

August 19, 2015

By first-class mail and email to LIHEAP.StatePlan@dc.gov

Karim D. Marshall
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, D.C. 20002

Re: Comments on LIHEAP State Plan for Fiscal Year 2016

Dear Mr. Marshall:

Thank you for the opportunity to submit comments on DDOE's draft LIHEAP State Plan for the upcoming fiscal year. We are pleased that the FY 2016 Draft Plan includes new and important clarifying information, including information about income and income verification, in-kind benefits, and appeal rights. This draft plan incorporates many of the comments we submitted earlier this year regarding the LIHEAP program and reflects much of our discussion from our meeting in April. We thank the department for its efforts to be responsive to our concerns.

Nonetheless, there are several areas of the draft State Plan still with incomplete information or where more clarity is needed about the program. We hope the Department will take this opportunity to further clarify the LIHEAP program through the State Plan, or, alternatively, publish regulations governing these issues. In addition, we recommend some changes to the policies governing LIHEAP to better serve DC residents.

1. Coordination with other District agencies

- **Department of Human Services.** Section 7.1 references the District's LIHEAP Heat and Eat program. We are pleased that the State Plan includes this reference. However, the description of the program may not be accurate. Section 7.1 states that "SNAP recipient households with an energy burden are eligible to receive" the Heat and Eat benefit. However, Heat and Eat provides LIHEAP benefits to all SNAP participants, regardless of energy burden. The following language is from the Department of Human Services, Economic Security Administration Policy Manual:

Effective January 1, 2010 all FS recipients are eligible to receive a \$1 [now \$20.01] "Heat and Eat" payment under the Low Income Energy Assistance Program (LIHEAP) if they are not already eligible for LIHEAP under other provisions.

Receipt of LIHEAP, including the \$1 “Heat and Eat” payment, makes them eligible for the HCSUA. Any active FS household is reasonably expected to receive the \$1 LIHEAP payment effective January 1, 2010, which makes them eligible for the HCSUA even if the \$1 payment has not yet been issued.

Determine initial eligibility for households who apply for FS without reference to the Heat and Eat program. If the household is otherwise eligible for the HCSUA expense, use the HCSUA in determining eligibility. If the household is not otherwise eligible for the HCSUA, first determine if the FS household is eligible for FS without the HCSUA. If the household is not eligible, deny the application. If the household is eligible for any FS benefit, including households of 2 or more members that meet gross and net income tests but are eligible for a \$0.00 benefit, the household is now receiving FS and is eligible for the Heat and Eat program. Redetermine eligibility using the HCSUA, since the household is reasonably expected to receive a LIHEAP payment.

FS households who are recertifying for FS are current recipients and are therefore eligible for the HCSUA under the Heat and Eat program.

ESA Policy Manual, Chapter 6.3, <http://dhs.dc.gov/node/120652>.

Beyond improving clarity of the Heat and Eat program in the State Plan, it would be extremely helpful if the Departments of the Environment and Human Services could issue specific policies and regulations governing the program so that both SNAP recipients and LIHEAP applicants understand how the program works.

- **Department of Consumer and Regulatory Affairs.** Section 2.7 anticipates that individuals could receive space heaters as in-kind assistance. There appears to be a policy conflict between DDOE and DCRA (the Department of Consumer and Regulatory Affairs), which has historically discouraged the use of space heaters as fire hazards. Have DDOE and DCRA discussed this potential conflict? Does DDOE make any sort of safety determination when deciding whether the provision of space heaters is appropriate? Does DDOE ask applicants whether space heaters are allowable under their leases? As with the Heat and Eat program above, we recommend that DDOE and DCRA work together to develop a consistent policy that accommodates the (potentially emergency) need for heat provided by a space heater with DCRA’s desire to protect District residents from potentially hazardous appliances.

