

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Community Affairs Proposed Rule Amendments Notice for Public Comment**

Disclaimer

Attached is a draft of **Community Affairs Proposed Rule Amendments Notice for Public Comment** that was approved by the TDHCA Governing Board on March 23, 2017. This document, including its preamble, is scheduled to be published in the April 7, 2017 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8 AM Austin local time on April 7, 2017 Ends: 5 PM Austin local time on May 8, 2017

Comments received after 5 PM Austin local time on May 8, 2017 will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Gavin Reid
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-3935
Email: gavin.reid@tdhca.state.tx.us

Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Street Address: 221 East 11th Street, Austin, TX 78701
Mailing Address: PO Box 13941, Austin, TX 78711-3941
Main Number: 512-475-3800 Toll Free: 1-800-525-0657
Email: info@tdhca.state.tx.us Web: www.tdhca.state.tx.us

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 6, Community Affairs Programs, Subchapter A, General Provisions, §6.2 Definitions, §6.4 Income Determination and §6.5 Documentation and Frequency of Determining Customer Eligibility and Subchapter C, Comprehensive Energy Assistance Program, §6.308 Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16, and §6.310 Household Crisis Component.

Since 10 TAC Chapter went into effect on December 4, 2016, several areas for change have been identified to either provide clarification or to remedy discrepancies between the new rules and federal guidelines. The amendments to these sections are to correct these issues.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and consistency of 10 TAC Chapter 6 with federal guidelines. There will not be any economic cost to any individuals required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 7, 2017, through May 8, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: gavin.reid@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M., Austin local time, May 8, 2017.**

STATUTORY AUTHORITY. The amendments are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The proposed amendments affect no other code, article, or statute.

<rule>

§6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the

power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility: A method where a Subrecipient must deem a Household to be eligible for benefits if that Household includes [Households determined to be income eligible because] at least one member that receives:

(A) SSI payments from the Social Security Administration; or

(B) Means Tested Veterans Program payments. See §6.2(b)(30).

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register*.

(6) Community Action Agencies ("CAAs")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant ("CSBG")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program ("CEAP")--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency but if not changed will or may result in Findings, Deficiencies and/or disallowed costs.

(10) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(11) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(13) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(14) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(15) Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-discretionary funds.

(16) Department of Energy ("DOE")--Federal department that provides funding for a weatherization assistance program.

(17) Department of Health and Human Services ("HHS")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(19) Elderly Person--

(A) for CSBG, a person who is 55 [fifty-five (55)] years of age or older; and

(B) for CEAP and WAP, a person who is 60 years of age or older.

(20) Emergency--defined as:

(A) a natural disaster;

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

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

(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 of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(21) Expenditure--An amount of money spent.

(22) Families with Young Children--A Household that includes a Child age five [(5)] or younger including a Household that has a pregnant woman.

(23) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption--A Household that is billed more than \$1000 annually for the use of gas and electricity in their Dwelling Unit [than the median of Low Income home energy expenditures. The amount is identified in the Contract].

(26) Household--Any individual or group of individuals, excluding unborn children, who are living together as one economic unit. For DOE WAP this includes all persons living in the

Dwelling Unit. For CSBG/LIHEAP these persons customarily purchase residential energy in common or make undesignated payments for energy.

(27) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(28) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the HHS Poverty Income guidelines, or a Household who is Categorically Eligible;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS Poverty Income guidelines, or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the HHS Poverty Income guidelines.

(29) Low Income Home Energy Assistance Program ("LIHEAP")--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(30) Means Tested Veterans Program--A program whereby applicants receive payments under §§415, 521, 541, or 542 of title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(31) Observation--A notable policy, practice or procedure observed through the course of monitoring.

(32) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(33) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(34) Outreach--The method that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(35) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(36) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

(B) disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. 15001; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(37) Population Density--The number of persons residing within a given geographic area of the state.

(38) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(39) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.

