Order Code RL33275

CRS Report for Congress

The LIHEAP Formula: Legislative History and Current Law

Updated November 19, 2008

Libby Perl
Analyst in Housing Policy
Domestic Social Policy Division

Congressional Research Service

Prepared for Members and Committees of Congress

The LIHEAP Formula: Legislative History and Current Law

Summary

The Low Income Home Energy Assistance Program (LIHEAP) provides funds to states, the District of Columbia, U.S. territories and commonwealths, and Indian tribal organizations (collectively referred to as grantees) primarily to help low-income households pay home energy expenses. The LIHEAP statute provides for two types of funding: regular funds (sometimes referred to as block grant funds) and emergency contingency funds. Regular funds are allocated to grantees based on a formula, while contingency funds may be released to one or more grantees at the discretion of the Secretary of the Department of Health and Human Services based on emergency need.

Regular LIHEAP funds are allocated to the states according to a formula that has a long and complicated history. (Tribes receive funds based on their number of federally eligible LIHEAP households compared to the total number in the state, whereas territories receive a set percentage of total LIHEAP regular funds.) In 1980, Congress created the predecessor program to LIHEAP, the Low Income Energy Assistance Program (LIEAP) as part of the Crude Oil Windfall Profits Tax Act (P.L. 96-223). Because Congress was particularly concerned with the high costs of heating, funds under LIEAP were distributed according to a multi-step formula that benefitted cold-weather states. In 1981, Congress enacted LIHEAP as part of the Omnibus Budget Reconciliation Act (P.L. 97-35), replacing LIEAP. However, the LIHEAP statute specified that states would continue to receive the same percentage of regular funds that they did under the LIEAP formula.

When Congress reauthorized LIHEAP in 1984 as part of the Human Services Reauthorization Act (P.L. 98-558), it changed the program's formula by requiring the use of more recent population and energy data and requiring that HHS consider both heating and cooling costs of low-income households (a change from the focus on the heating needs of all households). The effect of these changes meant that, in general, funds would be shifted from cold-weather states to warm-weather states. To prevent a dramatic shift of funds, Congress added two "hold-harmless" provisions to the formula. The result of these provisions is a current law, three-tiered formula (sometimes referred to as the "new" formula), the application of which depends on the amount of regular funds that Congress appropriates.

The Tier I formula is used to allocate funds when the total LIHEAP regular fund appropriation is less than or equal to the equivalent of a hypothetical FY1984 appropriation of $1.975 billion. Above this level, funds are allocated according to Tier II of the formula, which includes a hold-harmless *level* to prevent certain states from losing LIHEAP funds. Finally, Tier III applies to appropriations at or above $2.25 billion, and includes a second hold-harmless provision, the hold-harmless *rate*. Since FY1986, LIHEAP regular fund appropriations have exceeded the equivalent of an FY1984 appropriation of $1.975 billion on three occasions: in FY2006, when the regular fund appropriation was $2.48 billion; in FY2008, when appropriations slightly exceeded the trigger; and in FY2009, when Congress directed that $840 million be distributed according to the "new" LIHEAP formula.

Contents

List of Figures

List of Tables

The LIHEAP Formula: Legislative History and Current Law

Introduction

The Low Income Home Energy Assistance Program (LIHEAP) is a block grant program administered by the Department of Health and Human Services (HHS) under which the federal government gives annual grants to states, the District of Columbia, U.S. territories and commonwealths, and Indian tribal organizations to operate multi-component home energy assistance programs for needy households.[1] Established in 1981 by Title XXVI of P.L. 97-35, the Omnibus Budget Reconciliation Act, LIHEAP has been reauthorized and amended a number of times, most recently in 2005, when P.L. 109-58, the Energy Policy Act, authorized annual regular LIHEAP funds at $5.1 billion per year from FY2005 through FY2007.[2]

The federal LIHEAP statute has very broad guidelines, with almost all decisions regarding the program's operation made by the states. Recipients may be helped with their heating and cooling costs, receive crisis assistance, have weatherizing expenses paid, or receive other aid designed to reduce their home energy needs. Households with incomes up to 150% of the federal poverty income guidelines or, if greater, 60% of the state median income, are federally eligible for LIHEAP benefits. States may adopt lower income limits, but no household with income below 110% of the poverty guidelines may be considered ineligible. The most current HHS data show that an estimated 5.3 million households received winter heating or winter crisis assistance in FY2005 (the majority of LIHEAP funds pay for heating assistance).[3]

The LIHEAP statute provides for two types of program funding: regular funds — sometimes referred to as block grant funds — and emergency contingency funds. Regular funds are allotted to states on the basis of the LIHEAP statutory formula, which was enacted as part of the Human Services Reauthorization Act of 1984 (P.L. 98-558).[4] The way in which regular funds are allocated to states depends on the amount of funds appropriated by Congress. The second type of LIHEAP funds, emergency contingency funds, may be released and allotted to one or more states at

---

[1] For additional information on LIHEAP, see CRS Report RL31865, *The Low Income Home Energy Assistance Program (LIHEAP): Program and Funding*, by Libby Perl.

[2] LIHEAP is codified at 42 U.S.C. §§8621-8630.

[3] U.S. Department of Health and Human Services, Administration for Children and Families, *FY2005 LIHEAP Report to Congress*, April 24, 2008, p. 20.

[4] The formula section is codified at 42 U.S.C. §8623.

the discretion of the President and the Secretary of HHS.[5] The funds may be released at any point in the fiscal year to meet additional home energy assistance needs created by a natural disaster or other emergency.[6]

The remainder of this report discusses only the history and methods of distributing regular LIHEAP funds.