2. Crisis assistance

Although the Plan has improved in its description of how crisis assistance works, the draft state plan still raises questions about the threshold for receiving crisis assistance; further clarity is needed. First, the Plan is not clear about what standards a household must meet to be considered in crisis. It indicates, in both 4.2 and 4.7, that a household is eligible for crisis assistance if its energy service has actually been disconnected, or if it is virtually out of heating oil. But Section 4.7 also states that heating or cooling must be medically necessary; it is not clear whether this is an “and” or an “or” requirement. Although the text indicates that “any one of the checked yes items” is a qualifying event, the information in 4.7 is not entirely clear. For example, there is also a “yes” for “must the household have exhausted its regular benefit?” – but we assume this is a requirement, but not alone a triggering event, for crisis benefits.

It is therefore still unclear whether, to receive crisis assistance, a household must be disconnected and have a medical need for heating or cooling, or whether medical necessity is an alternative ground, such that a household with a medical need can obtain crisis assistance even if energy has not been disconnected. And if the latter is the case, how close to shutoff does the household with medical necessity need to be in order to be eligible?

More fundamentally, even with an exception for medical necessity, we have concerns about requiring service to be actually disconnected before a family is considered “in crisis.” Once a household is disconnected, there is a standard fee to reconnect service: \$35.00 for Pepco and anywhere from \$45.00 to \$70.00 for Washington Gas, depending on the day. This is a needless expenditure for already struggling families, and one that can be avoided if families can receive help before their service is discontinued rather than after. We recommend a policy change to allow households to receive crisis assistance if they have received a notice of pending shutoff, without having to wait for utilities to actually be shut off before seeking crisis assistance.

3. Benefits for households without a citizen or qualified alien

Section 17.4 of the Plan makes clear that in order to be eligible for LIHEAP benefits, a household member must be a U.S. citizen or qualified alien under federal law. While we understand that this is the requirement under federal law for federal LIHEAP funds, no such restriction applies for the use of D.C. funds.

We encourage DDOE to make LIHEAP assistance available, using local funds, for individuals who do not meet the federal citizenship requirements. This change would place LIHEAP in line with other D.C.-funded assistance programs, such as the D.C. Healthcare Alliance and the Local Rent Supplement Program, which use local dollars to expand eligibility

for federally-funded programs. Furthermore, it would have no budget impact on the LIHEAP program itself, as it would simply allocate the program's existing dollars differently.

In addition, we understand, based on our conversation with Mr. Marshall, that if a family contains both eligible and ineligible applicants – a “mixed family” in immigration terms – that the benefit will be calculated using a household size based on the number of eligible household members. We recommend using local funds to serve such households, counting all household members to determine benefits. Alternatively, if the current policy is retained, it should be spelled out more clearly, including language making clear that DDOE does not inquire about specific immigration status except as necessary to determine whether an individual is a qualified alien.

4. Definitions

Because the LIHEAP State Plan is a report to the federal government agency that administers the LIHEAP benefit, the Plan contains terms of art that others may not understand. We recommend adding a definition section to clarify terms whose meaning might not be obvious. Below is a list of terms which we would recommend that the agency define in its state plan.

- *Utility shut-off notice.* Based on our previous conversation with Mr. Marshall, we understand that this is a notice that a family's utilities *have* been shut off and not that they *will* be shut off; this is, however, not obvious from the term itself.
- *Prompt.* This term should be defined in order to determine whether the agency has acted “promptly” on an application for benefits.
- *Household.* The term household is not defined in the State Plan. Presumably, a LIHEAP household is composed of all eligible members who physically live together. However, can individuals who live in a unit choose not to be in the household? Are there mandatory and optional members (as there are in SNAP and TANF households)?
- *Categorically Eligible.* The adoption of categorical eligibility appears to be a change for DDOE. However, it is unclear from the State Plan whether being categorically eligible for LIHEAP benefits has any impact on households, as we assume that even for those families, the benefit will continue to be calculated based on household income. Nor is it clear whether all members of a household have to meet a categorical eligibility category in order to gain such eligibility. It would therefore be helpful for DDOE to provide a definition of categorical eligibility that also discusses the impact of such eligibility on households.
- *Income.* Although DDOE provides a list of the various types of income and documentation requirements for income, the agency does not state how income is calculated (based on when received or when earned, for example). Perhaps this is not a

problem in practice, but without such a definition, DDOE staff might be administering the eligibility process in inconsistent ways (for example, requiring three paystubs from one household and only one from another).

