



The Low-Income Home Energy Assistance Program (LIHEAP): Program and Funding

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Summary

The Low Income Home Energy Assistance program (LIHEAP), established in 1981 as part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), is a block grant program under which the federal government makes annual grants to states, tribes, and territories to operate home energy assistance programs for low-income households. The LIHEAP statute authorizes two types of funds: regular funds, which are allocated to all states using a statutory formula, and contingency funds, which are allocated to one or more states at the discretion of the Administration in cases of emergency as defined by the LIHEAP statute.

States may use LIHEAP funds to help households pay for heating and cooling costs, for crisis assistance, weatherization assistance, and services (such as counseling) to reduce the need for energy assistance. According to the most recent data available from the Department of Health and Human Services (HHS), in FY2006, 49.6% of funds went to pay for heating assistance, 3.6% of funds was used for cooling aid, 17.8% of funds went to crisis assistance, and 10.0% was used for weatherization. The LIHEAP statute establishes federal eligibility for households with incomes at or below 150% of poverty or 60% of state median income, whichever is higher, although states may set lower limits. In FY2006, an estimated 34.4 million households were eligible for LIHEAP under the federal guidelines. According to HHS, 5.5 million households received heating or winter crisis assistance and approximately 500,000 households received cooling assistance that same year.

On September 27, 2008, Congress passed a continuing resolution for FY2009, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, which the President signed into law on September 30, 2008 (P.L. 110-329). The law appropriated \$5.1 billion for LIHEAP in FY2009, exceeding by nearly \$2 billion the FY2006 appropriation of approximately \$3.2 billion, which previously had been the highest level of funding ever appropriated for the program. Of the \$5.1 billion, approximately \$4.5 billion was appropriated as regular funds and \$590 million as contingency funds. In addition, P.L. 110-329 gave states the discretion to serve households with incomes at or below 75% of state median income in FY2009.

In FY2010, the House- and Senate Appropriations Committee-passed appropriations bills (H.R. 3293) would fund LIHEAP at the same levels as FY2009, with \$4.5 billion distributed as regular funds and \$590 million as contingency funds. H.R. 3293 would also maintain the distribution of regular funds set out in the FY2009 appropriations act, when approximately \$840 million was allocated according to the “new” LIHEAP formula and the remainder—approximately \$3.67 billion—was distributed according to the proportions of the “old” formula. The amount for LIHEAP in H.R. 3293 exceeds the President’s request of \$2.41 billion for LIHEAP regular funds and \$790 million for contingency funds. The FY2010 Administration budget also proposed to create a trigger for additional LIHEAP funds to be released when energy prices increase above a certain level; this proposal would have resulted in an estimated \$450 million in mandatory spending. Neither version of H.R. 3293 includes the President’s trigger.

This report describes LIHEAP funding, current issues, legislation, program rules, and eligibility. It will be updated as events warrant.

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Introduction

The Low-Income Home Energy Assistance program (LIHEAP), established by Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35), is a block grant program under which the federal government gives states, tribes, and territories annual grants to operate home energy assistance programs for low-income households. The LIHEAP statute provides for two types of program funding: regular funds and contingency funds. Regular funds are allotted to states according to a formula prescribed by the LIHEAP statute.¹ The second type of LIHEAP funding, called contingency funds, may be released and allotted to one or more states at the discretion of the President and the Secretary of Health and Human Services (HHS).

The first section of this report describes proposed funding for LIHEAP in FY2010 as well as FY2009 appropriations. It also discusses current issues and legislation related to LIHEAP. The second section of this report discusses LIHEAP rules, including household eligibility and how funds may be used, and presents the most recent data available from HHS regarding household characteristics and benefit levels. Finally, the third section discusses how each category of LIHEAP funds is distributed to states, as well as a breakdown of funds to the states during the last several fiscal years.

LIHEAP Funding and Recent Developments

Proposed FY2010 Funding

In FY2010, both the House-passed version of the Departments of Labor, Health and Human Services, and Education appropriations bill as well as the Senate Appropriations Committee-passed version (H.R. 3293) would provide \$5.1 billion for LIHEAP, the same amount that was appropriated in FY2009. Both versions of the bill would also maintain the same division of funds as in FY2009, with \$4.51 billion allocated to LIHEAP regular funds and approximately \$590 million to emergency contingency funds. H.R. 3293 further specifies that the regular funds would be distributed to the states as they were in FY2009:

- Approximately \$840 million would be distributed according to the “new” LIHEAP formula. The new formula was enacted in 1984 and allocates funds to states on the basis of the heating and cooling costs of low-income households. For more information about the LIHEAP formula, see the section of this report entitled “Funds and Their Distribution.”
- The remaining \$3.67 billion would be distributed according to the proportion of funds that states received under the “old” LIHEAP formula, which existed prior to the enactment of the new formula in 1984.

The House-passed version of H.R. 3293 would also allow states to raise eligibility guidelines for LIHEAP up to 75% of state median income, a provision that was also included in the FY2009 Appropriations Act. The Senate Appropriations Committee-passed version of the bill does not

¹ See Section 2604(a)-(d) of the Low Income Home Energy Assistance Act (Title XXVI of P.L. 97-35), as amended. The section is codified at 42 U.S.C. §8623(a)-(d).

contain this provision. Ordinarily, states may set eligibility for LIHEAP assistance at the greater of 60% of state median income or 150% of poverty.²

The amount for LIHEAP in the House-passed and Senate Appropriations Committee-passed versions of H.R. 3293 exceed the President's request for LIHEAP regular and contingency funds by \$1.9 billion. The President proposed to provide \$2.41 billion for regular funds and \$790 million for emergency contingency funds. In addition, H.R. 3293 does not include the President's proposal for a new LIHEAP trigger whereby additional funds would be released "whenever there is a spike in energy costs."³ The budget estimated that the trigger would result in mandatory budget authority of \$450 million in FY2010. According to HHS budget justifications, funds were to be triggered when certain price benchmarks were met:⁴

- For oil and natural gas, when quarterly prices are at least 15% higher than in the previous year. Specifically, (1) at a 15% price increase, funds would be distributed by multiplying the percentage change in price by the total amount of the previous year's block grant funding and then multiplying that result by 20%; (2) at a price increase of 30% or greater, funds would be distributed by multiplying the percentage increase in price by the previous year's block grant funding level, and then that result would be multiplied by 25%.
- For electricity, when quarterly prices are at least 10% higher than in the previous year. The amount of funds released would be the product of the percentage increase in prices multiplied by the previous year's block grant funding level, with that result multiplied by 10%.

