

LOW-INCOME HOME ENERGY ASSISTANCE

U.S. Department of
Health and Human Services
Family Support Administration
Office of Community Services
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Information Memorandum

Transmittal No. FSA-IM-91-19

Date 4/11/91

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

SUBJECT: Use of Other Federal Funds for Costs Related to
LIHEAP Administration.

RELATED REFERENCES: Low Income Home Energy Assistance Act of 1981
(title XXVI of the Omnibus Budget Reconciliation
Act of 1981, Public Law 97-35, as amended);
Department of Health and Human Services block
grant regulations at 45 Code of Federal
Regulations (CFR) Part 96; Community Services
Block Grant Act (subtitle B of title VI of Public
Law 97-35, as amended); and General Accounting
Office report GAO/HRD-91-15, "Low-Income Home
Energy Assistance: HHS Has Not Assured State
Compliance With Administrative Cost Restrictions".

PURPOSE: The purpose of this memorandum is to remind
grantees of limitations on the use of other
Federal funds, including Community Services Block
Grant (CSBG) funds, for costs related to planning
and administering LIHEAP.

BACKGROUND: In the course of a Fiscal Year 1990 study of
LIHEAP program administration, the General
Accounting Office (GAO) found that subrecipients
in one State had used Community Services Block
Grant (CSBG) funds for LIHEAP-related activities.
GAO raised this as a possible compliance issue for
the LIHEAP program, and summarized its findings in
its report, "Low-Income Home Energy Assistance:
HHS Has Not Assured State Compliance With
Administrative Cost Restrictions" (GAO/HRD-91-
15). We understand that there may be other cases
in which LIHEAP grantees have used CSBG or other
Federal funds to administer other programs,
including LIHEAP. There are some limits on the
use of these other funds for LIHEAP administrative
costs.

CONTENT: Section 2605(b)(9) of the LIHEAP statute places
limits on the amount of funds that grantees may
use for planning and administering LIHEAP.

Section 2605(b)(9) of the LIHEAP statute provides 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 not transferred pursuant to section 2604(f) for use under another block grant; 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. (emphasis added)

Some grantees might interpret this language as allowing only LIHEAP funds to be used to plan and administer LIHEAP activities. Others might interpret this language to allow other Federal funds to be used to administer LIHEAP, as long as the total administrative funds from all Federal sources does not exceed 10% of the LIHEAP funds payable and not transferred to another HHS block grant program.

The HHS block grant regulations at 45 CFR 96.88(a) make clear that the 10 percent limit imposed by Section 2605(b)(9)(A) of the LIHEAP statute on planning and administrative costs applies to the combined expenditures of the State and its local administering agencies, not separately to each agency. 45 CFR 96.88(b) provides that Indian tribes, tribal organizations, and territories with allotments of \$20,000 or less are subject to a 20 percent limitation on the costs of planning and administering the LIHEAP program. For tribes, tribal organizations, and territories with allotments over \$20,000, the limitation on the costs of planning and administration is \$4,000 plus 10 percent of the amount of funds payable (and not transferred for use under another block grant) that exceeds \$20,000. (LIHEAP Information Memorandum FSA-IM-91-8 on LIHEAP administrative costs provides a compilation of Federal statutory and regulatory provisions relating to grantees' costs of administering the LIHEAP program, including the provisions cited above.)

Grantees considering the use of other Federal funds, including CSBG funds, for activities and costs related to the LIHEAP program should be aware of the following important points:

- o Any CSBG or other non-LIHEAP Federal funds used for activities and costs related to the LIHEAP program must be used consistent with the statute(s) and regulation(s) under which these funds are authorized and expended. For example, if a grantee is considering using CSBG funds under its CSBG program for LIHEAP-related activities, it must be sure that these funds are spent in accordance with the Community Services Block Grant Act and its implementing regulations, including restrictions on the types of activities for which CSBG funds may be used.

NOTE: Section 675(c)(5) of the CSBG statute permits CSBG grantees to transfer up to 5 percent of their CSBG allotments "... to services under... the energy crisis intervention program" under the Low Income Home Energy Assistance Act. If a grantee transfers CSBG funds to its LIHEAP program under this provision, these funds would be spent for energy crisis intervention under the LIHEAP statute. Similarly, Section 2002(d) of the Social Services Block Grant (SSBG) statute permits SSBG grantees to transfer up to 10 percent of their SSBG allotments for use under the LIHEAP statute. This IM does not address such transfers into LIHEAP.