- *Medically necessary.* It would be helpful to have some further guidance on how the Department interprets the term “medical necessity.” Is the standard met by producing a letter from a doctor? Is any more required?
- *DOE WAP rules.* We would recommend that DDOE add a cross reference to these rules in the State Plan.
- *DOE Savings to Investment Ratio.* We would recommend that DDOE add a cross reference to these rules in the State Plan.

5. Other items

Section 4.11 (Accommodations for Individuals with Disabilities). Under this section, the agency describes how an individual with physical disabilities can get a home visit to complete the LIHEAP application process for crisis assistance. Although the agency is being responsive to the issue raised in this question (which only addresses physical disabilities), it is unclear why only individuals with physical disabilities can get home visits. Individuals with severe mental illness or cognitive impairments can have an equally difficult time leaving their homes to apply for benefits because they fear being around others (and therefore cannot take public transportation or wait in an office), cannot remember how to get to DDOE or cannot communicate effectively with agency personnel. We would therefore recommend that DDOE expand this accommodation to include individuals with mental and intellectual disabilities as well as those with physical impairments.

Sections 2.7, 3.7, and 4.13 (In-kind benefits). We appreciate that this year’s Plan adds in eligibility criteria for receiving in-kind benefits such as blankets and fans. However, it still does not describe the process for seeking those benefits. And, more importantly, it does not answer the question we posed previously about whether families can receive in-kind benefits if they are not eligible for any financial LIHEAP assistance.

Section 9 (Energy Suppliers). It would be helpful to have more information publicly available about the relationship between DDOE and energy vendors. DDOE’s previously proposed regulations contained a list of the assurances that energy suppliers had to provide in their contracts with the District. Additionally, Section 4.16 references regulations adopted by the Public Services Commission that prohibits utility shut offs when the temperature goes below 32 degrees. Although we understand that Section 4.16 answers a specific question about winter moratorium on shut offs, it would be helpful for consumers to know if there were similar prohibitions when weather was dangerously hot. We would therefore recommend that DDOE put all of the language about vendor assurances in one section and reference details – such as

when power can and cannot be shut off and timelines for consumers to expect that their LIHEAP payments will be posted to their accounts -- that would better help consumers and their advocates understand how the LIHEAP program works.

Sections 17.2 and 17.4 (Citizenship/Identification Documentation and Verification). In addition to our policy proposal that the District use local funds to provide LIHEAP benefits to households that do not contain a citizen or qualified alien, we also have several questions about the State Plan's discussion of immigration requirements. First, while we appreciate that the Plan provides the immigration requirements for LIHEAP, it is not clear that Section 17.4 is the right place. This subject is at least as much a question of eligibility as it is one of verification, and so this information would be better placed in the eligibility sections (Assurances 2 through 4).

Second and more importantly, it is not clear why every household member needs to provide both a Social Security number and a Social Security card, which is what Section 17.2 appears to require. There are a number of ways that applicants can document their Social Security numbers, including through documents from SSA other than the card itself. The plan also indicates that qualified aliens cannot provide documentation of their immigration status (such as by providing a copy of their green cards) as an alternative to providing a Social Security number or card. If this is the case, we would recommend that DDOE change this policy.

* * *

We hope these comments are helpful to DDOE as it finalizes the Plan for the upcoming fiscal year. We would welcome the opportunity to meet with you in early September to discuss these and other issues with the program. Please contact Julie Becker or Jennifer Mezey at Legal Aid to schedule a meeting. Thank you.

Sincerely,

Julie H. Becker
Jennifer Mezey
*Legal Aid Society of the District of
Columbia*

Ed Lazere
D.C. Fiscal Policy Institute

Jan May
AARP Legal Counsel for the Elderly

Wendy Guyton
Bread for the City

Ivan Lanier
AARP DC