Under the proposal, the Secretary would have discretion in distributing funds to the states based on the impact of the price increases and the number of low-income households in each state that use the particular type of fuel at issue. The budget justifications further stated that other factors such as extreme weather or economic conditions could be considered in designing a LIHEAP trigger.

Although the FY2010 Budget Resolution (S.Con.Res. 13) gave the House Budget Committee authority to adjust aggregate spending levels and allocations to committees in order to accommodate the creation of a LIHEAP trigger, the resolution also allowed for LIHEAP appropriations to be increased to \$5.1 billion in lieu of the trigger. Both versions of H.R. 3293 take the latter approach. See **Table 1** for a breakdown of proposed FY2010 funding.

FY2009 LIHEAP Funding

In FY2009, Congress appropriated \$5.1 billion for LIHEAP, the most funding that has ever been provided for the program, as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (H.R. 2638), which President Bush signed into law on September 30, 2008 (P.L. 110-329). The appropriation exceeded President Bush's FY2009 budget request by \$3.1 billion. The appropriation also nearly doubled the \$2.57 billion that Congress had provided

² 42 U.S.C. §8624(b)(2)(B).

³ Office of Management and Budget, *A New Era of Responsibility, Renewing America's Promise*, p. 70, http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf.

⁴ U.S. Department of Health and Human Services, Administration for Children and Families, *FY2010 Congressional Justification*, pp. 32-33, http://www.acf.hhs.gov/programs/olab/budget/2010/sec2b_liheap_2010cj.pdf.

for the program in FY2008. Previously, the highest level of funding for LIHEAP had been \$3.16 billion, appropriated in FY2006. In that year, Congress appropriated an additional \$1 billion for LIHEAP on top of the annual appropriation.

Of the total amount appropriated in FY2009, \$4.51 billion was allocated to LIHEAP regular funds and \$590 million to contingency funds. A portion of the regular funds—approximately \$840 million—was distributed according to the “new” LIHEAP formula, while the remainder—\$3.67 billion—was distributed based on the proportions for the “old” LIHEAP formula. (For more information about the LIHEAP formula, see CRS Report RL33275, *The LIHEAP Formula: Legislative History and Current Law*, by Libby Perl.)

The FY2009 Continuing Appropriations Act further specified that states could use these FY2009 funds to serve households with incomes at or below 75% of state median income at their discretion.⁵ Ordinarily, states may set eligibility for LIHEAP assistance at the greater of 60% of state median income or 150% of poverty.⁶

P.L. 110-329 also required HHS to obligate all FY2009 LIHEAP funds, including the contingency funds, within 30 days of enactment of the law. On October 16, 2008, HHS released tables showing how both LIHEAP regular and contingency funds would be distributed to the states, tribes, and territories. In addition, HHS announced that it would distribute FY2009 leveraging incentive and Residential Energy Assistance Challenge (REACH) grants⁷ on the basis of FY2008 applications submitted by states and tribes. In FY2008, Congress did not authorize funds for leveraging incentive and REACH grants in the appropriations law. When HHS discovered that language to appropriate the funds was missing from the appropriations act, it released to the states the \$26.7 million that would otherwise have been distributed as leveraging incentive and REACH grants according to the LIHEAP formula.

To see how FY2009 LIHEAP funds were allocated to the states, see **Table 3** at the end of this report.

⁵ HHS annually publishes state median income data in the Federal Register. For FY2009 data, see *Federal Register*, vol. 73, no. 44, March 5, 2008, p. 11924.

⁶ 42 U.S.C. §8624(b)(2)(B).

⁷ Since the early 1990s, leveraging incentive and REACH grants have been made to states and tribes according to their ability to obtain non-LIHEAP resources for energy assistance (leveraging incentive grants) and for increasing the energy efficiency of low-income households (REACH grants). These funds are discussed later in this report.

Table I. Proposed FY2010 LIHEAP Funding

Source of Proposed Funding	Regular Funds			LIHEAP "Trigger" ^b	Total
	State Formula Grants	Set-Asides ^a	Contingency Funds		
President's request	\$2.41 billion	\$27 million leveraging incentive grants ^c	\$790 million	\$450 million	\$3.65 billion
House-passed H.R. 3293	\$4.51 billion	not specified ^d	\$590 million	0	\$5.1 billion
Senate Appropriations Committee-passed H.R. 3293	\$4.51 billion	not specified	\$590 million	0	\$5.1 billion

Source: Congressional Research Service (CRS), on the basis of the FY2010 budget appendix, the Department of Health and Human Services (HHS) Congressional Budget Justification, and the Departments of Labor, Health and Human Services, and Education appropriations bill, H.R. 3293.

- a. The LIHEAP statute gives the HHS Secretary authority to set aside up to \$300,000 from the regular fund appropriation for training and technical assistance. 42 U.S.C. § 8628a.
- b. In FY2010, the President's budget proposed that a trigger mechanism be created whereby funds would be released if energy price increases exceed certain levels. The estimated \$450 million additional budget authority under the trigger would be mandatory funding. For more information about the trigger, see the section of this report entitled "Proposed FY2010 Funding."
- c. The amount proposed to be set aside for leveraging incentive grants in FY2010 is noted in the HHS Congressional Budget Justification and does not appear in the budget appendix.
- d. The House Appropriations Committee Report, H.Rept. 111-220, specified that not more than \$27 million be used for leveraging incentive grants.