- o LIHEAP grantees should remember that CSBG funds retain their identity as Federal funds. Grantees should establish specific policies or guidelines relating to use (including use by subrecipients) of CSBG funds for activities and costs related to LIHEAP planning and administration.

Several provisions of the CSBG statute may provide authority for use of CSBG program funds for some activities related to LIHEAP. For example, Section 675(c) of the CSBG statute authorizes CSBG funds to be used to coordinate and establish linkages between governmental and other social services programs, including LIHEAP. Although such an activity is a valid use of CSBG funds, the grantee must determine

whether it is a LIHEAP administrative cost and whether it is subject to the LIHEAP cap on Federally funded LIHEAP administrative costs. Once the 10 percent cap has been reached, all further LIHEAP administrative costs must be paid from non-Federal funds. The grantee must determine when this cap is reached and whether it is applicable to each specific case.


It is important that grantees adopt and implement appropriate policies and procedures regarding possible use of other Federal funds for LIHEAP related activities and costs, in order to assure compliance with relevant Federal statutory and regulatory requirements. The LIHEAP statute provides at section 2605(b) that HHS "... may not prescribe the manner in which the States will comply with the provisions of this subsection." The HHS block grant regulations, which apply to both LIHEAP and CSBG, explain at 45 CFR 96.50(e) that, "The Department recognizes that under the block grant programs the States are primarily responsible for interpreting the governing statutory provisions." HHS accepts a grantee's interpretation of LIHEAP and CSBG statutory requirements unless it determines that the interpretation is clearly erroneous.

We are revising our LIHEAP compliance review guidelines to include steps to determine possible use of other Federal funds for costs related to LIHEAP planning and administration and to follow up to assure compliance with the requirements of the LIHEAP statute and HHS block grant regulations. We will review any cases that arise in compliance reviews and in complaint and audit resolution, and we will respond to them on a case-by-case basis to assure compliance. Our response will include determining the specific grantee activities in question, asking the grantee to provide its legal interpretation of the relevant statutory provisions, and determining whether that interpretation is clearly erroneous.

Grantees may wish to consult the HHS comments of August 1990 on the draft version of the attached GAO report, for a discussion of important considerations regarding use of other Federal funds (CSBG funds, in particular) for costs relating to LIHEAP administration. These comments are found at pp. 10-17 of the attached GAO final report.

ATTACHMENT: General Accounting Office report GAO/HRD-91-15,
"Low-Income Home Energy Assistance: HHS Has Not
Assured State Compliance With Administrative Cost
Restrictions"

INQUIRIES TO: Janet M. Fox, Director
Office of Energy Assistance
Office of Community Services/FSA/HHS
370 L'Enfant Promenade, S.W.
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Eunice S. Thomas
Director
Office of Community Services

United States General Accounting Office

GAO

**Report to the Secretary of Health and
Human Services**

November 1990

LOW-INCOME HOME ENERGY ASSISTANCE

HHS Has Not Assured State Compliance With Administrative Cost Restrictions



Human Resources Division

B-239593

November 13, 1990

The Honorable Louis W. Sullivan, M.D.
The Secretary of Health and Human Services

Dear Mr. Secretary:

We recently reviewed the Low-Income Home Energy Assistance Program (LIHEAP), which is administered through the Family Support Administration. During that review in Georgia, we identified a possible noncompliance issue related to the use of federal funds to pay for administrative costs. We would like to bring this issue to your attention because non-compliance could be occurring in other states as well.

Results in Brief

Two local agencies administering LIHEAP on behalf of the state were planning to use other federal funds to supplement available LIHEAP funds for planning and administrative costs. This could have resulted in the total of LIHEAP and other federal funds spent for planning and administrative costs exceeding 10 percent of the LIHEAP funds allocated to the state, which is prohibited by law. We brought our findings to the attention of the state LIHEAP program manager, who said the state would take action to prevent this from happening in fiscal year 1990 and in the future.

