



ADMINISTRATION FOR
CHILDREN & FAMILIES

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Low Income Home Energy Assistance Program Information Memorandum

IM#: ACF-OCS-LIHEAP-IM-2024-04
DATE: August 13, 2024
TO: Low Income Home Energy Assistance Program (LIHEAP) Grant Recipients and Other Interested Parties
SUBJECT: LIHEAP Obligations, Expenditures, and Refunds
ATTACHMENT(S): N/A

Related References

1. Low-Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. § 8621 *et seq*
2. Federal Block Grant Regulations at 45 C.F.R. Part 96
3. Federal Appropriation Accounting laws at 31 U.S.C. § 1502(a) and 1552(a)
4. Uniform Administrative Requirements Applicable to LIHEAP at 45 C.F.R. Part 75

Background

On January 30, 2024, the Office of Community Services (OCS) issued an information memorandum (IM), [LIHEAP IM 2024-01](#) regarding the federal Fiscal Year 2022 (FY22) and FY23 compliance monitoring process overview and trends. The IM noted that grant recipient treatment of vendor refunds was a trending area of fiscal non-compliance. OCS identified instances when those refunds were obligated after the allowable two-year federal project period of performance. For more information on the LIHEAP project period of performance, please see the [LIHEAP Supplemental Terms and Conditions](#).

OCS has received requests from grant recipients to provide supplemental guidance to the [LIHEAP Vendor Refunds Guide](#). The guide is intended to assist grant recipients in drafting vendor refund policies that comply with federal obligation deadlines, as well as expenditure timeframes in accordance with each grant recipient's own fiscal policies and procedures. Additional guidance related to LIHEAP obligations and expenditures can be found in [LIHEAP IM-2022-02](#), which is referenced throughout this guidance.

Purpose

This IM provides guidance on how obligation and expenditure timelines should be applied to vendor refunds. Grant recipients should also consider their own policies and procedures when applying this guidance to their LIHEAP.

Obligation Timelines

As noted in [LIHEAP IM-2022-02](#), it is the responsibility of grant recipients to timely obligate LIHEAP funding for allowable purposes in accordance with the grant recipients' own rules, to the extent they do not conflict with federal rules. Annual LIHEAP awards have two-year obligation periods. As set forth in [42 U.S.C. § 8626 \(b\)\(2\)](#) and in the [LIHEAP Supplemental Terms and Conditions](#), at least 90 percent of any LIHEAP grant must be obligated in the same year it was awarded. Up to 10 percent of the award may be carried over for obligation in the following year. Grant recipients must track all LIHEAP funds separately to ensure compliance with this requirement. LIHEAP funds that have not been obligated in accordance with this requirement are subject to return to the U.S. Department of Health and Human Services (HHS) for inclusion in the annual reallocation of unobligated funds.

Expenditure Timelines

As explained in [LIHEAP IM-2022-02](#), expenditures usually indicate liquidation, or payments made on invoices, approved household applications, etc., that were approved or for which a commitment was made within the proper obligation timeline. According to [45 C.F.R. § 96.30\(a\) and \(b\)\(2\)](#), grant recipients must expend LIHEAP funding, or liquidate the obligations described in the section above, according to the same rules, including the timeframe, required of its own non-federal funding. For example, if a grant recipient is required to expend or liquidate its own funds within one year of appropriation or availability, then the same expenditure deadline must apply to its federal LIHEAP funding. Grant recipients may not set expenditure deadlines for federal funding that are longer than their own non-federal funding deadlines.

Federal appropriations accounting law at [31 U.S.C. § 1552\(a\)](#) requires the closing of all appropriations accounts five years after the end of the period of availability, which, for LIHEAP, is five years following September 30 of the year of the award. Any funds remaining in the Payment Management System (PMS) five years after September 30 of the year of the award will be returned to the U.S. Department of the Treasury. However, this does not mean that grant recipients have unlimited access to LIHEAP funds for five years after the award. Grant recipients *must* follow liquidation timelines for LIHEAP funds that are compliant with liquidation timelines for their own non-federal funds. If grant recipients do not liquidate obligations within the two-year LIHEAP project period of performance, they must ensure that active agreements with partnering agencies (i.e., local administering agencies or subgrant recipients) allow for an extended liquidation period. Grant recipients are not allowed to be less restrictive with LIHEAP funds when compared to restrictions around their own non-federal funds.

Federal appropriations accounting law at [31 U.S.C. § 1502\(a\)](#) states that the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of

expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. Grant recipients may not incur new expenditures beyond the period of performance unless necessary to liquidate obligations made during the period of performance under active agreements or subawards with partnering agencies. Grant recipients must liquidate obligations according to the same rules, including the timeframe, required of its own non-federal funding. Grant recipients are only permitted to draw down the federal funding from their PMS accounts to meet their immediate, reasonable needs. As indicated in the [LIHEAP Supplemental Terms and Conditions](#), grant recipients are required to notify their Grants Management Officer identified in the Notice of Award if the grant recipient requires more than one year from the project period end date to liquidate allowable obligations.

