect to recipients of supplemental security income benefits if timely delivery of benefits to households described in subsection (b) and suppliers will not be impeded by the use of such data.*

(42 U.S.C. 8624)

## **NONDISCRIMINATION PROVISIONS**

### **Section 2606.**

(a) No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 also shall apply to any such program or activity.

(b) Whenever the Secretary determines that a State that has received a payment under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable; or (3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(42 U.S.C. 8625)

## **PAYMENTS TO STATES**

### **Section 2607.**

(a)(1) From its allotment under section 2604, the Secretary shall make payments to each State in accordance with section 203 of the Intergovernmental Cooperation Act of 1968, for use under this title.

*(2) Each State shall notify the Secretary, not later than 2 months prior to the close of a fiscal year, of the amount (if any) of its allotment for such year that will not be obligated in such year, and, if such State elects to submit a request described in subsection (b)(2), such State shall submit such request at the same time. The*

*Secretary shall make no payment under paragraph (1) to a State for a fiscal year unless the State has complied with this paragraph with respect to the prior fiscal year.*

**(b)(1) If--**

*(A) the Secretary determines that, as of September 1 of any fiscal year, an amount allotted to a State under section 2604 for any fiscal year will not be used by such State during such fiscal year;*

*(B) the Secretary--*

*(i) notifies the chief executive officer of such State; and*

*(ii) publishes a timely notice in the Federal Register; that, after the 30-day period beginning on the date of the notice to such chief executive officer, such amount may be reallocated; and*

*(C) the State does not request, under paragraph (2), that such amount be held available for such State for the following fiscal year; then such amount shall be treated by the Secretary for purposes of this title as an amount appropriated for the following fiscal year to be allotted under section 2604 for such following fiscal year.*

*(2)(A) Any State may request that an amount allotted to such State for a fiscal year be held available for such State for the following fiscal year. Such request shall include a statement of the reasons that the amount allotted to such State for a fiscal year will not be used by such State during such fiscal year and a description of the types of assistance to be provided with the amount held available for the following fiscal year. Any amount so held available for the following fiscal year shall not be taken into account in computing the allotment of or the amount payable to such State for such fiscal year under this title.*

*(B) No amount may be held available under this paragraph for a State from a prior fiscal year to the extent such amount exceeds 10 percent of the amount payable to such State for such prior fiscal year. For purposes of the preceding sentence, the amount payable to a State for a fiscal year shall be determined without regard to any amount held available under this paragraph for such State for such fiscal year from the prior fiscal year.*

*(C) The Secretary shall reallocate amounts made available under this paragraph for the fiscal year following the fiscal year of the original allotment in accordance with paragraph (1) of this subsection.*

*(3) During the 30-day period described in paragraph (1)(B), comments may be submitted to the Secretary. After considering such comments, the Secretary shall notify the chief executive officer of the State of any decision to reallocate funds, and shall publish such decision in the Federal Register.*

**(42 U.S.C. 8626)**

## **INCENTIVE PROGRAM FOR LEVERAGING NON-FEDERAL RESOURCES**

### **Section 2607A.**

(a) Beginning in fiscal year 1992, the Secretary may allocate amounts appropriated under section 2602(d) to provide supplementary funds to States that have acquired non-Federal leveraged resources for the program established under this title.

(b) For purposes of this section, the term "leveraged resources" means the benefits made available to the low-income home energy assistance program of the State, or to federally qualified low-income households, that--

*(1) represent a net addition to the total energy resources available to State and federally qualified households in excess of the amount of such resources that could be acquired by such households through the purchase of energy at commonly available household rates; and*

*(2)(A) result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid; or*

*(B) are appropriated or mandated by the State for distribution--*

*(i) through the State program; or*

*(ii) under the plan referred to in section 2605(c)(1)(A) to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program.*

(c)(1) Distribution of amounts made available under this section shall be based on a formula developed by the Secretary that is designed to take into account the success in leveraging existing appropriations in the preceding fiscal year as measured under subsection (d). Such formula shall take into account the size of the allocation of the State under this title and the ratio of leveraged resources to such allocation.

*(2) A State may expend funds allocated under this title as are necessary, not to exceed 0.08 percent of such allocation or \$35,000 each fiscal year, whichever is greater, to identify, develop, and demonstrate leveraging programs. Funds allocated under this section shall only be used for increasing or maintaining benefits to households.*

(d) Each State shall quantify the dollar value of leveraged resources received or acquired by such State under this section by using the best available data to calculate such leveraged resources less the sum of any costs incurred by the State to leverage such resources and any cost imposed on the federally eligible low-income households in such State.