We also found that the Department of Health and Human Services (HHS) reviews of state compliance with statutory LIHEAP requirements are not designed to identify such instances of noncompliance. We are recommending actions you should take to assure state compliance with the federal statutory restrictions on LIHEAP planning and administrative costs.

Scope and Methodology

We examined the compliance of Georgia and several of its local community action agencies (CAAs) with statutory requirements for the use of LIHEAP federal funding. In addition to visits with the Georgia Department of Human Resources, the state administering agency, we visited 2 of the 23 CAAs, which are used to administer a major component of the state's LIHEAP program. We examined CAA spending plans and discussed with CAA officials how they funded administrative costs associated with LIHEAP. We reviewed their LIHEAP contracts with the state, which classified the LIHEAP activities being funded as administrative. We also reviewed their community services block grant (CSBG) contracts, which included LIHEAP activities. In addition, we reviewed the state compliance

review guidelines used by HHS and the results of its most recent LIHEAP and CSBG compliance reviews in Georgia. Our work was conducted between November 1989 and May 1990 in accordance with generally accepted government auditing standards.

Background

LIHEAP provides eligible households with assistance for home heating and cooling; home weatherization; and home energy crises, such as the impending termination of heating fuel. Using a statutory formula, HHS distributes funds to states as authorized under the Low Income Home Energy Assistance Act of 1981, as amended. States are primarily responsible for administering the program, which includes developing eligibility criteria and benefit amounts, within statutory constraints.

Although states are given considerable flexibility in program implementation, the 1981 act includes a number of requirements for state use of funds. For example, states must assure that, in crisis situations, they will provide assistance within 48 hours (within 18 hours in life-threatening situations); make special efforts to inform the elderly and handicapped about the program; and target funds to the neediest with the highest energy costs, taking into account family size.

The act also requires that states not use more than 10 percent of their LIHEAP funds (after any transfers to other block grants) for planning and administrative costs.¹ It further states that any remaining administrative costs must be paid from nonfederal funding. The statute prevents HHS from prescribing how states must comply with the statute. States might interpret this provision as meaning that only LIHEAP funds can be used for LIHEAP administrative costs, or they might interpret it as permitting the use of other available federal funds to pay LIHEAP administrative costs, so long as the federal share does not exceed the 10-percent cap. We focused on the second interpretation because it allows states the greatest flexibility in use of federal funds.

¹P.L. 97-35, sec. 2605(b)(9). Hereafter, the term "administrative costs" will include planning, as well as administrative costs.

Georgia Used Full 10 Percent Allowed for Program Administration

The Georgia Department of Human Resources set aside 10 percent of its LIHEAP allotment to meet its administrative costs in fiscal year 1990. It used these funds to meet costs incurred by both the state and local administering agencies. It administers the state's federal LIHEAP allotment through its Division of Family and Children Services, Special Programs Unit. This unit administers a portion of the state program through 23 CAAs at the local level. CAAs contract with the state to accept and process applications, conduct outreach, and provide other related activities, but do not directly provide benefits. These contracts classify these activities as administrative costs. In its plan submitted to HHS, Georgia classified the operating costs of its LIHEAP program as administrative costs.

State officials said administrative costs usually exceed 10 percent. They said that, when necessary, they transfer state funds from other state programs to LIHEAP to cover administrative costs exceeding the 10-percent cap. However, while the state had procedures in place to ensure it did not spend more than 10 percent of LIHEAP funds for administrative costs, it did not have procedures in place to monitor whether other federal funds were being spent for LIHEAP administrative costs.

Other Federal Funds Were Used for Program Administration in Georgia

We visited CAAs in Athens and Atlanta in early 1990 and found each planned to use between \$35,000 and \$40,000 of federal funds other than LIHEAP (from the CSBG) for LIHEAP administrative costs during fiscal year 1990. The Athens CAA's CSBG plan said its funds would help support four categories of LIHEAP activities: (1) processing and verifying the eligibility of clients, (2) processing client applications for payments, (3) acting as a liaison between clients and vendors, and (4) negotiating payment arrangements with vendors on behalf of delinquent clients.² The Athens program director told us she planned to use CSBG because LIHEAP funds did not cover all administrative costs incurred, and CSBG funds had been used for this purpose in the past. Similarly, the Atlanta CAA's CSBG plan identified three LIHEAP activities it would fund: (1) verifying client eligibility, (2) acting as liaison for clients, and (3) negotiating on behalf of delinquent clients.

