

**REVISION - Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law**

THIS CONTAINS INFORMATION ISSUED BY THE U.S. ADMINISTRATION FOR CHILDREN AND FAMILIES IN LIHEAP INFORMATION MEMORANDUM TRANSMITTAL NO.

**LIHEAP-IM-99-10,**

**DATED**

6/15/99

**TO:**

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP) GRANTEEES AND OTHER INTERESTED PARTIES

**SUBJECT:**

REVISION - Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law

**RELATED REFERENCES:**

Low Income Home Energy Assistance Act, Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended; the Personal and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, signed into law on August 22, 1996; Federal Register notice dated August 26, 1997 (62 FR 45256) providing guidance on the definition of "Federal Means-Tested Public Benefits" under PRWORA for HHS programs; Federal Register notice dated August 4, 1998 (63 FR 41658) providing guidance on the definition of "Federal Public Benefits" under PRWORA for HHS programs; Federal Register notice dated August 4, 1998 (63 FR 41662) from the Department of Justice issuing a "Proposed Rule on Verification of Eligibility for Public Benefits" under PRWORA; Federal Register notice dated November 17, 1997 (62 FR 61344) from the Department of Justice issuing "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996"; LIHEAP Information Memorandum 97-25, dated 8/28/97; and LIHEAP Information Memorandum 98-25, dated August 6, 1998.

**PURPOSE:**

TO AMEND ADVICE given to LIHEAP grantees about the definition of "Federal Public Benefits" for non-qualified aliens under the 1996 welfare reform law for HHS programs, as it applies to use of LIHEAP funds for weatherization of multi-unit buildings.

**BACKGROUND:**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, was signed into law by the President on

August 22, 1996. PRWORA, popularly known as the welfare reform law, established the Temporary Assistance to Needy Families (TANF) program to replace the Assistance to Families With Dependent Children (AFDC) program. In addition, PRWORA restricts the access of certain categories of immigrants to specified Federal benefits, including some benefits administered by the Department of Health and Human Services (HHS).

On August 26, 1997, HHS published a notice in the Federal Register (62 FR 45256) providing guidance on the definition of "Federal Means-Tested Public Benefits" (applicable to benefits for "qualified aliens") under PRWORA for HHS programs. On August 4, 1998, HHS published a notice in the Federal Register (63 FR 41658) entitled "Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit'", providing guidance on the definition of "Federal Public Benefits" (applicable to benefits for "non-qualified aliens"). (See LIHEAP Information Memoranda 97-25, dated 8/28/97 and LIHEAP Information Memorandum 98-25, dated 8/6/98, respectively, for more information.)

**CONTENT:**

We have received inquiries about the treatment of LIHEAP funds used for weatherization of multi-unit buildings pursuant to the HHS notice published in the Federal Register on August 4, 1998 (63 FR 41658), and LIHEAP Information Memorandum 98-25, dated August 6, 1998.

The HHS Federal Register notice identified 31 programs that provide Federal public benefits, and LIHEAP is one of those programs. As noted in the HHS Federal Register notice, not all of the benefits or services provided by these programs are Federal public benefits. The use of LIHEAP funds to weatherize multi-unit buildings was given as an example of a benefit that is not a Federal public benefit, and, therefore, providers would not be required to verify the alienage and citizenship of residents. The reasoning given in the HHS Federal Register notice was incorrect for why this benefit is not a Federal public benefit, but the conclusion is correct: LIHEAP funds used to weatherize multi-unit buildings are not Federal public benefits, and providers should not verify alien and citizen eligibility.

To be considered a Federal public benefit, the HHS Federal Register notice stated that the benefit must meet a two-part test. First, it must be provided to an individual, household or family eligibility unit; and second, the individual, household or family must, as a condition of receipt, meet specified criteria, such as income or residency in order to receive the benefit. The HHS Federal Register notice stated that the use of LIHEAP funds to weatherize multi-unit buildings was not a Federal public benefit because the eligibility of individuals is not considered in determining whether such funds will be used to improve the building, which is the second part of the test. In fact, LIHEAP grantees are allowed to use Department of Energy rules applicable to the DOE Low Income Weatherization Assistance Program (LIWAP) for their LIHEAP funds spent on weatherization. Under one of those rules, 2/3 of the residents of a multi-unit building must meet income eligibility criteria in order for the building to be weatherized with DOE or LIHEAP funds. Accordingly, LIHEAP Information Memorandum 98-25, dated

8/6/98, clarified that determinations would need to be made to ensure that 2/3 of the units meet the citizenship and alienage criteria for assistance. This has caused some confusion.

It has now been determined that weatherization of multi-unit buildings is not a Federal public benefit because it does not meet the first part of the test, that is, it is not a benefit provided to an individual, household or family eligibility unit. Weatherization of a multi-unit building is a benefit conferred on a community of people, much in the same way as benefits provided under Title I, Part A of the Elementary and Secondary Education Act (ESEA) are benefits conferred on a student body at a school. Under Title I of ESEA, funds are provided directly to a school system which then uses those funds to improve services that are provided by the individual schools to individual students. The eligibility of a school to receive this benefit is based in part on the income eligibility of a portion of students attending the school. The Conference Report to PRWORA specifically stated that it was the intent of the conferees that Title I of ESEA not be considered a Federal public benefit "because the benefit is not provided to an individual, household, or family eligibility unit." (H.Rept. No. 104-725 at page 380 (1996)).

We believe this same reasoning should be applied to the use of LIHEAP funds for the weatherization of multi-unit buildings.

Based on the above analysis, we are withdrawing that portion of our LIHEAP Information Memorandum 98-25 that states that residents in 2/3 of the units must be qualified aliens before the building could be weatherized. As stated above, providers do not need to verify alienage or citizenship of any of the building residents, since LIHEAP funds for weatherization of a multi-unit building are not considered Federal public benefits.

This guidance, however, does not apply to single family dwelling units. Weatherization services performed on or provided to single-family dwelling units are considered to be Federal public benefits, because they are provided to an individual, household or family eligibility unit. Therefore, weatherization services performed on or provided to a single-family dwelling unit are subject to the alien verification requirements.

## **IMPLEMENTATION OF ALIEN VERIFICATION REQUIREMENTS**

We would also like to remind you that agencies providing Federal public benefits must be in full compliance with the alien verification requirements within 2 years of publication of a Justice Department final rule. Until a final rule is published, verification of alien status may be carried out using the Justice Department's proposed rule issued on 8/4/98 (63 FR 41662), in conjunction with the Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which Justice published earlier in the Federal Register at 62 FR 61344 on November 17, 1997; but verification is not required by Federal rules at this time. A copy of Justice's proposed rule and the Interim

Guidance may be obtained from the Federal Register website at "[www.access.gpo.gov/nara](http://www.access.gpo.gov/nara)".

In addition to questions about the application of the "Federal Public Benefits" definition to the weatherization of multi-unit buildings, HHS received several other comments on its August 4, 1998 Federal Register notice as it relates to LIHEAP and several of the other HHS programs. We are reviewing these comments and considering whether changes to the proposed rule should be made. We anticipate publicly addressing comments on the Notice shortly.

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