(e) Not later than 2 months after the close of the fiscal year during which the State provided leveraged resources to eligible households, as described in subsection (b), each State shall prepare and submit, to the Secretary, a report that quantifies the leveraged resources of such State in order to qualify for assistance under this section for the following fiscal year.

(f) The Secretary shall determine the share of each State of the amounts made available under this section based on the formula described in subsection (c) and the State reports. The Secretary shall promulgate regulations for the calculation of the leveraged resources of the State and for the submission of supporting documentation. The Secretary may request any documentation that the Secretary determines necessary for the verification of the application of the State for assistance under this section.

(42 U.S.C. 8626a)

### **RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION (R.E.A.CH.)**

#### **Section. 2607B.**

(a) PURPOSE.--The purpose of the Residential Energy Assistance Challenge (in this section referred to as "R.E.A.Ch.") program is to--

- (1) minimize health and safety risks that result from high energy burdens on low-income Americans;*
- (2) prevent homelessness as a result of inability to pay energy bills;*
- (3) increase the efficiency of energy usage by low-income families; and*
- (4) target energy assistance to individuals who are most in need.*

#### **(b) FUNDING.--**

*(1) ALLOCATION.--For each fiscal year, the Secretary may allocate not more than 25 percent of the amount made available pursuant to section 2602(d) for such fiscal year to a R.E.A.Ch. fund for the purpose of making incentive grants to States that submit qualifying plans that are approved by the Secretary as R.E.A.Ch. initiatives. States may use such grants for the costs of planning, implementing, and evaluating the initiative.*

*(2) RESERVATION.--The Secretary shall reserve from any funds allocated under this subsection, funds to make additional payments to State R.E.A.Ch. programs that--*

*(A) have energy efficiency education services plans that meet quality standards established by the Secretary in consultation with the Secretary of Energy; and*

*(B) have the potential for being replicable model designs for other programs. States shall use such supplemental funds for the implementation and evaluation of the energy efficiency education services.*

#### **(c) CRITERIA.--**

*(1) IN GENERAL.--Not later than May 31, 1995, the Secretary shall establish criteria for approving State plans required by subsection (a), for energy efficiency education quality standards described in subsection (b)(2)(A), and for the distribution of funds to States with approved plans.*

*(2) DOCUMENTATION.--Notwithstanding the limitations of section 2605(b) regarding the authority of the Secretary with respect to plans, the Secretary may require a State to provide appropriate documentation that its R.E.A.Ch. activities conform to the State plan as approved by the Secretary.*

**(d) FOCUS.--**The State may designate all or part of the State, or all or part of the client population, as a focus of its R.E.A.Ch. initiative.

**(e) STATE PLANS.--**

*(1) IN GENERAL.--Each State plan shall include each of the elements described in paragraph*

*(2), to be met by State and local agencies. (2) ELEMENTS OF STATE PLANS.--Each State plan shall include--*

*(A) an assurance that such State will deliver services through community-based nonprofit entities in such State, by--*

*(i) awarding grants to, or entering into contracts with, such entities for the purpose of providing such services and payments directly to individuals eligible for benefits; or*

*(ii) if a State makes payments directly to eligible individuals or energy suppliers, making contracts with such entities to administer such programs, including--*

*(I) determining eligibility;*

*(II) providing outreach services; and*

*(III) providing benefits other than payments;*

*(B) an assurance that, in awarding grants or entering into contracts to carry out its R.E.A.Ch. initiative, the State will give priority to organizations that--*

*(i) are described in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902(1)), except where significant geographic portions of the State are not served by such entities;*

*(ii) the Secretary has determined have a record of successfully providing services under the Low-Income Home Energy Assistance Program; and*

*(iii) receive weatherization assistance program funds under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6863 et seq.); except that a State may not require any such entity to operate a R.E.A.Ch. program;*

*(C) an assurance that, subject to subparagraph (D), each entity that receives a grant or enters into a contract under subparagraph (A)(i) will provide a variety of services and benefits, including--*

*(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under section 2605(b) for home energy costs;*

*(ii) energy efficiency education;*

*(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;*

*(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and*

*(v) negotiation with home energy suppliers on behalf of households eligible for R.E.A.Ch. services and benefits;*

*(D) a description of the methodology the State and local agencies will use to determine--*

*(i) which households will receive one or more forms of benefits under the State R.E.A.Ch. initiative;*