²HHS guidance suggests definitions states could use for administrative costs (see 52 Fed. Reg. 37962, Oct. 13, 1987). These definitions would include these types of activities, but would also allow some of these activities to be considered as program costs, depending on state interpretation.

Since the state had already allocated and expected to spend the full 10 percent of its LIHEAP funds for administrative costs, the use of other federal funds probably would have caused the state to exceed the 10-percent cap on federal funding of LIHEAP administrative costs. We alerted both the Georgia LIHEAP manager and the Georgia Office of Community and Intergovernmental Affairs director (who is responsible for administering CSBG and overseeing the operation of the state's CAAS) of our findings. The state did not have a policy on the use of other federal funds for LIHEAP administrative costs. However, the state LIHEAP manager said that, in her opinion, CSBG funds should not be used to supplement LIHEAP administrative funds. She also said that, beginning next fiscal year, all LIHEAP contracts with CAAS will contain an express prohibition on the use of other federal funds to administer LIHEAP.

The Director of the Office of Community and Intergovernmental Affairs told us he knew CAAS were using CSBG funds for LIHEAP administrative costs, but did not know about the 10-percent limit on the use of federal funds. On May 8, 1990, the Georgia Office of Community and Intergovernmental Affairs issued a memorandum to all State CAAS directing them to not use CSBG or other federal funds to administer the LIHEAP program in fiscal year 1990 to ensure the state would not exceed the 10-percent cap. If such funds had already been spent for LIHEAP administrative costs, the CAAS were required to replace them with other available nonfederal funds at their disposal.

HHS Reviews Would Not Have Detected Noncompliance

We reviewed the HHS guidelines for state compliance reviews for both LIHEAP and CSBG. We wanted to see if reviews using these guidelines would have detected state use of other federal dollars to exceed the 10-percent cap. We found that the guidelines would not have helped. The guidelines did not probe for other possible sources of federal funding that could result in states exceeding the 10-percent administrative cost cap. We also examined results of the most recent HHS compliance reviews of Georgia's CSBG program (1985) and its LIHEAP program (1985) and found neither had identified this issue.

Conclusions

Georgia did not have procedures in place to detect whether local CAAS were using other federal dollars for LIHEAP administrative expenses. It probably would have exceeded the 10-percent cap on federal funds if we had not brought this matter to the state's attention. Furthermore, HHS monitoring procedures would not have identified this problem. As a result, other CAAS in Georgia and in other states may also be planning to

use, or may have used, other federal funds for LIHEAP administrative costs in excess of the 10-percent cap.

If states do not have clear policies on whether other federal funds can be used to pay for LIHEAP administrative costs, states and HHS may have difficulty in monitoring administrative funding limits. Further, if states allow the use of other federal funds, they should have procedures in place to determine if, and to what extent, local administering agencies are using other federal funds for LIHEAP administrative costs. Without such procedures, states could unknowingly exceed the statutory 10-percent administrative cost cap.

Recommendations

On the basis of our finding that CAAS in Georgia planned to spend other federal funds for LIHEAP administrative costs, which probably would have caused the state to exceed the 10-percent cost cap, and the fact that HHS compliance reviews are not designed to detect this spending, we recommend that you direct the Assistant Secretary, Family Support Administration, to:

- require states to have a clear policy on whether other federal funds can be used to pay LIHEAP administrative expenses,
- require states that use CAAS to provide LIHEAP services to have adequate procedures in place to assure that CAAS using CSBG or other federal funds to administer the LIHEAP program do not cause the state to exceed the 10-percent ceiling on the use of federal funds for administrative costs, and
- revise HHS compliance review guides to include steps to assess whether other federal funds are being used for LIHEAP administrative and planning costs to ensure that states and their local administering agencies are adhering to the 10-percent ceiling on the use of federal funds for administrative costs.