Predecessor Programs to LIHEAP

The mid- to late-1970s, a time marked by rapidly rising fuel prices, also marked the beginning of federal energy assistance funding for low-income households. The first national program to help low-income households was created in early 1975 to assist families with energy conservation primarily through home weatherization. This assistance was provided through a new Emergency Energy Conservation Program (EECP), enacted as part of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (P.L. 93-644). The funds were administered by the Community Services Administration (CSA), the successor agency to the Office of Economic Opportunity, which was responsible for many of the programs created as part of the 1964 war on poverty. Beginning in 1977, funds were also made available through the CSA to help families directly pay for fuel (as opposed to weatherization expenses) via a variety of programs. Each of these programs had in common a focus on the need for heating assistance (versus cooling assistance).

Congress continued to appropriate funds for energy assistance programs through FY1980, at which point a new program, the Low Income Energy Assistance Program (LIEAP) was enacted as part of the Crude Oil Windfall Profits Tax Act of 1980 (P.L. 96-223). LIEAP, which was administered by the Department of Health and Human Services (HHS), was funded for one year, FY1981, before the creation of LIHEAP. Like the CSA programs, LIEAP emphasized heating over cooling needs. This preference was reflected in both the CSA program formulas and the LIEAP set of formulas, which used variables that benefitted cold-weather states to determine how funds would be distributed. The LIEAP set of formulas continues to have relevance for the way in which LIHEAP funds are distributed. This section of the report describes these predecessor programs to LIHEAP and their distribution formulas.

---

[5] Depending on how Congress appropriates them, contingency funds may remain available for distribution in more than one fiscal year or they may expire with the fiscal year for which they were appropriated.

[6] The statutory definition of emergency includes a significant home energy supply shortage or disruption, a significant increase in the cost of home energy, a significant increase in home energy disconnections, a significant increase in participation in a public benefit program, a significant increase in unemployment, or an event meeting such criteria as the Secretary determines to be appropriate. 42 U.S.C. §8622.

Community Services Administration Energy Assistance Programs

On January 4, 1975, President Ford signed into law the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (P.L. 93-644), which contained funds for a new program, called the Emergency Energy Conservation Program (EECP). The program was to be administered by the Community Services Administration (CSA), and its purpose was

> to enable low-income individuals and families, including the elderly and the near poor, to participate in energy conservation programs designed to lessen the impact of the high cost of energy ... and to reduce ... energy consumption.

The law governing EECP listed a number of eligible activities in which states could participate, including energy conservation and education programs; weatherization assistance; loans and grants for the purchase of energy conservation technologies; alternative fuel supplies; and fuel voucher and stamp programs. Despite the variety of activities that could be funded through the program, the first CSA funding notice regarding the program limited eligible activities to "winterizing" homes and to giving emergency assistance "to prevent hardship or danger to health due to utility shutoff or lack of fuel."[7] During the four years the EECP was funded, the majority of funds were used for weatherization expenses.[8]

EECP funds were distributed to states via a formula that benefitted those states with high heating costs. One formula variable in particular, a measure of "coldness" called heating degree days, benefitted cold-weather states. Heating degree days measure the extent to which a day's average temperature falls below 65° Fahrenheit. For example, a day with an average temperature of 50° results in a measure of 15 heating degree days. Because heating degree days are higher in cold weather states, including the heating degree day variable in a formula favors states with greater heating needs. Squaring the heating degree days magnifies this effect.[9] The EECP formula took the number of population-weighted heating degree days in each state, squared them, and multiplied the result by the number of households in poverty that owned their homes to determine how funds would be allocated.[10] The CSA

---

[7] Community Services Administration, "Character and Scope of Specific Community Action Programs: Emergency Energy Conservation Program," *Federal Register*, vol. 40, no. 145, July 28, 1975, p. 31603.

[8] See, for example, House Appropriations Committee, report to accompany H.R. 4877, the FY1977 Supplemental Appropriations Act, 95th Cong., 1st sess., H.Rept. 95-68, March 11, 1977: "The funds in this program are used primarily to purchase materials to insulate the homes of low-income families."

[9] For example, if a southern state experiences 700 heating degree days in a year and a northern state experiences 7,000, the northern state has 10 times as many heating degree days as the southern state. However, if both numbers are squared, the northern state has 100 times as many heating degree days as the southern state.

[10] Community Services Administration, "Emergency Energy Conservation Program: Submission of Funding Plans," *Federal Register*, vol. 41, no. 208, October 27, 1976, p.

(continued...)

acknowledged the emphasis on heating needs in its formula, stating that the FY1975 allocation "was heavily weighted to the coldest areas..."[11] In the three fiscal years that followed the first appropriation for the EECP, from FY1976 through FY1978, the CSA changed somewhat the way in which it allocated funds to the states; however, the factors continued to favor cold-weather states through use of either heating degree days or heating degree days squared.[12]

The first year that Congress specifically appropriated funds for direct assistance to help low-income households (those at or below 125% of poverty) pay their energy costs (instead of funds that went primarily for weatherization and conservation activities) was FY1977. The FY1977 Supplemental Appropriations Act (P.L. 95-26) provided $200 million for a Special Crisis Intervention Program to be administered by CSA. States could use funds to make direct payments to fuel providers on behalf of low-income families lacking the financial resources to pay their energy bills. The CSA directed states to target households where utilities had been shut off (or were threatened with shut off) and who could prove dire need due to large energy bills.[13] Although the law did not reserve funds exclusively for heating costs, the way in which funds were allocated to the states emphasized heating need. Funds were distributed to the states based on a formula that used (1) heating degree days squared, (2) the number of households in poverty, (3) the number of persons above age 65 with incomes below 125% of poverty, and (4) the relative cost of fuel in the region.[14] Congress again appropriated $200 million for crisis intervention in both FY1978 and FY1979.[15] In FY1978, funds were available to households with the need for assistance as the result of an energy-related emergency such as lack of fuel, a natural disaster, fuel shortages, and widespread unemployment.[16] In FY1979, funds were made available to assist families facing "substantially increased energy costs

---

[10] (...continued)
47096.

[11] *Federal Register*, vol. 41, no. 208, October 27, 1976, p. 47096.

[12] See Ibid., pp. 47096-47097.