*(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and*

*(iii) the amount of such benefit[s] required to meet the goals of the program;*

*(E) a method for targeting nonmonetary benefits;*

*(F) a description of the crisis and emergency assistance activities the State will undertake that are designed to--*

*(i) discourage family energy crises;*

*(ii) encourage responsible vendor and consumer behavior; and*

*(iii) provide only financial incentives that encourage household payment;*

*(G) a description of the activities the State will undertake to--*

*(i) provide incentives for recipients of assistance to pay home energy costs; and*

*(ii) provide incentives for vendors to help reduce the energy burdens of recipients of assistance;*

*(H) an assurance that the State will require each entity that receives a grant or enters into a contract under this section to solicit and be responsive to the views of individuals who are financially eligible for benefits and services under this section in establishing its local program;*

*(I) a description of performance goals for the State R.E.A.Ch. initiative including--*

*(i) a reduction in the energy costs of participating households over one or more fiscal years;*

*(ii) an increase in the regularity of home energy bill payments by eligible households; and*

*(iii) an increase in energy vendor contributions towards reducing energy burdens of eligible households;*

*(J) a description of the indicators that will be used by the State to measure whether the performance goals have been achieved;*

*(K) a demonstration that the plan is consistent with section 2603, paragraphs (2), (3), (4), (5), (7), (9), (10), (11), (12), (13), and (14) of section 2605(b), subsections (d), (e), (f), (g), (h), (i), and (j) of section 2605, and section 2606 of this title;*

*(L) an assurance that benefits and services will be provided in addition to other benefit payments and services provided under this title and in coordination with such benefit payments and services; and*

*(M) an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements.*

(f) COST OR FUNCTION.--None of the costs of providing services or benefits under this section shall be considered to be an administrative cost or function for purposes of any limitation on administrative costs or functions contained in this title.

(42 U.S.C. 8626b)

## **WITHHOLDING**

### **Section 2608.**

(a)(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this title and the assurances such State provided under section 2605.

*(2) The Secretary shall respond in writing in no more than 60 days to matters raised in complaints of a substantial or serious nature that a State has failed to use funds in accordance with the provisions of this title or the assurances provided by the State under section 2605. For purposes of this paragraph, a violation of any one of the assurances contained in section 2605(b) that constitutes a disregard of such assurance shall be considered a serious complaint.*

(b)(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this title in order to evaluate compliance with the provisions of this title.

*(2) Whenever the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this title by such State in order to ensure compliance with the provisions of this title.*

*(3) The Comptroller General of the United States may conduct an investigation of the use of funds received under this title by a State in order to ensure compliance with the provisions of this title.*

(c) Pursuant to an investigation conducted under subsection (b), a State shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) In conducting any investigation under subsection (b), the Secretary may not request any information not readily available to such State or require that any information be compiled, collected, or transmitted in any new form not already available.

(42 U.S.C. 8627)

### **LIMITATION ON USE OF GRANTS FOR CONSTRUCTION**

#### **Section 2609.**

Grants made under this title may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this title, for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility.

(42 U.S.C. 8628)

### **TECHNICAL ASSISTANCE AND TRAINING**

#### **Section 2609A.**

(a) Of the amounts appropriated under section 2602(b) for any fiscal year, not more than \$300,000 of such amounts may be reserved by the Secretary-

*(1) to-*

*(A) make grants to State and public agencies and private nonprofit organizations; or*

*(B) enter into contracts or jointly financed cooperative arrangements or interagency agreements with States and public agencies (including Federal agencies) and private nonprofit organizations; to provide for training and technical assistance related to the purposes of this subtitle, including collection and dissemination of information about programs and projects assisted under this subtitle, and ongoing matters of regional or national significance that the Secretary finds would assist in the more effective provision of services under this title; or*

*(2) to conduct onsite compliance reviews of programs supported under this title.*

(b) No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant.

(42 U.S.C. 8628a)

## **STUDIES**

### **Section 2610.**

(a) The Secretary, after consultation with the Secretary of Energy, shall provide for the collection of data, including--

*(1) information concerning home energy consumption;*

*(2) the amount, cost and type of fuels used for households eligible for assistance under this title;*

*(3) the type of fuel used by various income groups;*

*(4) the number and income levels of households assisted by this title;*

*(5) the number of households which received such assistance and include one or more individuals who are 60 years or older or disabled or include young children; and*

*(6) any other information which the Secretary determines to be reasonably necessary to carry out the provisions of this title. Nothing in this subsection may be construed to require the Secretary to collect data which has been collected and made available to the Secretary by any other agency of the Federal Government.*

(b) The Secretary shall, no later than June 30 of each fiscal year, submit a report to the Congress containing a detailed compilation of the data under subsection (a) with respect to the prior fiscal year, and a report that describes for the prior fiscal year--

*(1) the manner in which States carry out the requirements of clauses (2), (5), (8), and (15) of section 2605(b); and*

*(2) the impact of each State's program on recipient and eligible households.*

(42 U.S.C. 8629)

## **REPEALER**

### **Section 2611.**

Effective October 1, 1981, the Home Energy Assistance Act of 1980 is repealed.