Pursuant to federal grant regulations that apply to LIHEAP at [45 C.F.R. § 75.101\(b\)\(1\)](#), terms and conditions of federal awards flow down to subgrant recipients, including LIHEAP partnering agencies. Information on the federal award and applicable requirements must be provided to subgrant recipients pursuant to [45 C.F.R. § 75.352\(a\)](#). Therefore, partnering agencies are subject to the same rules regarding limiting obligations to the period of availability.

Example 1: Allowable Application of Expenditure Guidance

A LIHEAP grant recipient receives a \$1,000,000 LIHEAP award on October 1, 2023 (FY24). In the same FY, the grant recipient enters a LIHEAP Weatherization contract with an insulation company totaling \$200,000, which is consistent with the grant recipient's definition of obligation. The grant recipient obligates and expends the remaining \$800,000 from the LIHEAP award during the same FY in accordance with federal obligation and expenditure rules.

The performance period for the \$200,000 LIHEAP Weatherization contract is from January 1, 2024 (FY24) to September 30, 2026 (FY26), which is compliant with the grant recipient's own procurement rules. In this example, the contract serves as the obligation of LIHEAP funds, meaning that the grant recipient is compliant with federal obligations deadlines for LIHEAP, even though the contract period of performance extends beyond the LIHEAP grant award period of performance, which is two years for LIHEAP awards.

In this example, the grant recipient may incur expenses, such as making regularly scheduled payments, to meet the contract obligation associated with that agreement through September 30, 2026 (FY26). Because the payments relate to completing contracts properly made within the period of availability, in accordance with [31 U.S.C. § 1502\(a\)](#) cited above, this example would be compliant with federal law. The grant recipient will have up to five years after the year of the award to draw funding from PMS to complete payments required by the agreement before LIHEAP funding expires. However, this does not mean that grant recipients can freely expend funds for five years after the award year. Grant recipients *must* ensure that active agreements with partnering agencies, as described in the example above, are in place to allow for the liquidation of obligations beyond the two-year LIHEAP project period of performance and must ensure that any payments drawn from PMS relate back to the

agreement. In general, grant recipients should liquidate obligations and draw funding from PMS as soon as practicable.

Example 2: Unallowable Application of Expenditure Guidance

A LIHEAP grant receives a \$1,000,000 LIHEAP award on October 1, 2023 (FY24). The grant recipient immediately obligates 100 percent of the award by entering a subaward agreement with a partnering agency to administer LIHEAP benefits to individuals in the community, which is consistent with the grant recipient's definition of obligation, and therefore, compliant with federal obligation rules.

However, the grant recipient has funds available in PMS from 2021 that it was unable to spend or liquidate, even though it obligated all its 2021 LIHEAP funding via a similar agreement that ended on September 30, 2023. As a result, the grant recipient employs a first-in-first-out method of drawing funds (i.e., drawing 2021 funds first, in this example) to cover expenditures incurred under the October 1, 2023 subaward agreement with the partnering agency.

This method results in funds that were unspent from the 2021 LIHEAP award rolled over into the new program period. This approach contradicts the statutory requirement cited above that appropriations limited to a definite period are available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. This practice also increases the risk of inaccurate reporting of expenditures and refunds, as well as the risk of expired funds being reused instead of being returned to HHS. Drawdowns of funds from PMS must reconcile with the obligations and expenditures associated with each grant, each year.

Expenditures associated with one grant may not be paid with a grant that covers a different period of performance. Grant recipients should develop and implement policies and procedures that will ensure all funding is obligated, expended, and drawn down in accordance with each recipient's rules, statutes, and requirements and in accordance with federal requirements. While OCS generally defers to grant recipient's interpretation of the LIHEAP assurances and the provisions of the block grant statutes, HHS will challenge interpretations that are clearly erroneous, as described in [45 C.F.R. § 96.50\(e\)](#). Grant recipients must ensure that all obligations incurred during a particular performance period are paid by the grant associated with that performance period and not by a grant that covers a different performance period.

Vendor Refunds

Grant recipients often report LIHEAP obligations to OCS in compliance with the federal guidance discussed above. However, vendor refunds, credits, overpayments, or erroneous payments could affect what LIHEAP funds are considered obligated and what funds need to be returned to HHS.

For example, many grant recipients provide LIHEAP bill assistance payments that could create a credit on the customer's utility account, which is an allowable use of funds if the credit is used to offset future utility bill amounts. If a utility vendor identifies unused LIHEAP funds that have been applied to a utility account because the customer no longer has an active account (i.e., the customer moved or is deceased), the vendor must refund the unused benefit and indicate when the payment occurred.

In general, vendor refunds are either: (1) returned directly to the grant recipient (i.e., state, tribe, or territory); or (2) returned to a partnering agency. Each scenario is described in more detail below and includes guidance on how those refunds should be addressed by the grant recipient.

Scenario #1: Vendor refund is returned directly to the grant recipient.

1a. The vendor refund was returned in the fiscal year the grant was awarded (i.e., the first year of the LIHEAP award). In this scenario, the LIHEAP award was made in FY22.