[13] Community Services Administration, "Special Crisis Intervention Program: General Information, Application Procedures, and Post Grant Requirements," *Federal Register*, vol. 42, no. 125, June 29, 1977, p. 33240.

[14] The formula was described in the Senate Appropriations Committee report to accompany H.R. 4877, the FY1977 Supplemental Appropriations Act, 95th Cong., 1st sess., S.Rept. 95-64, March 24, 1977. The CSA implemented this formula, which it described in guidance to the states. See the *Federal Register*, Ibid.

[15] Funds were appropriated through the FY1978 Supplemental Appropriations Act (P.L. 95-240) and in FY1979 through a continuing resolution (P.L. 95-482). In FY1978, Congress called the program Emergency Energy Assistance Program and in FY1979 called it the Crisis Intervention Program (excluding the word "Special" from the title).

[16] Community Services Administration, "Emergency Energy Conservation Program: Funding Requirements for Emergency Energy Assistance Program," *Federal Register*, vol. 43, no. 46, March 8, 1978, p. 9476.

and/or life- or health-threatening situations caused by winter-related energy emergencies."[17]

In FY1980, Congress appropriated a total of $1.6 billion for energy assistance. Of this amount, $400 million was appropriated for the Energy Crisis Assistance Program (ECAP, a CSA program similar to the Special Crisis Intervention Program) through two separate appropriations.[18] The remainder, $1.2 billion, was appropriated as part of the FY1980 Department of the Interior Appropriations Act (P.L. 96-126) to the Department of Health, Education, and Welfare (HEW, the predecessor to HHS) for cash assistance and crisis intervention due to high energy costs. This appropriation to HEW is sometimes referred to as Low Income Supplemental Energy Allowances. Of this $1.2 billion, $400 million was to be distributed specifically to recipients of Supplemental Security Income (SSI). The rest of the funds appropriated to HEW, approximately $800 million, as well as the ECAP funds, were distributed to states on the basis of three factors: heating degree days squared, the number of households below 125% of poverty, and the difference in home heating energy expenditures between 1978 and 1979. The formula used to distribute the $400 million for SSI recipients used these same factors but also included the number of SSI recipients in each state relative to the national total.

---

[17] Community Services Administration, "Emergency Energy Conservation Program: Fiscal Year 1979 Crisis Intervention Program," *Federal Register*, vol. 43, no. 250, December 28, 1978, pp. 60466-60467.

[18] Congress appropriated $250 million for ECAP as part of an FY1980 Continuing Resolution (P.L. 96-123, referencing the FY1980 Departments of Labor, Health and Human Services and Education Appropriations bill, H.R. 4389), and appropriated an additional $150 million as part of the Department of the Interior Appropriations Act (P.L. 96-126).

Table 1. Select Energy Assistance Formulas, FY1975-FY1980

Emergency Energy Conservation Program:[a] FY1975 (P.L. 93-644)	Special Crisis Intervention Program:[b] FY1977 (P.L. 95-26)	Low Income Supplemental Energy Allowances:[c] FY1980 (P.L. 96-126)
(Heating degree days)^2 * number of homeowners in poverty	(Heating degree days)^2	½ (Heating degree days)^2 * number of households below 125% of poverty
	Number of households in poverty	½ Difference in home heating expenditures between 1978 and 1979
	Number of persons over age 65 with income less than 125% of poverty	
	Relative cost of fuel	

Source: For the formula under P.L. 93-644, see Community Services Administration, "Emergency Energy Conservation Program: Submission of Funding Plans," *Federal Register*, vol. 41, no. 208, October 27, 1976, p. 47096. For the formula under P.L. 95-26, see Senate Appropriations Committee, report to accompany H.R. 4877, the FY1977 Supplemental Appropriations Act, 95th Cong., 1st sess., S.Rept. 95-64, March 24, 1977. The formula for P.L. 96-126 is contained within the law.

* Multiplied by.

a. Of the funds appropriated for the Emergency Energy Conservation Program, 90% were distributed via the formula, while the remaining 10% were divided among the 12 coldest states as measured by heating degree days.

b. The Special Crisis Intervention Program did not specify a weight for each of the four variables used to determine allocations.

c. Of the $1.6 billion appropriated for energy assistance in FY1980, $400 million was set aside for SSI recipients. The formula to distribute those funds was ⅓ heating degree days^2 * number of households below 125% of poverty, ⅓ difference in home heating expenditures between 1978 and 1979, and ⅓ SSI recipients in each state relative to the national total.

Low Income Energy Assistance Program (LIEAP)

In April 1980, Congress replaced the patchwork energy assistance programs of the late 1970s with one program, the Low Income Energy Assistance Program (LIEAP). LIEAP, the direct predecessor program to LIHEAP, was established as part of the Crude Oil Windfall Profits Tax Act of 1980 (P.L. 96-223). The program was introduced in the Senate as the Home Energy Assistance Act (S. 1724) and was incorporated into H.R. 3919, the bill that would become the Crude Oil Windfall Profits Tax Act, on the Senate floor. Like the energy assistance programs of the late 1970s such as the Special Crisis Intervention Program and the Low Income Supplemental Energy Allowances, LIEAP allocated funds to states in order to help low-income households pay their home energy costs. Also like these predecessor programs, LIEAP allocated funds to states using a method that put more emphasis on the heating needs of cold-weather states than it did on cooling needs.

During the 1970s, home energy costs had increased substantially while wages failed to keep up. According to the report from the Senate Committee on Labor and

Human Resources that accompanied the Home Energy Assistance Act (S. 1724), between 1972 and 1979, heating oil prices increased by 293%, natural gas prices by 155%, and electricity prices by 91%, while wages grew by 59% during the same period.[19] During 1978, low-income households spent an estimated 18.4% of their income, on average, to pay their utilities, with expenditures in New England by low-income households exceeding 30% of income.[20] The Senate Committee on Labor and Human Resources held numerous hearings about the need for energy assistance to address the "dramatically rising cost of home heating."[21]

The resulting formula in S. 1724 reflected, in part, the committee's concern that the problem of rising energy costs were "most critical in areas with high home heating costs."[22] Although subsequent changes were made to the LIEAP formula in S. 1724 before it was enacted, the need for heating assistance continued to be paramount. The formula developed under LIEAP has been used to distribute LIHEAP funds as recently as FY2007, so the variables used are important in understanding the current formula and the way in which it is used to distribute funds.