Distribution of LIHEAP Contingency Funds

FY2009 Contingency Funds

In FY2009, Congress appropriated approximately \$590 million in LIHEAP contingency funds as part of P.L. 110-329, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act. The law specified that HHS must obligate the funds to states within 30 days of the law's enactment (September 30, 2008). On October 16, 2008, HHS announced that it would release the contingency funds to all states, tribes, and territories—of the \$590 million, \$490 million was released to all states according to the proportion of funds that states received under the old LIHEAP formula, and \$100 million was released to seven states where at least 30% of low-income households use heating oil to heat their homes. The seven states received funds according to the proportion of funds they received under the old LIHEAP formula weighted by their share of low-income heating oil users. These seven recipient states were Alaska, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. For the amount of contingency funds received by each state in FY2009, see **Table 3** at the end of this report.

LIHEAP Legislation in the 111th Congress

Bills that would affect aspects of LIHEAP have been introduced in the 111th Congress. This is not necessarily an exhaustive list of LIHEAP-related legislation.

- The LIHEAP Equity Act (H.R. 252), would mandate that no more than 50% of the funding provided for LIHEAP regular funds be made available for heating purposes.
- The Home Energy Assistance Targeted for Seniors Act (H.R. 1140) would rename LIHEAP the “Low Income and Senior Home Energy Assistance Act” and make eligible for benefits households with incomes at or below state median income, as long as at least 50% of the household’s income was attributable to persons age 65 and older. (Currently households may not have incomes above 60% of state median income and still be eligible for LIHEAP.)
- The Consumer Reasonable Price Protection Act (H.R. 1482) would impose a windfall profits tax on sellers of crude oil and natural gas, with the proceeds going to LIHEAP. The bill would establish a reasonable profits board to determine what constitutes a reasonable profit from the sale of these products. A windfall profits tax would be imposed when profits exceed reasonable profits by 100% or more.
- The Federal Price Gouging Prevention Act (H.R. 2129) would make it illegal to charge excessive prices for gasoline and other petroleum distillate products if an “energy emergency” is declared by the President. Specifically, it would be illegal to sell those products at unconscionably excessive prices that indicate the seller is taking unfair advantage of an energy emergency. Penalties imposed for violations of these provisions would be deposited in a Consumer Relief Trust Fund which could be used to provide LIHEAP assistance.

Climate Change Legislation and LIHEAP

The 111th Congress is likely to consider legislation that would aim to reduce levels of greenhouse gas emissions produced by various industrial processes. This is sometimes referred to as climate change legislation. Among those industries that would likely be targeted by a greenhouse gas reduction policy are power plants that generate electricity, oil refineries, and natural gas suppliers. The details of a plan to regulate greenhouse gases could take different forms, although the primary models that have been discussed are a direct tax on emissions (sometimes referred to as a carbon tax) or a cap-and-trade system in which regulated entities would buy allowances that permit them to emit carbon and other greenhouse gases. Depending on the details of a greenhouse gas reduction plan, energy prices paid by consumers could increase.⁸ In addition, the effects of such a system could be regressive—that is, lower-income households could pay a larger percentage of their income toward increased energy prices than higher-income households.⁹

⁸ See, for example, Terry Dinan and Diane Lim Rogers, “Distributional Effects of Carbon Allowance Trading: How Government Decisions Determine Winners and Losers,” *National Tax Journal*, vol. 55, no. 2 (June 2002), pp. 199-221.

⁹ See Terry Dinan, *Trade-Offs in Allocating Allowances for CO² Emissions*, Congressional Budget Office, April 25, 2007, http://www.cbo.gov/ftpdocs/89xx/doc8946/04-25-Cap_Trade.pdf; and Dallas Burtraw, Rich Sweeney, and Margaret Walls, *The Incidence of U.S. Climate Policy: Where You Stand Depends on Where You Sit*, Resources for the (continued...)

In the 110th Congress, numerous bills to curb greenhouse gas emissions were introduced. At least four of these bills would have allocated a portion of the proceeds from the sale of allowances to LIHEAP in order to mitigate the effects of price increases on low-income households. These included the Low Carbon Economy Act of 2007 (S. 1766), the Lieberman-Warner Climate Security Act of 2008 (S. 3036), the Investing in Climate Action and Protection Act (H.R. 6186), and the Climate MATTERS Act of 2008 (H.R. 6316). It is possible that climate change legislation in the 111th Congress could also include funds for LIHEAP.

Program Rules and Benefits

Federal LIHEAP requirements are minimal and leave most important program decisions to the states, the District of Columbia, the territories, and Indian tribes and tribal organizations (collectively referred to as grantees) who receive federal funds. The federal government (HHS) may not dictate how grantees implement “assurances” that they will comply with general federal guidelines.

Federal Eligibility Standards and Grantee Responsibility

Federal law limits LIHEAP eligibility to households with incomes up to 150% of the federal poverty income guidelines (or, if greater, 60% of the state median income). States may adopt lower income limits, but no household with income below 110% of the poverty guidelines may be considered ineligible. States may separately choose to make eligible for LIHEAP assistance any household of which at least one member is a recipient of Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps, or certain needs-tested veterans’ programs. LIHEAP assistance does not reduce eligibility or benefits under other aid programs.

Within these limits, grantees decide which, if any, assistance categories to include, what income limits to use, and whether to impose other eligibility tests. The statute gives priority for aid to households with the greatest energy needs or cost burdens, especially those that include disabled individuals, frail older individuals, or young children. Federal standards require grantees to treat owners and renters “equitably,” to adjust benefits for household income and home energy costs, and to have a system of “crisis intervention” assistance for those in immediate need. The LIHEAP definition of “energy crisis” leaves room for each state to define the term slightly differently, although generally, crisis assistance is provided to households that are in danger of losing their heating or cooling due to problems with equipment, receipt of a utility shutoff notice, or exhaustion of a fuel supply.¹⁰ Federal rules also require outreach activities, coordination with the Department of Energy’s Weatherization Assistance Program, annual audits and appropriate fiscal controls, and fair hearings for those aggrieved. Grantees decide the mix and dollar range of

(...continued)

Future, September 2008, <http://www.rff.org/RFF/Documents/RFF-DP-08-28.pdf>.