(42 U.S.C. 8601 note)

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**OTHER RELEVANT STATUTORY PROVISIONS (Sec. 927 and Sec. 308)**

Section 927 of the Housing and Community Development Act of 1992 (Public Law 102-550), as amended by Public Law 103-185 on December 14, 1993, applies to treatment under the Low-Income Home Energy Assistance Program of certain households that receive utility allowances under programs administered by the U.S. Department of Housing and Urban Development.

**Section 927. CLARIFICATION ON UTILITY ALLOWANCES**

(a) ELIGIBILITY.--Tenants who--

*(1) are responsible for making out-of-pocket payments for utility bills; and*

*(2) receive energy assistance through utility allowances that include energy costs under programs identified in subsection c; shall not have their eligibility or benefits under other programs designed to assist low-income people with increases in energy costs since 1978 reduced or eliminated except as provided in subsection (d).*

(b) EQUAL TREATMENT IN BENEFIT PROGRAMS.--Tenants described in subsection (a) shall be treated identically with other households eligible for or receiving energy assistance, including in the determination of the home energy costs for which they are individually responsible and in the determination of their incomes for any program in which eligibility or benefits are based on need, except as provided in subsection (d).

(c) APPLICABILITY.--This section applies to programs under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, section 202 of the Housing Act of 1959, and title V of the Housing Act of 1949.

(d) SPECIAL RULE FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.--For purposes of the Low-Income Home Energy Assistance Program, tenants described in subsection (a)(2) who are responsible for paying some or all heating or cooling costs shall not have their eligibility automatically denied. A state may consider the amount of the heating or cooling component of utility allowances received by tenants described in subsection (a)(2) when setting benefit levels under the Low-Income Home Energy Assistance Program. The size of any reduction in Low-Income Home Energy [Assistance] Program benefits must be reasonably related to the amount of the heating or cooling component of the utility allowance received and must ensure that the highest level of assistance will be furnished to those households with the lowest incomes and the highest energy costs in relation to income, taking into account family size, in compliance with section 2605(b)(5) of the Low-Income Home Energy Assistance Act of 1981

(43 U.S.C. 8624(b)(5)).

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In addition to changes to the LIHEAP statute, **Title III of Public Law 105-285, the Low-Income Home**

**Energy Assistance Amendments of 1998**, contains the following relevant provision **at section 308**.

**Section 308. RESIDENTIAL ENERGY ASSISTANCE CHALLENGE OPTION**

(a) EVALUATION.--The Comptroller General of the United States shall conduct an evaluation of the Residential Energy Assistance Challenge program described in section 2607B of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8626b).

(b) REPORT.--Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to Congress a report containing--

*(1) the findings resulting from the evaluation described in subsection (a); and*

*(2) the State evaluations described in paragraphs (1) and (2) of subsection (b) of such section 2607B.*

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**LIHEAP and the Energy Policy Act of 2005 (Public Law 109-58)**

**Below are the LIHEAP-related provisions of the law, signed by the President on 8/8/05.**

**Section Title I. Subtitle B**

Sec. 121(a) - Increases the authorization of the LIHEAP program to "\$5.1 billion for each of fiscal years 2005 through 2007."

Sec. 121(b) - Adds a new Section 2612 to the LIHEAP statute to authorize participants to purchase renewable fuels with LIHEAP benefits.

Sec 121(c) - Requires the Secretary to report to Congress on the use of renewable fuels in providing assistance under the Low-Income Home Energy Assistance Act of 1981.

**Title III, Subtitle E -- Production Incentives**

Sec. 342(j)(1) - Establishes a provision where the Secretary of Interior may distribute oil and gas royalties to subsidize Federal and State low-income energy assistance programs.

**Title XVIII - Studies**

Sec 1804 - Requires the Secretary of HHS to submit a report on how LIHEAP could be used more effectively to prevent loss of life from extreme temperatures and that HHS should consult with all states on this issue in the preparation of the Report.