The LIEAP Formula. When the Home Energy Assistance Act (S. 1724) was introduced, it contained a formula that would have distributed funds to the states on the basis of half on residential energy expenditures and half on heating degree days (the heating degree day measure is described in the previous section "Community Services Administration Energy Assistance Programs"). However, on the Senate floor, the program formula was amended, resulting in a multi-part formula under which states would receive funds.

Formula Under P.L. 96-223. Under the final LIEAP formula in P.L. 96-223, states received funds under one of four alternative formulas used to measure home energy need, depending on which one benefitted a state the most. Three of the four formulas contained different combinations of several factors: residential energy expenditures; heating degree days or heating degree days squared; and the number of low-income households in the state.

- Under the first formula alternative, half of the allocation was based on residential energy expenditures and half on heating degree days squared multiplied by the number of households at or below the Bureau of Labor Statistics (BLS) lower living standard.[23]

---

[19] Senate Committee on Labor and Human Resources, *Home Energy Assistance Act*, report to accompany S. 1724, 96th Cong., 1st sess., S.Rept. 96-378, October 25, 1979, p. 2.

[20] Ibid., p. 3.

[21] Also discussed at the hearings was "the need for some level of assistance to be provided to certain eligible households, where excessive heat is a factor in threatening life and health." Ibid., p. 5. This did not figure prominently into the formula, however.

[22] Ibid., p. 12.

[23] The BLS determined the lower living standard income level through its annual family budgets, which it maintained from 1947 to 1981. At the time the LIEAP program was enacted, the BLS developed annual family budgets assuming three different standards of (continued...)

- Under the second formula alternative, one quarter of the allocation was based on residential energy expenditures and three quarters based on heating degree days squared multiplied by the number of households at or below the BLS lower living standard.

- Under the third formula alternative, half of the allocation was based on residential energy expenditures and half based on heating degree days (not squared) multiplied by the number of households with incomes at or below the BLS lower living standard.

The fourth option guaranteed states a minimum benefit of $120 for each household that received Aid to Families with Dependent Children (AFDC) or Food Stamp benefits. (See **Table 2** for a breakdown of these formulas.)

All formulas in P.L. 96-223 effectively gave preference to states with colder climates due to the variables used. As discussed earlier in this report, the heating degree day variable is a measure of temperatures below 65° F and therefore favors cold-weather states. Squaring the heating degree day variable magnifies the discrepancy between warm- and cold-weather states. In addition, residential energy expenditures of all households (rather than energy expenditures of low-income households only) are higher in cold-weather states because, on average, the proportion of poor families in warm-weather states is higher than that in cold-weather states. However, the LIEAP law did allow states to provide for cooling when households could demonstrate medical necessity.[24] Congress authorized LIEAP for one year, FY1981, at $3 billion, but funds were not appropriated as part of P.L. 96-223.

Formula Under P.L. 96-369. Before the formula in P.L. 96-223 could be used to allocate funds, Congress introduced an alternative method for computing the state distribution rates. It did so when it appropriated $1.85 billion in LIEAP funds for FY1981 in a continuing resolution (P.L. 96-369), in October of 1980, six months after enactment of the Crude Oil Windfall Profits Tax Act. The new allocation method was not described in P.L. 96-369, however. Instead, the continuing resolution referred to a House Appropriations Committee report (H.Rept. 96-1244) accompanying another bill — the FY1981 Departments of Labor, Health and Human Services and Education Appropriations Act. It was in this committee report that the

---

[23] (...continued)
living: lower, intermediate, and higher. The budget was calculated using costs of consumer goods including food, housing, transportation, clothing, and health care (unlike the federal poverty guidelines, which are based on the amount of money needed to buy food). The budget was then adjusted for family size and the prices of goods in various cities throughout the country. See David S. Johnson, John M. Rogers, and Lucilla Tan, "A Century of Family Budgets in the United States," *Monthly Labor Review*, 124, no. 5 (May 2001): 28-45.

[24] According to the law, "The State is authorized to make grants to eligible households to meet the rising costs of cooling whenever the household establishes that such cooling is the result of medical need pursuant to standards established by the Secretary."

specific formula components for LIEAP were laid out.[25] H.Rept. 96-1244 did little to erode the defacto cold-weather states preference enacted in the original LIEAP formula.

The first step in the new set of formulas was to determine each state's share of funds using two calculations set out in H.Rept. 96-1244 and assign states the greater of the two amounts.

- Under the first formula alternative, half of the allocation was based on the increase in home heating expenditures, and half was based on the number of heating degree days squared times the population with income less than or equal to 125% of poverty.

- Under the second formula alternative, one quarter of the allocation was based on total residential energy expenditures, and three quarters was based on heating degree days squared multiplied by the number of low-income households in the state.

The greater of the two percentages calculated using the formula in H.Rept. 96-1244 was then assigned to each state. After adjusting state allotments proportionately so that the total allocation reached 100% of funds available, the second step in the amended formula was to compare these state allotments to 75% of the amount each state would receive under the formula in P.L. 96-223. States would then receive the greater of these two amounts.

Although the alternative formulas under H.Rept. 96-1244 used factors similar to those in P.L. 96-223, the original set of formulas was slightly more favorable to warm-weather states. For example, the BLS lower living standard was higher than 125% of poverty for most household sizes, which benefitted the South, where the low-income population was higher.[26] The original set of formulas also provided for a minimum benefit to states on the basis of the number of AFDC and Food Stamp recipient households, unconditioned on their household heating expenditures. In addition, the inclusion of the increase in home heating expenditures in H.Rept. 96-1244 benefitted northeastern states, where heating oil prices had increased substantially.[27]

---

[25] House Committee on Appropriations, report to accompany H.R. 7998, the FY1981 Departments of Labor, Health and Human Services, and Education Appropriations Act, 96th Cong., 2nd sess., H.Rept. 96-1244, August 21, 1980, pp. 75-76.