Agency Comments

HHS, in its written comments, expressed a number of concerns with the draft report. We revised our report to address these concerns. Our draft report focused on one possible interpretation of statutory restrictions on administrative costs, that is that states cannot use other federal funds for LIHEAP administrative costs. We revised our report and recommendations to recognize that other federal funds could be used for LIHEAP administrative costs as long as total federal funds did not exceed the 10-percent cap. In response to our report, HHS has agreed to take "appropriate Federal actions to assure compliance," which it said may include

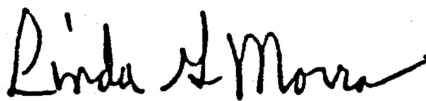
issuing an information memorandum to grantees or revising HHS block grant regulations and LIHEAP and CSBG compliance review guidelines. HHS's full comments are included in appendix I. Our response to them is included as appendix II.

We are sending copies of this report to the Senate and House Appropriations Committees, the Senate Labor and Human Resources Committee, the House Education and Labor Committee, and the Commissioner of the Georgia Department of Human Resources. We will also make copies available to other interested parties on request.

Federal law (31 U.S.C. 720) requires you to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of this report. You are also required to submit a written statement to the Senate and House Appropriations Committees with the agency's first request for appropriations made more than 60 days after the date of this report.

Please call me on (202) 275-1655 if you or your staff have any questions about this report. Other major contributors to this report are listed in appendix III.

Sincerely yours,



Linda G. Morra
Director, Human Services Policy
and Management Issues

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Abbreviations

CAA	community action agency
CSBG	community services block grant
HHS	Department of Health and Human Services
LIHEAP	Low-Income Energy Assistance Program

Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG 23 1990

Ms. Linda G. Morra
Director
Intergovernmental and Management Issues
United States General
Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

Enclosed are the Department's comments on your draft report, "Low-Income Home Energy Assistance: HHS Cannot Assure State Compliance With Administrative Cost Restrictions." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. Kusserow".

Richard P. Kusserow
Inspector General

Enclosure

Comments of the Department of Health and Human Services (HHS)
on the General Accounting Office (GAO) Draft Report,
"Low-Income Home Energy Assistance: HHS Cannot Assure
State Compliance With Administrative Cost Restrictions"

The Department appreciates the opportunity to comment on this draft report before its publication. However, these comments express our substantive concerns with respect to the draft report.

We do not believe the draft report considers a number of important and relevant factors, including the primary role of the States in interpreting the HHS block grant statutes. In our opinion, the draft report makes overly broad generalizations on the basis of a review in two local agencies. Further, the draft report's title does not accurately reflect the specific focus of the GAO review. We believe that these points should be addressed and incorporated in the final version of GAO's report.

The draft report states that two local community action agencies administering the Low Income Home Energy Assistance Program (LIHEAP) for the State of Georgia used other federal funds--specifically, Community Services Block Grant (CSBG) funds--"...to supplement available LIHEAP funds for planning and administrative costs." and that, "This is specifically prohibited by the LIHEAP statute." The draft report states that, when GAO brought its "...findings to the attention of the state LIHEAP program manager, she said the state would take corrective action to prevent this from happening in FY 1990 and in the future." The draft report also states that "...HHS reviews of state compliance with federal requirements are not designed to identify such instances of noncompliance." and recommends that HHS "...take steps to assure state compliance with the provision prohibiting the use of other federal funds for LIHEAP planning and administrative costs."

The provision in question is section 2605~~(b)(9)~~(b) of the Low Income Home Energy Assistance Act of 1981 (title XXVI of the Omnibus Budget Reconciliation Act of 1981) ~~that~~ has amended. Section 2605(b)(9) provides that, as part of the annual application for LIHEAP funds, the chief executive officer of each State shall certify that the State agrees to:

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 not transferred pursuant to section 2604~~(b)~~(b) for use under another block grant; 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.

GAO's draft report interprets this provision of the statute to mean that only Federal LIHEAP funds, and nonfederal funds, may be used for planning and administering the LIHEAP program--that any planning and administrative costs which are not covered by Federal LIHEAP funds must be paid from nonfederal funds, whether or not the State has used its full limit of 10 percent of LIHEAP funds for this purpose.