- (40) Production Schedule--The estimated monthly and quarterly performance targets and expenditures for a Contract period. The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.
- (41) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP and July 1 through June 30 of each calendar year for DOE WAP.
- (42) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.
- (43) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.
- (44) Reobligation--The reallocation of deobligated funds to other Subrecipients.
- (45) Single Audit-- Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.
- (46) State--The State of Texas or the Department, as indicated by context.
- (47) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.
- (48) Subgrant--An award of financial assistance in the form of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.
- (49) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.
- (50) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).
- (51) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.
- (52) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").
- (53) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.
- (54) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.
- (55) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.
- (56) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.
- (57) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.
- (58) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(59) Weatherization Assistance Program ("WAP")--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

§6.4. Income Determination

(a) Eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein (some forms of income may qualify the Household as Categorically Eligible for assistance (see §6.2(b)(3), however Categorical Eligibility does not determine the level of benefit, which is determined through the Income Determination process). Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Gross income is to be used, not net income, except that from non-farm or farm self-employment net receipts must be used (*i.e.*, receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses), and net income from gambling or lottery winnings.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

(2) Excluded Income:

(A) Capital gains;

(B) Any assets drawn down as withdrawals from a bank;

(C) Balance of funds in a checking or savings account;

(D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E) Proceeds from the sale of property, a house, or a car;

(F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G) Tax refunds, Earned Income Tax Credit refunds;

(H) Jury duty compensation;

(I) Gifts, loans, and lump-sum inheritances;

(J) One-time insurance payments, or compensation for injury;

(K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L) Reimbursements (for mileage, gas, lodging, meals, etc.);

(M) Employee fringe benefits such as food or housing received in lieu of wages;

(N) The value of food and fuel produced and consumed on farms;

(O) The imputed value of rent from owner-occupied non-farm or farm housing;

(P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);

(Q) Combat zone pay to the military;

[~~(R)~~ Veterans (VA) Disability Payments;]

~~(R)~~[(S)] College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits ("GI Bill"), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

~~(S)~~ [(T)] Child support payments (amount paid by payor may not be deducted from income);

~~(T)~~ [(U)] Income of Household members under 18 [eighteen (18)] years of age including payment to children under the age of 18 made payable to a person over the age of 18;

(U) [(V)] Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(V) [(W)] AmeriCorps Program payments, allowances, earnings, and in-kind aid;

(W) [(X)] Depreciation for farm or business assets;

(X) [(Y)] Reverse mortgages;

(Y) [(Z)] Payments for care of Foster Children;

(Z) [(AA)] Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(AA) [(BB)] Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(BB) [(CC)] Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(CC) [(DD)] Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act (29 U.S.C.3101);

(DD) [(EE)] Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(EE) [(FF)] The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(FF) [(GG)] Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(GG) [(HH)] Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(HH) [(II)] Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(II) [(JJ)] The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(JJ) [(KK)] Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(KK) [(LL)] Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(LL) [(MM)] Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(MM) [(NN)] Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(NN) [(OO)] Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(OO) [(PP)] Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(PP) [(QQ)] A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(QQ) [(RR)] Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(RR) [(SS)] Any other items which are excluded by virtue of federal or state legislation or by properly adopted federal regulations have taken effect. The Department will, from time to time, provide on its website updated links to such federal exceptions. Notwithstanding such information, a Subrecipient may rely on any adopted federal exception on and after the date on which it took effect.

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date. Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.

(c) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.

(d) Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a twelve month period, the income shall be calculated on the total annual earning period (*e.g.*, for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(F) One-time income should be added to the total after the income has been annualized.

(4) Except where a more frequent period is required by federal regulation, re-certification of income eligibility must occur at least every twelve months.

- (e) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.
- (f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).
- (g) For CSBG and LIHEAP, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example 4(1): A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.
- (h) Subrecipients shall not discourage anyone from applying for assistance. Subrecipients shall provide all potential customers with an opportunity to apply for programs.