¹⁰ The LIHEAP statute defines an energy crisis as “weather-related and supply shortage emergencies and other household energy-related emergencies.” 42 U.S.C. §8622(3). For the state definitions of “crisis” see the HHS LIHEAP Networker FY2007 compilation of definitions, available at <http://www.liheap.ncat.org/tables/FY2007/CrisisDef2007.doc>.

benefits, choose how benefits are provided, and decide what agencies will administer the program.¹¹

Kinds of Energy Assistance Available

Funds are available for four types of energy assistance to eligible households:

- help paying heating or cooling bills;
- low-cost weatherization projects (e.g., window replacement or other home-energy related repair; limited to 15% of allotment unless a grantee has a waiver for up to 25%);
- services to reduce need for energy assistance (e.g., needs assessment, counseling on how to reduce energy consumption; limited to 5% of allotment); and
- help with energy-related emergencies (winter or summer crisis aid).

Use of Funds

The greatest share of LIHEAP funding is used to offset home heating costs. In FY2006, approximately 49.6% of all LIHEAP funds were used to provide heating assistance; all states (including the District of Columbia) provided some heating assistance.¹² Nearly all states also offered crisis assistance, most of which is used for heating needs. In FY2006, 17.8% of LIHEAP funds was used to provide crisis assistance in 48 states. Seven of these 48 states provided summer as well as winter crisis assistance, and one state—Hawaii—provided only summer crisis assistance.¹³ Also in FY2006, 3.6% of funds went for cooling aid (offered by 13 states); 10.0% of total LIHEAP funds was used for weatherization services (provided by 45 states); 7.7% of available funds went for administration and planning purposes (51 states), and 1.2% of the FY2006 funds was used to offer services to reduce the need for energy assistance (provided by 24 states).¹⁴

Households Served

In FY2006, it is estimated that 5.5 million households received LIHEAP heating or winter crisis assistance.¹⁵ This estimate attempts to remove duplication among households that received both heating and winter crisis assistance; the estimate is derived from the 5.0 million households that received heating assistance and the 1.5 million that received winter or year round crisis assistance in FY2006. The number of households receiving heating or winter crisis assistance in FY2006 increased from FY2005, when an estimated 5.3 million households were served. Shortly after

¹¹ Information regarding state LIHEAP program characteristics and contacts is available at <http://www.liheap.ncat.org/sp.htm>.

¹² Based on state-reported total LIHEAP obligations for FY2006 of \$3.2 billion. U.S. Department of Health and Human Services, Administration for Children and Families, *Low Income Home Energy Assistance Program Report to Congress for Fiscal Year 2006*, April 22, 2009, p. 16 (hereafter *FY2006 LIHEAP Report to Congress*).

¹³ *Ibid.*, Table C-3, pp. 61-62.

¹⁴ *Ibid.*, p. 16.

¹⁵ *Ibid.*, p. 21.

LIHEAP began, in FY1983, approximately 6.8 million households received heating or winter crisis assistance. Since that time, the number of households receiving assistance declined generally until FY2000, reaching a low of 3.6 million recipients in FY1999. After FY2000, the number of recipient households began increasing again to the current level. (See **Table 3.**)

The same trend can be seen in the percentage of federally eligible households that receive heating or winter crisis assistance. In FY1983, the 6.8 million households that received funds represented 31% of federally eligible households. By FY1999, the number of federally eligible households receiving LIHEAP heating or winter crisis assistance had dropped to 12%. In FY2004, 14% of federally eligible households received assistance, which grew to 15% in FY2005, and in FY2006, that number increased to 16%.

The number of households receiving cooling assistance reached a high point in FY2002, with 570,000 recipients. However, in FY2006, cooling assistance nearly reached this level, with approximately 519,000 beneficiaries.¹⁶ This was an increase over FY2005, when 337,000 households received cooling aid. Also in FY2006, HHS reported that 157,000 households received summer crisis assistance; it is not known to what extent these recipients overlapped with those receiving cooling assistance. In FY2006, nearly 125,000 households received weatherization assistance, up from 104,000 in FY2005.

HHS estimates that of all households receiving LIHEAP heating assistance, about 31% had at least one member 60 years of age or older; about 30% had at least one member with a disability; and some 21% included at least one child five years of age or younger.¹⁷

Benefit Levels

In FY2006, the constant dollar value of the average LIHEAP heating and winter crisis benefit increased more than thirty dollars from the previous year, FY2005. Measured in constant 1981 dollars (the year in which LIHEAP was enacted), the average LIHEAP benefit per household in FY2006 was \$171, up from \$140.¹⁸ The general trend in the constant dollar value of LIHEAP benefits since the program's beginning has been a decline. In FY1983, the average heating and winter crisis benefit, measured in constant 1981 dollars, was \$209. By FY1998, it had declined to \$117, and although the average benefit reached \$187 in FY2001, it declined again thereafter, and in FY2005 the average constant dollar benefit was \$140. (See **Table 3.**)

LIHEAP also covers a smaller portion of home heating bills than in earlier years. In FY2006, the LIHEAP benefit covered 10% of the combined home heating costs of all households federally eligible for LIHEAP, compared to 23% in 1981.¹⁹ (This estimate includes the heating costs of households that were eligible for LIHEAP based on the federal guidelines, but did not receive LIHEAP assistance.) Between FY1990 and FY2006, the percentage of home heating bills covered has ranged between 8% and 15% compared to the 18% to 19% range covered in the 1980s.

¹⁶ *Ibid.*, p. 20.

¹⁷ *Ibid.*, pp. 23.

¹⁸ U.S. Department of Health and Human Services, Administration for Children and Families, *LIHEAP Home Energy Notebook for Fiscal Year 2006*, August 2008, p. 32 (hereinafter *FY2006 LIHEAP Home Energy Notebook*).

¹⁹ *Ibid.*, p. 33.