However, the provision also could be interpreted to mean that only those costs of planning and administering the LIHEAP program in excess of the 10 percent limitation on costs of planning and administration, must be from nonfederal sources--that other Federal funds could be used for LIHEAP planning and administration if the total Federal share of these costs did not exceed the 10 percent limit, and if the statutes and regulations applicable to the other Federal source or sources permitted this use. Under the latter interpretation, the issue would be whether the total Federal share of LIHEAP administrative and planning costs exceeded 10 percent of the LIHEAP funds payable to a State and not transferred, not whether other Federal funds also were used. (The HHS block grant regulations at 45 C.F.R. 96.88(a) make clear that this 10 percent limit on planning and administrative costs applies to the combined expenditures of the State and its local administering agencies, not separately to each agency.)

The LIHEAP statute provides at section 2605(b) that HHS "...may not prescribe the manner in which the States will comply with the provisions of this subsection." An identical provision applies to the CSBG program. In accordance with this and other statements of congressional intent that States are to have broad discretion as to how they will comply with these statutory assurances, the HHS block grant regulations, which apply to both LIHEAP and CSBG, provide at 45 C.F.R. 96.50(e) that:

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.

In accordance with HHS's understanding of congressional intent, chapter 3-01 of the HHS Grants Administration Manual (10/1/83) provides the following:

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...While HHS does have authority to promulgate regulations that interpret statutory requirements, the Department has chosen to issue few regulations and to rely on State interpretation of the statutory language.... As a general matter, a basic premise is that Departmental policy and legal interpretations that affect the conduct of outside parties should ordinarily appear in regulations and not be issued informally.... In the absence of a regulation, a uniform interpretation of the block grant statutes is not required and it is the Department's position that any reasonable State interpretation should be acceptable to the Department, the General Accounting Office and the Courts.

Accordingly, the Department accepts a State's interpretation of LIHEAP and CSBG statutory requirements unless it determines that the interpretation is clearly erroneous.

It is our understanding that the GAO auditors in Georgia did not ask the State's interpretation of relevant provisions of the LIHEAP and CSBG statutes. Instead, they concluded that the activities in question represented LIHEAP administrative costs and that the LIHEAP statute specifically prohibits "...using other federal funds to supplement available LIHEAP funds for planning and administrative costs." We are concerned that GAO apparently provided an informal "definitive" interpretation and did not allow the State a realistic opportunity to provide its own interpretation of the relevant statutory provisions.

We also are concerned that the draft report does not describe the specific activities in question, but simply categorizes them all as LIHEAP administration. The LIHEAP statute does not define "administrative costs." 45 C.F.R. 96.88(a), in the subpart of the HHS block grant regulations that applies to the LIHEAP program, provides that:

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.

The preamble to the final rule of October 13, 1987, which added this provision, discusses grantee categorization of LIHEAP costs as administrative costs or as program costs (52 FR 37961-37964). Neither the regulations nor the preamble lists specific activities or functions which must be considered administrative. The preamble states that HHS "...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." (52 FR 37963)Th

A staff member with Georgia's LIHEAP program told us informally that the State considered the activities in question, which were supported with CSBG funds, to be valid CSBG service costs. The staff member said that these activities probably included outreach, in which workers made home visits to inform low income households about several related programs, including LIHEAP, and may have provided budget counseling and assistance with preparation of applications for LIHEAP assistance; prorated costs for the time workers spent taking LIHEAP applications and determining LIHEAP eligibility; and probably some emergency and nonemergency benefits relating to home energy situations. The preamble to the final rule of October 13, 1987, states at 52 FR 37963 that "...outreach activities are not intrinsically administrative..." and that the "...term [outreach] encompasses [some] activities that are administrative and others that are not." Actual heating, cooling, crisis assistance, and weatherization benefits clearly are not administrative costs.

Further, GAO's draft report does not consider the relevant CSBG statutory provisions under which the activities in question were carried out. Several provisions of the Community Services Block Grant Act (subtitle B of title VI of the Omnibus Budget Reconciliation Act of 1981), as amended, may provide authority for use of CSBG (program) funds for these activities. As part of the annual application for CSBG funds, for example, under section 675(a)(4) the chief executive officer of each State shall certify that the State agrees to "provide for coordination between antipoverty programs in each community, where appropriate, with emergency energy crisis intervention programs under title XXVI of this Act (relating to low-income home energy assistance) conducted in such community." Also, the chief executive officer shall certify that the State agrees to use CSBG funds "...to coordinate and establish linkages between governmental and other social services programs to assure the effective delivery of such services to low-income individuals" (section 675(c)(1)(D)) and "...to make more effective use of other programs related to the purposes of this subtitle..." (section 675(c)(1)(B)(viii)).