[26] "The Low-Income Home Energy Assistance Program: An Analysis of the 1984 Reauthorization Issues," Coalition of Northeastern Governors, April 1984, p. 5.

[27] H.Rept. 96-1244 did not specify the years between which the increase in home heating expenditures should be measured. In implementing the formula, HHS measured the increase between 1978 and 1980.

Table 2. Distribution of Funds Under LIEAP

P.L. 96-223	P.L. 96-369
Assign each state the option under which they receive the greatest proportion of funds. If Options 2 and 3 both result in a greater proportion than Option 1, assign the state the lesser of Option 2 or 3.	Each state receives the greater of 75% of the amount under P.L. 96-223 or Option 1 or Option 2 under P.L. 96-369.
Option 1: ½ Residential energy expenditures ½ (Heating degree days)^2 * Households with income ≤ BLS lower living standard	Option 1: ½ Increase in home heating expenditures from 1978-1980[a] ½ (Heating degree days)^2 * Population with income ≤ 125% of poverty
Option 2: ¼ Residential energy expenditures ¾ (Heating degree days)^2 * Households with income ≤ BLS lower living standard	Option 2: ¼ Total residential energy expenditures 1980 ¾ (Heating degree days)^2 * Households with income ≤ BLS lower living standard
Option 3: ½ Residential energy expenditures ½ Heating degree days * Households with income ≤ BLS lower living standard	
Option 4: Funds sufficient for a minimum benefit of $120 per AFDC- and/or Food Stamp-recipient household	

Source: The Crude Oil Windfall Profits Tax Act (P.L. 96-223) and the House Appropriations Committee Report to Accompany H.R. 7998, the FY1981 Departments of Labor, Health and Human Services, and Education Appropriations Bill, H.Rept. 96-1244, August 21, 1980.

* Multiplied by.
≤ Less than or equal to.
a. H.Rept. 96-1244 did not specify which years would be used to determine residential energy expenditures; 1978 and 1980 were the years used by HHS.

Enactment of LIHEAP

In August 1981, the Omnibus Budget Reconciliation Act, P.L. 97-35, created LIHEAP, replacing its predecessor, LIEAP. The new program was not substantially different from the previous program. Some of the changes to the program included less restrictive federal rules and more state flexibility in determining how to operate their LIHEAP programs. The program was authorized at $1.85 billion for FY1982-FY1984. In FY1982, Congress appropriated $1.875 billion for LIHEAP; in FY1983, it appropriated $1.975 billion; and in FY1984, $2.075 billion.

Continued Use of the LIEAP Formula

When the formula for LIEAP was initially created in 1980 under the Crude Oil Windfall Profits Tax Act (P.L. 96-223), it brought about a good deal of debate on the floor of the Senate, where the formula provisions were added to the legislation.[28] Discussion over the formula also occurred leading up to the enactment of P.L. 96-369, the FY1981 continuing resolution that funded LIEAP and amended the formula.[29] Despite these earlier disagreements over formula allocations, the process to enact LIHEAP in 1981 did not engender the same level of debate or result in a different formula. Instead, the law creating LIHEAP provided that the allotment percentages for each state would remain the same as they had been in FY1981 under the LIEAP formula as amended by P.L. 96-369. From FY1982 through FY1984, then, states continued to receive the same proportion of funds that they received under the LIEAP formula.

The 1984 LIHEAP Reauthorization: A New Formula

Formula Discussions. When Congress began to consider reauthorizing LIHEAP in 1983, two aspects of the formula were debated. First, legislators recognized that the multi-step LIEAP formula benefitted cold-weather states relative to warm-weather states.[30] This was due to the heating degree day variable and the fact that residential energy costs of all households (instead of just low-income households) were used under the various LIEAP formulas. The second debated aspect of the formula centered on the appropriateness and timeliness of the data used in formula calculations. In 1983, the energy information used to calculate state allotments was not the most current data available.[31] For example, the most recent data the formula used were the change in the cost of energy between 1978 and 1980, or the cost of energy in 1980, depending on the sub-formula one chose to apply. No aspect of the formula took account of increased costs after 1980.[32]

Legislative sentiment in favor of changing the formula was evident, when, in September 1983, the House adopted an amendment to the Emergency Immigration Education Act (H.R. 3520) that would have adjusted the LIHEAP formula and resulted in a change in allocations to the states. The amendment's formula took into account the energy expenditures of poor families, which, according to the amendment's sponsor, Representative Carlos Moorhead (California), would result

---

[28] See, for example, Senate debate, *Congressional Record*, vol. 125, parts 24-25 (November 13-15, 1979), pp. 32082-32086, 32275-32293, 32558-32565.

[29] House debate, *Congressional Record*, vol. 126, part 18 (August 27, 1980), pp. 23502-23515.

[30] See, for example, Comments of Rep. Billy Tauzin, Joint Hearing before the Subcommittees on Energy and Commerce, Education and Labor, and Ways and Means, 98th Cong., 1st sess., February 24, 1983, pp. 119-120.

[31] Report of the Committee on Energy and Commerce to accompany H.R. 2439, the Low-Income Home Energy Assistance Amendments of 1984, 98th Cong., 2nd sess., H.Rept. 98-139, Part 2, May 15, 1984, p. 13.

[32] Ibid., p. 4.

in lower percentage allocations for 23 states, mostly in the Northeast and Midwest, gains for 27, primarily in the South, and the same allocation for one state.[33] The amendment was eventually dropped from H.R. 3520 in conference with the Senate.