The constant dollar value of the cooling and summer crisis benefit, which is available to a more limited number of households in far fewer states, has largely risen in recent years. While the average benefit in 1981 was \$129, in the years that followed, the average benefit in constant 1981 dollars declined as low as \$57 in FY1983, and \$49 in FY1990. However, from FY1990 levels the average benefit grew, and by FY2000 and FY2001, the average benefit had reached \$107. After a recent decline in FY2004 and FY2005 when the average cooling or summer crisis benefit had dropped to \$91, in FY2006, the average benefit was \$105.²⁰

Apart from federal funding levels, a variety of factors help determine to what extent LIHEAP is able to meet its stated goal of assisting low-income households in meeting their home energy needs.²¹ These include the following:

- the cost of energy for a given household (influenced by energy price fluctuations and variation in kinds of fuels used);
- the amount of energy consumed (influenced by severity of the weather, energy efficiency of housing, and expected standards of comfort); and
- the number of eligible households (influenced by population size and health of the economy).

Table 2. LIHEAP Heating/Winter Crisis Aid, Selected Years

	Fiscal Years											
	1983	1990	1993	1998	1999	2000	2001	2002	2003	2004	2005	2006
Households												
Number receiving aid (millions)	6.8	5.8	5.6	3.9	3.6	3.9	4.8	4.4	4.8	5.0	5.3	5.5
Number federally eligible (millions)	22.2	25.4	28.4	29.1	29.0	29.4	30.4	32.7	34.5	35.4	34.8	34.4
Federally eligible and receiving aid	31%	23%	20%	13%	12%	13%	16%	13%	14%	14%	15%	16%
Benefit Levels												
Average benefit (nominal \$)	\$225	\$209	\$201	\$213	\$237	\$270	\$364	\$291	\$312	\$277	\$304	\$385
Average benefit (constant 1981 \$) ^a	\$209	\$147	\$129	\$117	\$128	\$140	\$187	\$147	\$154	\$132	\$140	\$171

²⁰ Ibid., p. 32.

²¹ See also CRS Report RS20761, *LIHEAP and Residential Energy Costs*, by Bernard A. Gelb.

	Fiscal Years												
	1983	1990	1993	1998	1999	2000	2001	2002	2003	2004	2005	2006	
LIHEAP Coverage													
Portion of winter heating bill covered by LIHEAP (for all federally eligible households) ^b	18%	15%	11%	9%	9%	11%	14%	12%	NA ^c	8%	8%	10%	

Source: Compiled by the Congressional Research Service (CRS) on the basis of information provided by or included in the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance, *LIHEAP Home Energy Assistance Notebooks* and *LIHEAP Reports to Congress* for FY1998, FY2000, FY2001, FY2002, FY2003, FY2004, FY2005, and FY2006.

- a. The constant dollars are based on the 1981 value of the benefit (using the CPI-U index).
- b. These percentages represent the estimated portion of combined home heating costs for all households federally eligible for LIHEAP that was offset by LIHEAP heating/winter crisis assistance.
- c. HHS did not make FY2003 data for these trends available.

Funds and Their Distribution

The LIHEAP statute authorizes regular funds appropriations, which are allocated to all states on the basis of a statutory formula, and contingency fund appropriations, which are allocated to one or more states at the discretion of the Administration. The statute also authorizes a smaller amount of funds for incentive grants to states that leverage non-federal resources for their energy assistance programs.

Regular Funds

Regular funds are distributed to states according to a three-tier formula in the LIHEAP statute and based on the level of funds appropriated in a given fiscal year.²² The three-tier formula is the result of changes to the LIHEAP statute in 1984 through the Human Services Reauthorization Act (P.L. 98-558). Prior to the changes in P.L. 98-558, LIHEAP allotments to the states were based largely on home heating needs with minimal consideration of cooling costs, and did not provide for the use of updated data, including population and energy costs.

The new distribution formula provides that in determining state allotments the Department of Health and Human Services shall use “the most recent satisfactory data available” and consider home energy costs of low-income households (not simply all households, as was previously the case). These changes to the calculation of state allotments mean that some states will receive a smaller percentage share of regular funds, while some will receive a larger share. In order to

²² States are defined to include the District of Columbia. Indian tribes receive funds out of state allotments that are proportionate to their share of LIHEAP-eligible households in the state. Before state allotments are made, the statute provides that at least one-tenth (but not more than one-half) of 1% of the total appropriation must be set aside for energy assistance in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

offset the losses to certain states resulting from the formula change, and “prevent severe disruption to programs,”²³ Congress implemented two “hold harmless” provisions in P.L. 98-558 to prevent states from losing too much funding. This resulted in the three-tier current law formula, which is described in more detail below.

Tier I

The Tier I formula is used to allocate funds when the total LIHEAP regular fund appropriation is less than \$1.975 billion. Neither hold harmless provision applies at the Tier I level, and HHS allocates funds according to the allotment percentages used under the pre-1984 formula. The old formula is used because the amount of appropriated funds required to trigger the new formula is \$1.975 billion. The LIHEAP statute stipulates that for FY1986 and succeeding years, no state shall receive less money than it would have received in FY1984 had the LIHEAP funding in that year been \$1.975 billion.²⁴ According to HHS, then, the LIHEAP statute requires use of the old allotment percentages when funding is less than \$1.975 billion.²⁵ Until FY2006, funding levels for LIHEAP only twice exceeded the \$1.975 billion level, in FY1985 and FY1986. Thus, from FY1987 through FY2005, states continued to receive the same allotment percentages they received under the previous LIHEAP formula.

Tier II

For appropriations above \$1.975 billion and up to \$2.25 billion, the Tier II rate applies, and HHS uses the formula enacted in 1984 to calculate state allotments. Under the Tier II formula, a hold harmless *level* applies, and no state may receive less funding than it would have received under the Tier I distribution rate as it was in effect for FY1984, assuming a \$1.975 billion appropriation.²⁶ State allotment *percentages* may be different, however. To ensure that states receive their hold harmless levels of funding, those states that gain the most funding under the new formula must have their percentage share of funds ratably reduced to bring other states up to the hold harmless level.²⁷

Tier III

The Tier III formula applies to funding levels at or above \$2.25 billion. The Tier III rate uses the Tier II methodology to distribute funds, but adds a second hold-harmless requirement, a hold harmless *rate*. States that would receive less than 1% of a \$2.25 billion appropriation must have their funds allocated using the rate that would have been used at a hypothetical \$2.14 billion

²³ Report of the Committee on Energy and Commerce (H.Rept. 98-139, Part 2), to accompany H.R. 2439, May 15, 1984, p. 13.