Under its interpretation of the relevant statutory provisions, a grantee might contend, for example, that CSBG funds spent for coordinating functions under the CSBG statute are not LIHEAP administrative costs at all and are not subject to the provisions of the LIHEAP statute.

Similarly, a grantee might contend that CSBG funds may be spent under the CSBG statute for heating, cooling, energy crisis, and/or weatherization assistance. In the application for CSBG funds, the chief executive officer shall certify that the State

agrees to provide activities designed to assist low income participants "...to obtain and maintain adequate housing and a suitable living environment..." (section 675(c)(1)(B)(iv)) and "...to obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for... housing..." (section 675(c)(1)(B)(v)). Also, section 680(a) indicates that CSBG funds may be used for low-cost residential weatherization or other energy-related home repairs.

In summary, we do not agree with the GAO draft report's conclusion that its interpretation of section 2605(b)(7)(B) of the LIHEAP block grant statute is the only acceptable interpretation of that provision or with the report's not considering a number of additional, important, and relevant factors.

In addition, we believe the title of the draft report--"HHS Cannot Assure State Compliance With Administrative Cost Restrictions"--is overly broad and not accurate. We recommend that the title be revised to reflect the specific issue addressed by the report--the restriction on the use of other Federal funds to supplement LIHEAP administrative costs.

Use of CSBG funds for LIHEAP-related, possibly administrative, activities may raise questions regarding cost allocation or assignment of costs that should be addressed. This issue came up in one of our recent LIHEAP compliance reviews. However, at this time, we believe that there is no indication of significant noncompliance to justify a nationwide special effort to identify LIHEAP administrative activity supported by other Federal funds. Rather, we will review these questions as they arise in compliance reviews and audit resolution, and deal with them on a case-by-case basis. Where block grant funds are determined to have been misspent, we will take action to assure appropriate repayment or offset.

In response to the GAO compliance review in Georgia, we intend to ask the State to specify the home energy or LIHEAP-related activities carried out by its local administering agencies with CSBG funds, to provide its interpretation of the relevant statutory provisions, and to describe, as appropriate, any actions it has taken or will take to assure compliance with the LIHEAP and CSBG statutes. We also intend to determine and carry out appropriate Federal actions to assure compliance of all grantees with the statutory administrative cost limitation. This may include issuance of an information memorandum on the issue to all grantees, as well as possible amendment of the HHS block grant regulations and our LIHEAP and CSBG compliance review guides.

The intent of section 2605(b)(7)(B) of the LIHEAP statute clearly is to assure that the maximum amount of LIHEAP assistance is provided as direct services to low income households and a

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minimum amount is spent for LIHEAP administrative and planning costs. The HHS intends to carefully review grantee practices and statutory interpretations which might appear to circumvent or otherwise violate this provision. At the same time, unless the Congress otherwise directs, we must assure that grantees have full opportunity to present their interpretations of the relevant block grant statutory provisions, and that grantees continue to be the primary interpreters of the block grant statutes.

As previously noted, we believe that the points discussed in this response should be addressed and incorporated in the final GAO report. We would be happy to discuss further with your staff the issues raised in the draft report.

Technical Comments

We suggest revising the "Background" section of the draft report on pp. 3-4 as follows, to make factual corrections and clarifications:

LIHEAP provides eligible households with assistance for home heating and cooling, home weatherization, and home energy crises such as the impending termination of heating fuel. Using a statutory formula, HHS distributes funds to states as authorized under the Low Income Home Energy Assistance Act of 1981, as amended. States are primarily responsible for administering the program--developing different eligibility criteria and benefit amounts, etc., that must comply with overall federal statutory and regulatory requirements. The Georgia Department of Human Resources administers the state's federal LIHEAP allotment through its Division of Family and Children Services, Special Programs Unit. Georgia operates a portion of its program through 23 community action agencies (CAAs) at the local level.