Introduction of a Hold-Harmless Level. Efforts to reauthorize LIHEAP had begun in April 1983 with the introduction of the Low-Income Home Energy Assistance Amendments of 1984 (H.R. 2439). The bill was referred to two committees: Education and Labor and Energy and Commerce. Within the Energy and Commerce committee, two subcommittees held mark-ups: Fossil and Synthetic Fuels and Energy Conservation and Power.

As introduced, H.R. 2439 did not contain changes to the LIHEAP formula. The Subcommittees on Fossil and Synthetic Fuels and Energy Conservation and Power worked together to arrive at a formula change, which had the effect of shifting funds from states in the Northeast to the South and West. Unlike the previous set of formulas developed under LIEAP, the new formula directed the Department of Health and Human Services to determine states' allotments "using data relating to the most recent year for which data is available." Because the cost of heating oil remained steady between 1981 and 1983, and the price of natural gas rose 33%, this meant that states in the Northeast — where heating oil was the primary source of energy — would lose LIHEAP dollars, while states in the South and the Midwest would gain under this provision.[34] In addition, population growth in the South (as well as its higher poverty rates) meant that southern states would benefit from the use of more recent population data.

To offset the losses to certain states resulting from the use of current data, H.R. 2439 also included a hold-harmless provision, or hold-harmless level; this provision ensured that if appropriations were less than or equal to $1.875 billion, states would receive no less than their allotment would have been under the old formula at this appropriations level. The bill additionally increased the LIHEAP authorization level to $2.075 billion for FY1984, $2.26 billion for FY1985, $2.625 billion for FY1987, and $2.8 billion for FY1988.

Introduction of a Hold-Harmless Rate. After the House Energy and Commerce Committee reported H.R. 2439 to the House floor — but before the full House could act on the bill — the Senate passed its version of LIHEAP reauthorization as part of the Human Services Reauthorization Act (S. 2565) on October 4, 1984.[35] The Senate bill contained language very similar to H.R. 2439, but made several changes and additions to the formula.

---

[33] *Congressional Record*, vol. 129, part 17 (September 13, 1983), p. 23877. The greatest increases in percentage allocations were for Florida at 51%, Texas at 44%, and Alabama at 37%. The states whose percentage allocations decreased the most were Vermont at 32%, North Dakota at 24%, and New Hampshire at 23%.

[34] "The Low-Income Home Energy Assistance Program: An Analysis of the 1984 Reauthorization Issues," Coalition of Northeastern Governors, April 1984, p. 9.

[35] The final version of S. 2565 can be found in the *Congressional Record*, daily edition, vol. 130 (October 4, 1984), p. S13393.

- S. 2565 specified that states' shares of LIHEAP funds would be based on the home energy expenditures of low-income households, not on expenditures of all households.

- The hold-harmless level was altered. S. 2565 directed that no state in FY1985 would receive fewer funds than it received in FY1984, and for FY1986 and thereafter, no state would receive less than the amount they would have received in FY1984 if the appropriations level had been $1.975 billion.

- A second hold-harmless provision, or hold-harmless rate, was created. The provision maintained the *percentage* allocated rather than a total funding level allocated to each affected state.

The hold-harmless rate provision guaranteed that certain states would receive increased allotments when appropriations reached $2.25 billion. States would qualify for this increase if their total allotment percentage at an appropriation of $2.25 billion were less than 1%. These states would instead receive the allotment rate they would have received at an appropriation of $2.14 billion *if* that allotment rate were higher than the rate at $2.25 billion. In its debate about S. 2565, Senators referred to the hold-harmless rate as the "small States hold harmless," as the intent was to protect the small (population) states' shares of LIHEAP funds.[36] Otherwise, these states' percentage shares of LIHEAP funds might decline, even as total appropriations increased. No rate protection was guaranteed for more populous states beyond the aforementioned hold-harmless level.

The Senate bill also included different authorization amounts for LIHEAP, $2.14 billion for FY1985 and $2.275 billion for FY1986. After S. 2565 passed the Senate, the House debated and passed the bill on October 9, 1984, retaining all the provisions included in the Senate version. The bill became P.L. 98-558, the Human Services Reauthorization Act, on October 30, 1984.

LIHEAP Formula Statutory Language. Unlike the allocation formulas under LIEAP and the other energy assistance programs that preceded LIHEAP, which dictated the use of specific variables to determine allotments to the states, the LIHEAP formula as drafted by Congress gives more general guidance to HHS. The LIHEAP statute, as enacted in P.L. 98-558 and codified at 42 U.S.C. §8623(a)(2) provides as follows.

> (A) a State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States, except that States which thereby receive the greatest proportional increase in allotments by reason of the application of this paragraph from the amount they received pursuant to Public Law 98 — 139 [the FY1984 appropriation] shall have their allotments reduced to the extent necessary to ensure that —
>
> > (i) no State for fiscal year 1985 shall receive less than the amount of funds the State received in fiscal year 1984; and

---

[36] *Congressional Record*, daily edition, vol. 130 (October 4, 1984), pp. S13415-S13416.

> (ii) no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 if the appropriations for this subchapter for fiscal year 1984 had been $1,975,000,000, and
>
> (B) any State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000.

The next section of this report describes how funds are allocated to the states according to this statutory language.

Determining LIHEAP Regular Fund Allotments Using the "New" Formula

Current law as enacted in P.L. 98-558, sometimes referred to as the "new" LIHEAP formula, provides for three different methods to calculate each state's allotment of regular LIHEAP funds. The calculation method used to determine state allotments depends upon the size of the appropriation for that fiscal year. If the annual appropriation level does not exceed the equivalent of a hypothetical FY1984 appropriation of $1.975 billion, then the allocation rates under the "old" LIHEAP formula apply. This is sometimes referred to as "Tier I" of the LIHEAP formula. If appropriations exceed a hypothetical FY1984 appropriation of $1.975 billion, then new formula rates apply and are used to calculate state allotments. To calculate the new formula rates, the most recent data available are used to determine the heating and cooling costs of low-income households. When appropriations exceed the $1.975 billion level, but are less than $2.25 billion, the new formula rates are used together with the hold-harmless level. This is sometimes referred to as "Tier II" of the LIHEAP formula. Finally, if appropriations equal or exceed $2.25 billion, the new rates apply and both the hold-harmless level together with the hold-harmless rate are in effect. This is sometimes referred to as "Tier III" of the LIHEAP formula. This section describes the steps involved in allocating LIHEAP funds to the states under the three tiers of the formula.