§6.5. Documentation and Frequency of Determining Customer Eligibility

- (a) For CEAP [LIHEAP] and CSBG, income must be verified annually, with a new application each Program Year.
- (b) For [DOE-]WAP, income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, household income must be updated within at least 12 months of the unit being initially inspected.

Chapter 6, Subchapter C

§6.308. Allowable Subrecipient Administrative, Program Services Costs[, and Assurance 16]

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services expenditures. Administrative costs shall not exceed the maximum percentage of total direct services expenditures as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, and all indirect (or overhead) costs, and activities as described in paragraphs (1) - (7) of this subsection:

- (1) salaries;
- (2) fringe benefits;
- (3) non-training travel;
- (4) equipment;
- (5) supplies;
- (6) audit (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and
- (7) office space (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).

(b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (9) [(8)] of this subsection:

- (1) direct administrative cost associated with providing the customer direct service;
- (2) salaries and benefits cost for staff providing program services;
- (3) supplies;
- (4) equipment;
- (5) travel;
- (6) postage;
- (7) utilities;
- (8) rental of office space; and
- (9) staff time to provide energy conservation education, needs assessments, and referrals.

[(c) Assurance 16. Assurance 16 services encourage and enable households to reduce their home energy needs and thereby the need for energy assistance. The Department calculates Assurance 16 based on total Contract Expenditure. Subrecipients must provide an energy-related needs assessment and referrals, budget counseling, and energy conservation education to each CEAP customer. Subrecipients may provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients must maintain documentation of the assessment, referrals, counseling and education provided.]

§6.310. Household Crisis Component

(a) Crisis assistance can be provided under the following conditions:

- (1) A Life Threatening Crisis exists, as defined in §6.301 of this Subchapter;
- (2) Disconnection notice - a utility disconnection notice may constitute a Household Crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. [The notice of disconnection must have been provided to the Subrecipient within the effective contract term and] The [the] notice of disconnection must have been issued within [no more than] 60 days of [from] receipt by the Subrecipient[.]; or,
- (3) Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(b) Benefit Level for Crisis Assistance.

- (1) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; *e.g.* when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need and are documented in the customer file.
- (2) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this Subchapter relating to Types of Assistance and Benefit Levels. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.
- (3) Payments may not exceed Household's actual utility bill.
- (4) Crisis funds, whether for utility payment assistance, disconnection notice, life threatening crisis, temporary shelter, emergency fuel deliveries, assistance related to natural disasters shall be considered part of the total maximum Household allowable assistance.
- (5) Service and repair or purchase of heating and or cooling units for up to \$3,000 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(c) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may provide:

(1) Payment of utility bill(s) during the month(s) when Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(2) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(4) For Non-Vulnerable Population Households [regardless of weather conditions], service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system when the county is experiencing Extreme Weather Conditions. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.

(5) For Vulnerable Population Households regardless of weather conditions, service and repair of existing heating and cooling units or purchase of portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort), when the Household has an inoperable or there is a nonexistent heating or cooling system[.]. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Any service or repair of air conditioning or heating units must comply with the 2015 International Residential Code ("IRC") to ensure proper installation. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed \$3,000 during the Contract period.

(6) When a Household's crisis meets the definition of Life Threatening Crisis and the Household has a utility disconnection notice or is low on fuel, regardless of whether the county is experiencing Extreme Weather Conditions, utility or fuel assistance can be provided.

(d) When portable heating/cooling units are purchased and/or repaired, the following requirements must be met:

(1) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(2) Purchase of portable heating/cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(3) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(4) Portable heating/cooling units must be Energy Star®. In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(e) When natural disasters result in energy supply shortages or other energy-related emergencies, CEAP [LIHEAP] will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, *i.e.*, placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(f) Time Limits for Assistance. [---]Subrecipients shall ensure that for customers who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application, and completes the eligibility process.

(g) Subrecipients must maintain written documentation in customer files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in customer files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.