- The grant recipient can re-obligate the vendor refund at any time during FY22 to any household or partnering agency.
- The grant recipient should ensure that it reports its total LIHEAP expenditures and any unobligated balances at the end of FY22 on its annual Standard Form 425 Federal Financial Report (SF-425).
- Any LIHEAP funds, including vendor refunds, that are not obligated in the first FY of the grant should be reported on the Carryover and Reallotment Report (Carryover Report).

1b. The vendor refund was returned in the FY *after* the grant was awarded (i.e., the second year of the LIHEAP award). In this example, the LIHEAP award was made in FY22, so the second year of the LIHEAP award is FY23.

- Any vendor refunds re-obligated in the FY after the grant was originally awarded will be considered part of the grant recipient's carryover and are only allowed if the total amount carried over (i.e., the unobligated balance on its Carryover Report), including any re-obligated vendor refunds, is less than or equal to 10 percent of the LIHEAP award.
 - For example, if the grant recipient received a LIHEAP award of \$1,000,000, the maximum amount it can carryover from the first year of the LIHEAP award (FY22) to the second (FY23) is \$100,000, or 10 percent of the LIHEAP award. If the grant recipient chooses to carryover less than 10 percent, there is more flexibility to re-obligate potential vendor refunds in the second year of the LIHEAP award. If the grant recipient carried over 7 percent of the LIHEAP award discussed above, or \$70,000, the grant recipient could re-obligate vendor refunds received in FY23 up to \$30,000.

- If the full 10 percent of the LIHEAP award was carried over from the first year of the award to the second year of the award, the vendor refund must be returned to HHS.
 - For example, if the grant recipient received a LIHEAP award in FY22 of \$1,000,000 and carried over the full 10 percent into FY23, or \$100,000, any vendor refund would have to be returned to HHS to ensure that the grant recipient does not obligate over the 10 percent cap allowed in the second year of the award, or FY23.
- In each example, the SF-425 and Carryover Report from the first fiscal year of the award, or FY22, must be updated to reflect the return of funds by the vendor.

1c. The vendor refund was returned outside of the grant period of performance, i.e., after the second year of the LIHEAP award. In this scenario, the grant period of performance ended September 30, 2023.

- The vendor refund must be returned to HHS under all circumstances.
- In this example, the SF-425 and Carryover Report from the first fiscal year of the award, or FY22, must be updated to reflect the return of funds by the vendor.

Scenario #2: Vendor refund is returned directly to the partnering agency.

2a. Vendor refund was returned to partnering agency in the first year of the LIHEAP award, or the fiscal year the grant was awarded. In this scenario, the LIHEAP award was made in FY22.

- The partnering agency can reissue the benefit to any household so long as the obligation from the grant recipient has occurred and the partnering agency has an active agreement with the grant recipient. The refund does not have to be returned to the grant recipient unless it has issued guidance stating this as a requirement.

2b. Vendor refund was returned to partnering agency in the second year of the LIHEAP award, or the fiscal year *after* the grant was awarded (FY23).

- The partnering agency can reissue the benefit to any household so long as the obligation from the grant recipient has occurred and the partnering agency has an active agreement with the grant recipient. The refund does not have to be returned to the grant recipient unless the grant recipient has issued guidance stating this as a requirement.
- The grant recipient is responsible for ensuring it does not carryover more than 10 percent of the LIHEAP award from year one to year two, not the partnering agency. If the partnering agency has received a valid obligation from the grant recipient, it can reissue benefits at any time during the two-year project period of performance so long as an active agreement with the grant recipient exists.

2c. Vendor refund was returned to partnering agency after the second year of the LIHEAP award, or after FY23, (i.e., outside of the grant period of performance.)

- Subawards are subject to the same terms and conditions as the primary grant award, including limitations on period of performance. Any refund returned to the partnering agency outside of the two-year LIHEAP project period of performance must be returned to the grant recipient and subsequently returned to HHS. The partnering agency cannot reissue the benefit to a household. The refund should be returned to the grant recipient in accordance with the grant recipient's policies and procedures and returned to HHS.
- In this situation, the grant recipient is responsible for updating the SF-425 and Carryover Report from the year the returned benefit was issued.

Conclusion

OCS recommends that grant recipients create their own guidance related to obligations, expenditures, and vendor refunds. Grant recipients should always consider internal regulations as it relates to the treatment of its own funding when applying new guidance to LIHEAP. While potential guidance must be compliant with the federal law described above, the LIHEAP statute allows grant recipients flexibility in how it processes and tracks vendor refunds.

If you have any questions about the information included in this IM, please contact:

Andrew Germain
Fiscal Operations and Accountability Branch Chief
Division of Energy Assistance
Office of Community Services

For additional resources to assist in the administration of LIHEAP, please review other [guidance issued by OCS](#) or contact your assigned [federal LIHEAP liaison](#) to request assistance

Thank you for your attention to these matters. OCS looks forward to continuing to provide high-quality services to OCS partners.

/s/
Megan Meadows
Director
Division of Energy Assistance
Office of Community Services