Calculating the New Formula Rates

As mentioned previously, when Congress considered a new formula for distributing LIHEAP funds in 1983 and 1984, one of its concerns was the appropriateness and timeliness of the data used in formula calculations. At the time, the energy information used to calculate state allotments under the LIEAP formula did not use the most current data available.[37] For example, the formula used the change in cost of energy between 1978 and 1980, but did not take account of

---

[37] Report of the Committee on Energy and Commerce to accompany H.R. 2439, the Low-Income Home Energy Amendments of 1984, 98th Cong., 2nd sess., H.Rept. 98-139, Part 2, May 15, 1984, p. 13.

increased costs after 1980. In fact, the formula factors were fixed rates, and the LIHEAP statute at that time had no provision for allowing newer information to be incorporated into the determination of state allotments. The LIHEAP formula as created by P.L. 98-558 requires HHS to use the most recent data available. HHS updates these data periodically. The most recent data were provided to CRS in September of 2008.

As directed by the statute as enacted in 1984, the LIHEAP formula uses the home energy expenditures of low-income households in each state as a first step in determining the proportion of total regular funds that each state will receive.[38] Specifically, this means estimating the amount of money that all low-income households (as defined by the LIHEAP statute[39]) in each state spend on heating and cooling from all energy sources. This method accounts for variations in heating and cooling needs of the states, the types of energy used, energy prices, and the low-income population and their heating and cooling methods. The process for capturing the expenditures of low-income households for the most current year possible involves the following steps.

- **Total Residential Energy Consumption.** The first step in calculating new formula rates is determining total residential energy consumption for each heating and cooling source in every state. Residential energy consumption is usually measured in terms of the total amount of British Thermal Units (Btus) used in private households and generally captures energy used for space and water heating, cooling, lighting, refrigeration, cooking, and the energy needed to operate appliances. The most recent data used in calculating LIHEAP formula rates come from the 2004 Energy Information Administration (EIA) State Energy Data System consumption estimates.

- **Temperature Variation.** The next step in determining the formula rates involves adjusting the amount of energy consumed for each fuel source by temperature variation in each state. This is done by using a ratio consisting of the 30-year average heating and cooling degree day data to each state's share of the most recent year's average heating and cooling degree days. A heating degree day measures the extent to which a day's average temperature falls below 65°F and a cooling degree day measures the extent to which a day's average temperature rises above 65°F.[40] For example, a day with an average temperature of 50°F results in a measure of 15 heating degree days; a day with an average temperature of 80°F

---

[38] "[A] State's allotment percentage is the percentage which expenditures for home energy by low-income households in that State bears to such expenditures in all States..." 42 U.S.C. §8623(a)(2).

[39] The LIHEAP statute considers households with income at or below 150% of poverty or 60% of state median income (whichever value is greater) to be low income. 42 U.S.C. §8624(b)(2)(B).

[40] A state's heating and cooling degree data are weighted by population in the state.

results in a measure of 15 cooling degree days. The purpose of the adjustment to fuel consumption is to account for abnormally warm or cool years, where energy usage might attain extreme values. This information is collected by the National Oceanic and Atmospheric Administration. The most recent year's average heating and cooling degree day data are from 2006, and the 30-year average was computed from 1971 to 2000.

- **Heating and Cooling Consumption.** As mentioned above, total residential energy consumption encompasses other uses in addition to heating and cooling (e.g. operation of appliances). So the next step in calculating LIHEAP formula rates is to derive the portion of fuel consumed specifically to heat and cool homes as opposed to other uses. The EIA, as part of the Residential Energy Consumption Survey (RECS), uses an "end use estimation methodology" to estimate the amount of fuel used for heating and cooling (among other uses). The most recent information on heating and cooling consumption comes from the 2001 RECS, adjusted for 2003.[41]

- **Low-Income Household Heating and Cooling Consumption.** After estimating heating and cooling consumption for *all* households, the next step is to calculate heating and cooling consumption in Btus for low-income households. The Bureau of the Census, Department of Commerce, prepares a special sample for HHS of the fuel sources used by low-income households. The most recent information on low-income households and the fuel sources they use comes from the 2000 Census. In addition, low-income consumption data are adjusted to account for the fact that low-income households might use more or less of a fuel source than is used by households on average. This is done using consumption data from the 2001 RECS adjusted for 2003.

- **Total Spending on Heating and Cooling.** To arrive at the amount of money that low-income households spend on heating and cooling, the number of Btus used by low-income households that were estimated in the previous step are multiplied by the average fuel price for each fuel source. The total amount spent on heating and cooling by low-income households for each fuel source is then added together to arrive at total spending for each state. Regional energy price variation can be significant, and the formula takes expected expenditure differences into account. This information is collected by the EIA and published in the State Energy Data System Consumption, Price, and Expenditure Estimates.[42] The most recent price data used to calculate formula rates are from 2004.

---

[41] For more information about the RECS, see the EIA website at [http://www.eia.doe.gov/emeu/recs/].

[42] The EIA's state data tables are available at [http://www.eia.doe.gov/emeu/states/_seds.html].

- **New Formula Rate.** Finally, these expenditure data are used to estimate the amount spent by low-income households on heating and cooling in each state relative to the amount spent by low-income households on heating and cooling in all states. The calculated proportion becomes the new formula percentage, or rate, for each state. See **Table 3** at the end of this section for both old and new LIHEAP formula rates. Column (a) shows the rates under the "old" formula, while column (b) shows the most recent "new" formula rates.