²⁴ 42 U.S.C. §8623(a)(2)(A).

²⁵ U.S. Department of Health and Human Services, *Low Income Home Energy Assistance Program: Report to Congress for FY1987*, p. 133. The statutory provision that provides for use of the old formula is 42 U.S.C. §8623(a)(3).

²⁶ Since this language was enacted, Congress further provided that HHS could use regular LIHEAP funds appropriations for Training and Technical Assistance (P.L. 99-425). It also authorized Leveraging Incentive Grants (P.L. 101-501) and the REACH option (P.L. 103-252)—both of which it generally funds out of regular LIHEAP funds. These debits on the regular funds account were not in place for FY1984. Because they affect the level of regular funds available for state grant allotments by a little more than \$25 million, it is possible but not certain that HHS would not implement the newer formula before a regular funds appropriation level of approximately \$2.0028 billion.

²⁷ 42 U.S.C. §8623(a)(3).

appropriation (if this rate is greater than the calculated rate at \$2.25 billion). In both the Tier II and Tier III rates, a state will not be allocated less funds than the state received under the Tier I distribution as it was in effect in FY1984 (had the appropriation level been \$1.975 billion).

Contingency Funds

The statute currently provides an annual authorization of \$600 million for LIHEAP contingency funds (contingency funds are authorized indefinitely).²⁸ Appropriated contingency funds may only be released at the discretion of HHS and may be allocated to one or more states according to their needs. The statute authorizes the appropriation of contingency funds “to meet the additional home energy assistance needs of one or more states arising from a natural disaster or other emergency.” The term “emergency” is defined in the LIHEAP statute to include a natural disaster; a significant home energy supply shortage or disruption; significant increases in the cost of home energy, home energy disconnections, participation in public benefit programs, or unemployment; or an “event meeting such criteria as the [HHS] Secretary may determine to be appropriate.”

Leveraging Incentive and REACH Funds

In 1990, P.L. 101-501 amended the program statute to provide a separate funding authorization of \$50 million (\$30 million if regular funds appropriated are under \$1.4 billion) for incentive grants to states that leverage non-federal resources for their LIHEAP programs.²⁹ Such resources might include negotiated lower energy rates for low-income households or separate state funds. States are awarded incentive funds in a given fiscal year on the basis of a formula that takes into account their previous fiscal year success in securing non-federal resources for their energy assistance program. In 1994 (P.L. 103-252) the statute was further amended to provide that of any incentive funds appropriated, up to 25% may be set aside for the Residential Energy Assistance Challenge Option (REACH). Under the REACH option states may be awarded competitive grants for their efforts to increase efficiency of energy usage among low-income families and to reduce those families’ vulnerability to homelessness and other health and safety risks due to high energy costs. The funding authorization for Leveraging Incentive and REACH grants is separate from regular funds, and the programs were not reauthorized in P.L. 109-58. In practice, however, Congress has funded these initiatives at \$22 million to \$30 million with dollars set-aside out of annual regular fund appropriations.

Other Funds

States are allowed to carry over unused funds from a previous fiscal year (limited to 10% of funds awarded a state). A diminishing amount of money may also be available from previously settled claims of price control violation by oil companies.³⁰ In addition, the Social Services Block Grant program allows states to transfer up to 10% of funds to provide low-income home energy

²⁸ 42 U.S.C. §8621(e).

²⁹ 42 U.S.C. §8621(d).

³⁰ *FY2004 LIHEAP Report to Congress*, p. 11. For FY2004, \$2 million in oil overcharge funds was available to one state.

assistance,³¹ while the Temporary Assistance for Needy Families program gives states the discretion to use funds for home heating and cooling costs.³²

Legislative History

Since it was created by the Low Income Home Energy Assistance Act of 1981 (Title XXVI of P.L. 97-35), the LIHEAP program has been reauthorized or amended seven times. The legislation and some of the significant changes made are briefly discussed in the following paragraphs.

In 1984, P.L. 98-558, established a new formula by which regular LIHEAP funds are to be distributed in every year (after FY1985) in which regular appropriations exceed \$1.975 billion. This level of funding was exceeded in FY1986 and again in FY2006.

In 1986, P.L. 99-425 extended the program with few changes. In 1990, P.L. 101-501 created the Incentive Program for Leveraging Non-Federal Resources and authorized a July to June program year (or forward funding) for LIHEAP to allow state program directors to plan for the fall/winter heating season with knowledge of available money. This program year language was subsequently removed, although the statute now states that money appropriated in a given fiscal year is to be made available for obligation in the following fiscal year. Congress last provided advance appropriations for LIHEAP in the FY2000 appropriations cycle.

In 1993, P.L. 103-43 extended the authorization of LIHEAP for one year but made no other changes. In 1994 (P.L. 103-252) Congress stipulated that LIHEAP benefits and outreach activities target households with the greatest home energy needs (and costs), and it enacted a separate and permanent contingency funding authorization of \$600 million for each fiscal year. The 1994 law also established the competitive REACH grant option. In 1998, P.L. 105-285 authorized annual regular funding for each of FY2002-FY2004 at \$2 billion and made explicit a wide variety of situations under which HHS is authorized to release LIHEAP contingency funds.