Although states are given considerable flexibility in program implementation, the Low-Income Home Energy Assistance Act of 1981 includes a number of requirements for state use of funds. For example, states must assure that, in crisis situations, they will provide assistance that will resolve the crisis within 48 hours after an eligible household applies for assistance in a situation that is not life-threatening; make special efforts to inform the elderly and handicapped about the program; and provide the highest benefits to households with the lowest incomes and highest energy costs in relation to income, taking into account family size.

The act (section 2605(b)(9)) also requires that states not use more than 10 percent of their LIHEAP funds payable (i.e., net allotments) after any transfers to other HHS

Now on p. 2.

Appendix I
Comments From the Department of Health
and Human Services

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block grants, for planning and administrative costs. Any remaining administrative costs must be paid from nonfederal funding. The act (section 2605(g)) provides that states shall repay to the United States, or the Secretary of HHS may offset from current or future LIHEAP allotments, any amounts found not to have been expended in accordance with the act.

GAO Evaluation of HHS Comments on a Draft of This Report

HHS raised four major concerns with our draft report. We have considered each and, where appropriate, revised the report to address them. The following is our evaluation of these concerns.

Interpretation of Provision on the Use of Other Federal Funds for Administrative Costs

Our draft report focused on one possible interpretation of the statutory restrictions on administrative costs; that is, that states cannot use any non-LIHEAP federal funds to administer the program.¹ HHS said its administrative role is limited by the LIHEAP statute and that states might interpret this provision to mean that only those administrative costs in excess of the 10-percent limit would be affected by this restriction. We agree that states could interpret the statute in this manner and have revised our report accordingly. But, even under this interpretation, Georgia probably would have exceeded the 10-percent cap by using other federal funds if we had not brought this matter to its attention.

In support of its limited role in administering LIHEAP, HHS cites the statutory provision that it "... may not prescribe the manner in which the States will comply with the provisions of this subsection."² We agree that the statute limits HHS's role in administering LIHEAP. The Department, as it points out, may not prescribe the manner in which the states will comply with the statutory requirements. This does not mean, however, that HHS should not exercise oversight to assure that the states are in compliance with the statute.

In fact, in 1984 the Congress added to the LIHEAP statute a provision that affirms HHS's responsibility to carry out its oversight function. The same provision that precludes HHS from prescribing how the states are to comply with the law also charges the Department to issue regulations to prevent waste, fraud, and abuse in LIHEAP.

Interpretation of Administrative Costs

Since HHS gives great deference to state interpretation of the LIHEAP statute,³ it expressed concern that we had imposed our own definition of administrative costs in our review. HHS believed that we found Georgia out of compliance based on GAO, not state, criteria. We clarified the text by citing provisions from the individual CAA plans that describe specific activities to be funded with CSBG grants to emphasize that we did not

¹P.L. 97-35, sec. 2605(b)(9).

²P.L. 97-35, sec. 2605(b).

³45 C.F.R. 96.50(e).

define administrative costs, but instead relied on the information provided by the state.

In its comments on our draft report, HHS said we did not allow the state an opportunity to provide its own interpretation of the administrative cost provisions. Our findings were based on costs the state had classified as administrative. We recognize that, if administrative costs had been defined differently, we might have found Georgia in compliance. However, when we presented our findings to the state, program officials concluded that a problem existed and chose to limit the use of federal funds rather than redefining administrative costs.

Allowable Use of CSBG Funding

HHS states that the activities in question were possibly valid CSBG service costs, and that we did not consider the relevant CSBG statutory provisions⁴ when making our compliance determination. We did not consider the allowable uses of CSBG funds because the two Georgia CAAs had classified the expenditures in question as LIHEAP administrative costs. Although other classifications may be possible, HHS and the states must ensure that LIHEAP expenditures are consistent with federal law.

Overly Broad Report Title

HHS said the report title is overly broad, because we visited only two local agencies in one state, and that it is not accurate. Although our review was narrowly focused, we believe there is a larger issue because HHS procedures used to monitor compliance with the administrative costs limitation provision do not address the use of other federal funds that could cause the 10-percent ceiling to be exceeded. Accordingly, what is true in Georgia could be true in other states. We also believe the title is accurate. HHS assured that local administering agency actions do not result in states exceeding the cap, because other federal funds may be used to pay LIHEAP administrative costs.

⁴P.L. 97-35, secs. 675(c)(1)(B) and (D), and sec. 675(c)(8).

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