In 2005, the Energy Policy Act (P.L. 109-58) reauthorized the program and raised the LIHEAP regular funds authorization level for FY2005 through FY2007 to \$5.1 billion. It also explicitly permitted the purchase of renewable fuels as part of providing LIHEAP assistance; required the Department of Energy to report on use of renewable fuels in provision of LIHEAP aid; and required HHS to report (within one year of the legislation's enactment) on ways that the program could more effectively prevent loss of life due to extreme temperatures. The law also allowed the Secretary of the Interior, when disposing of royalty-in-kind oil and gas taken as payment from lessees using federal land, to grant a preference for the purpose of providing additional resources to support federal low-income energy assistance programs. (Lessees of federal land may pay royalties to the U.S. government in oil and natural gas rather than cash payments.) However, the Government Accountability Office issued a decision determining that the law did not give the Interior Department sufficient authority to grant such a preference.³³ Because of a provision in

³¹ 42 U.S.C. §1397a(d).

³² 42 U.S.C. §604(a)(1).

³³ U.S. Government Accountability Office, *Department of Interior—Royalty-in-Kind Oil and Gas Preferences*, B-307767, November 13, 2006, available at <http://www.gao.gov/decisions/appro/307767.pdf>.

existing law that the Interior Department cannot sell oil and gas obtained as in-kind royalties for less than market price,³⁴ the provision in P.L. 109-58 does not allow a price preference.

Table 3. LIHEAP Funding by State, FY2006 to FY2009
(Funding Shown for Each State Does Not Include Distributions to Tribes)
(dollars in millions)

State	Total Funds Distributed ^a (Regular and Contingency)			Regular Allotment	Contingency Distributed	Total
	FY2006	FY2007	FY2008	FY2009		
Alabama	31.787	22.077	19.090	59.649	4.182	63.832
Alaska	12.839	8.631	11.681	16.333	5.100	21.433
Arizona	14.230	7.856	8.591	26.844	1.882	28.726
Arkansas	23.336	15.749	14.667	36.497	3.213	39.711
California	156.441	94.089	102.250	223.989	22.402	246.391
Colorado	44.806	33.073	41.326	63.474	7.877	71.352
Connecticut	71.106	48.102	65.618	95.783	30.104	125.887
Delaware	10.954	5.727	6.929	17.384	1.364	18.748
District of Columbia	8.165	6.700	7.284	14.653	1.596	16.249
Florida	49.785	27.970	30.406	95.013	6.662	101.675
Georgia	40.026	28.564	24.047	75.141	5.269	80.410
Hawaii	2.567	2.228	2.403	4.652	0.531	5.182
Idaho	14.055	12.275	13.241	25.632	2.924	28.556
Illinois	193.814	119.418	149.216	237.236	28.443	265.679
Indiana	75.327	54.062	67.552	103.602	12.877	116.479
Iowa	52.054	38.319	47.881	67.803	9.127	76.929
Kansas	27.709	19.727	22.083	45.308	4.188	49.496
Kentucky	45.320	32.010	30.588	68.353	6.702	75.055
Louisiana	32.671	22.499	19.651	57.196	4.305	61.502
Maine	43.496	32.487	44.835	47.649	28.644	76.293
Maryland	61.889	33.036	35.913	101.296	7.868	109.164
Massachusetts	126.425	93.757	126.442	162.916	50.499	213.414
Michigan	153.615	112.509	140.589	221.244	26.862	248.106
Minnesota	110.849	81.681	102.063	144.528	19.455	163.982
Mississippi	27.415	17.838	16.448	38.937	3.604	42.541
Missouri	78.220	52.645	59.603	103.541	11.361	114.902
Montana	19.259	12.487	15.602	26.075	2.974	29.049

³⁴ 42 U.S.C. §15902(b)(3)(A).

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State	Total Funds Distributed ^a (Regular and Contingency)			Regular Allotment	Contingency Distributed	Total
	FY2006	FY2007	FY2008			
Nebraska	28.634	18.940	23.660	39.558	4.512	44.070
Nevada	7.247	4.016	4.366	13.643	0.957	14.599
New Hampshire	27.740	18.769	25.635	34.112	13.624	47.737
New Jersey	114.759	79.920	108.707	166.690	19.083	185.773
New Mexico	11.555	9.867	10.711	22.919	2.347	25.266
New York	381.719	261.178	359.046	475.409	62.240	537.649
North Carolina	71.125	45.156	41.629	121.051	9.121	130.172
North Dakota	19.272	13.446	16.426	27.299	3.114	30.413
Ohio	164.226	105.643	132.004	220.588	25.162	245.750
Oklahoma	26.921	17.517	16.048	44.572	3.521	48.092
Oregon	24.575	25.035	27.010	44.640	6.009	50.650
Pennsylvania	202.324	140.520	191.759	274.925	33.469	308.394
Rhode Island	23.066	15.428	20.816	30.123	8.420	38.544
South Carolina	25.279	17.636	15.266	47.702	3.345	51.047
South Dakota	16.540	10.977	13.715	22.921	2.614	25.536
Tennessee	47.139	33.568	30.985	73.723	6.789	80.512
Texas	84.005	46.545	50.599	158.110	11.086	169.196
Utah	22.848	15.062	18.823	31.646	3.609	35.255
Vermont	20.903	14.162	19.370	25.568	10.587	36.156
Virginia	75.053	40.241	43.746	118.084	9.585	127.668
Washington	39.631	40.443	43.626	71.568	9.634	81.201
West Virginia	24.543	18.621	20.157	40.584	4.435	45.019
Wisconsin	99.837	73.525	91.872	130.096	17.512	147.608
Wyoming	8.987	5.932	7.415	12.640	1.442	14.081
Subtotal	3,096	2,108	2,559	4,428.898	582.230	5,011.128
Tribes ^b	32.897	23.201	27.983	47.403	7.434	54.837
Territories ^c	3.456	2.788	3.014	6.070	0.664	6.734
Leveraging/REACH ^d	27.225	27.225	— ^f	27.000	—	27.000
Training/Tech. Asst. ^e	0.297	0.297	0.292	0.300	—	0.300
Total	3,160	2,161	2,591	4,509.672	590.328	5,100

Source: Compiled by the Congressional Research Service (CRS) using U.S. Department of Health and Human Services (HHS) data.

- a. The totals shown in these columns include regular fund allocations to states (net of the direct awards to tribes) and any contingency funds awarded to the state in that year.

- b. This funding is made directly available to or for tribes but is reserved out of a given state's allotment amount. As prescribed in the statute, the tribal set-aside from a state gross allotment is based on tribal households in that state.
- c. The statute provides that HHS must set-aside not less than one-tenth of 1% and not more than one-half of 1% for use in the territories (American Samoa, Guam, Puerto Rico, Northern Mariana Islands, and the U.S. Virgin Islands).
- d. The statute provides a separate funding authorization for competitive grants under the leveraging incentive program (designed to encourage states to increase non-federal support for energy assistance). It also provides that up to 25% of any leveraging funds made available may be reserved for competitive REACH grants (for state efforts to increase efficient use of energy among low-income households and to reduce their vulnerability to homelessness and other problems due to high energy costs). Congress has in recent years stipulated that a certain portion of the LIHEAP regular funds be set aside for leveraging grants and, of this amount, HHS has reserved 25% for REACH grants.
- e. The statute provides that HHS may reserve up to \$300,000 for making grants or entering into contracts with states, public agencies, or private nonprofits that provide training and technical assistance related to achieving the purposes of the LIHEAP program.
- f. The FY2008 Appropriations Act (P.L. 110-161) did not specify funds for leveraging incentive and REACH grants.

Table 4. LIHEAP Funding: FY1982 to FY2010

(dollars in thousands)

Fiscal Year	Regular Funds ^a			Contingency Funds ^a		Total Distributed
	President's Request	Authorized	Appropriated	Appropriated	Distributed	
1982	1,400,000	1,875,000	1,875,000	—	—	1,875,000
1983	1,300,000	1,875,000	1,975,000	—	—	1,975,000
1984	1,300,000	1,875,000	2,075,000	—	—	2,075,000
1985	1,875,000	2,140,000	2,100,000	—	—	2,100,000
1986	2,097,765	2,275,000	2,100,000	—	—	2,100,000
1987	2,097,642	2,050,000	1,825,000	—	—	1,825,000
1988	1,237,000	2,132,000	1,531,840	—	—	1,531,840
1989	1,187,000	2,218,000	1,383,200	—	—	1,383,200
1990	1,100,000	2,307,000	1,443,000	—	—	1,443,000
1991	1,050,000	2,150,000	1,415,055	195,180	195,180	1,610,235
1992	925,000	2,230,000	1,500,000	300,000	0	1,500,000
1993	1,065,000	ssan ^b	1,346,030	595,200	0	1,346,030
1994	1,507,408	ssan ^b	1,437,402	600,000	300,000	1,737,402
1995	1,475,000	2,000,000	1,319,202	600,000	100,000	1,419,202
1996	1,319,204	2,000,000	900,000	180,000	180,000	1,080,000
1997	1,000,000	2,000,000	1,000,000	420,000	215,000	1,215,000
1998	1,000,000	2,000,000	1,000,000	300,000	160,000	1,160,000
1999	1,000,000	2,000,000	1,100,000	300,000	175,299	1,275,299
2000	1,100,000	ssan ^b	1,100,000	900,000	744,350 ^c	1,844,350 ^c

Fiscal Year	Regular Funds ^a			Contingency Funds ^a		Total Distributed
	President's Request	Authorized	Appropriated	Appropriated	Distributed	
2001	1,100,000	ssan ^b	1,400,000	600,000	455,650	1,855,650
2002	1,400,000	2,000,000	1,700,000	300,000	100,000 ^d	1,800,000
2003	1,400,000	2,000,000	1,788,300 ^e	0	200,000 ^f	1,988,300
2004	1,700,000	2,000,000	1,789,380	99,410	99,410	1,888,790
2005	1,900,500 ^{g,h}	5,100,000	1,884,799	297,600	277,250	2,162,050
2006	1,800,000 ^g	5,100,000	2,480,000	681,000	679,960	3,160,000
2007	1,782,000	5,100,000	1,980,000	181,000	181,000	2,161,000
2008	1,500,000	— ⁱ	1,980,000	590,328	610,678 ⁱ	2,590,678
2009	1,700,000	— ⁱ	4,509,672	590,328	590,328	5,100,000
2010	2,410,000 ^k	—	—	—	—	—

Source: Prepared by the Congressional Research Service (CRS) on the basis of HHS data.

- a. Amounts listed under the Regular Funds heading are for *regular* funding only. In 1994, Congress enacted a permanent \$600 million annual authorization for contingency funding. As shown, however, before this authorization contingency funds were sometimes made available.
- b. Such sums as necessary.
- c. President Clinton released \$400 million of these FY2000 contingency funds in late September 2000 making it effectively available to states in FY2001.
- d. These funds were distributed out of the total FY2002 contingency appropriation (P.L. 107-116). With the end of FY2002, the remaining \$200 million of these contingency funds expired.
- e. The final FY2003 appropriations act (P.L. 108-7) included \$1.688 billion in new regular funds and converted into regular funds \$100 million of remaining contingency funds originally appropriated in FY2001 (P.L. 107-20).
- f. These funds were distributed out of contingency dollars appropriated as part of the FY2001 supplemental (P.L. 107-20). That law provided that the funds were “available until expended.” Congress subsequently converted some of these dollars into regular funds (see tablenote).
- g. Of the amounts requested by the President in FY2005 and FY2006, \$500,000 was to be set aside for a national evaluation.
- h. In FY2005, the President’s initial budget request for LIHEAP regular funds was \$1,800,000,500. However, on November 14, 2004, the President submitted a budget amendment to Congress, requesting \$1,900,000,500 for LIHEAP regular funds.
- i. LIHEAP has not been unauthorized in FY2008 and FY2009.
- j. Of the contingency funds distributed in FY2008, \$20 million came from funds appropriated in the FY2005 Departments of Labor, Health and Human Services, and Education Appropriations Act (P.L. 108-447). Contingency funds in P.L. 108-447 were made available until expended.
- k. In FY2010, the President proposed that a mechanism be created whereby additional LIHEAP funds would be released when energy price increases reached certain levels. This “trigger” is estimated to result in mandatory budget authority of \$450 million. This amount is not included in proposed funding for regular funds.

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