These new formula rates are used to allocate LIHEAP funds to the states if the annual appropriation exceeds the equivalent of a hypothetical FY1984 appropriation of $1.975 billion. However, these new formula rates do not represent the exact proportion of funds that states will receive under the new formula. The ultimate allotments are determined after application of the both the hold-harmless level and hold-harmless rate, described in the next section. The new rates are the starting point for determining how funds will be allocated to the states.

Using the New Formula Rates to Allocate Funds to the States

The LIHEAP new formula rates that HHS calculates using the most current data available do not necessarily represent the proportion of funds that states will receive. State allotments depend upon the application of the two hold-harmless provisions in the LIHEAP statute. Some states must have their share of funds ratably reduced in order to hold harmless those states that would, but for the hold-harmless provisions, lose funds. Other states see a gain in their share of funds because they benefit from the hold-harmless provisions. The application of the hold-harmless provisions depends upon the size of the appropriation for a given fiscal year. These appropriation level triggers are described below.

Tier I: Below $1.975 Billion. Current law requires that for fiscal years in which the regular LIHEAP fund appropriation is equivalent to a hypothetical FY1984 appropriation of $1.975 billion or less, states receive the same percentage of funds that they would have received at that appropriation level under the "old" LIHEAP formula.[43] This FY1984 appropriation of $1.975 billion referred to in the LIHEAP statute is hypothetical because this was not the amount actually appropriated in FY1984. The actual FY1984 appropriation was $2.075 billion. In addition, the current year appropriation that is "equivalent to" a hypothetical FY1984 appropriation of $1.975 billion is not exactly $1.975 billion. In FY1984, with the exception of funds provided to the territories, all LIHEAP regular funds were distributed to the states. Since then, two other funds have become part of the regular fund distribution. These are funds for training and technical assistance and for the

[43] It is important to understand, however, that although the new formula rates are always applied to all appropriations, when appropriations are below a hypothetical FY1984 appropriation of $1.975 billion, the result of the current law's hold-harmless provisions is that states receive the same allotment percentages that they did under the old formula. See U.S. Department of Health and Human Services, *Low Income Home Energy Assistance Program: Report to Congress for FY1987*, p. 133.

leveraging incentive grants (which includes REACH grants) to the states. This means that an appropriation that is *equivalent to* a hypothetical FY1984 appropriation of $1.975 billion must account for these new funds. Assuming that funds for leveraging incentive/REACH grants is $27 million and training and technical assistance is $300,000 (the amounts allocated to these funds in FY2009), then the equivalent of an FY1984 appropriation of $1.975 billion is approximately $2.0023 billion.[44]

The LIHEAP formula in FY1984 distributed funds by giving states the same share of funds that they received in FY1981 under the predecessor program, the Low Income Energy Assistance Program (LIEAP). **Table 3**, at the end of this section of the report, shows rates under the old formula in column (a). For example, at an appropriation at or below the equivalent of a hypothetical FY1984 appropriation of $1.975 billion, Alabama would receive 0.86% of total funds, Alaska would receive 0.55% of total funds, and so on. **Appendix A, Table A-1**, column (a) reports the dollar amount of funds that each state would have received in FY1984 had the regular fund appropriation been $1.975 billion.

Tier II: From $1.975 Billion up to $2.25 Billion. If the regular LIHEAP appropriation exceeds a hypothetical FY1984 appropriation of $1.975 billion for the fiscal year, *all* funds are to be distributed under a different methodology, using the new set of rates described earlier. In addition, a hold-harmless *level* applies to ensure that certain states do not fall below the amount of funds they would have received at the equivalent of a hypothetical FY1984 appropriation of $1.975 billion. **Table 3**, at the end of this section, shows whether a state benefits from the hold-harmless level. This is indicated by a "Y" in column (c), while the dollar amount of funds those states receive by being held harmless appears in column (d). For example, Alabama is not held harmless, while Alaska is held harmless. The dollar amount of funds that Alaska receives pursuant to the hold-harmless level is $10.828 million. But for the hold-harmless level, Alaska would receive less than this dollar amount at its new formula rate at certain appropriation levels. Eventually, when appropriations increase sufficiently, the allotments for states that are held harmless with exceed their hold harmless amounts. This appropriation level varies for each state.

The hold-harmless level is achieved by reducing the allocation of funds to those states with the greatest proportional gains under the new formula rates.[45] For example, under the most recent LIHEAP formula rates, states with the greatest proportional gains were Nevada, Texas, and Florida. Depending on the appropriation level, these states (and others with the greatest gains) may then have their allotments reduced to hold harmless those states that would otherwise see reduced benefits. So although these states with the greatest proportional gains will see their LIHEAP

---

[44] This amount is arrived at by adding $27 million and $300,000 to $1.975 billion.

[45] "States which thereby receive the greatest proportional increase in allotments ... shall have their allotments reduced to the extent necessary to ensure that ... no State for fiscal year 1986 and thereafter shall receive less than the amount of funds the State would have received in fiscal year 1984 ..." 42 U.S.C. §8623(a)(2)(A)(ii).

allotments increase under the new formula, their allotments may not increase to reach their new formula rates (column (b) of **Table 3**).

Columns (b) and (c) of **Table A-1** in **Appendix A** show estimated allotments to the states at hypothetical appropriations levels under Tier II of the LIHEAP formula. Column (b) shows the estimated allotment of funds that each state would receive when the regular fund appropriation is at $2.14 billion and column (c) shows the estimated allotment of funds when the regular fund appropriation is just under $2.25 billion ($2,249,999,999).

Tier III: At or Above $2.25 Billion. The LIHEAP statute stipulates additional requirements in the method for distributing funds when the appropriation is at or above $2.25 billion. At this level, all of the provisions specified in the Tier II allocation methodology are in place, including the change in the formula factors and the hold-harmless level. In addition, a new hold-harmless *rate* is applied. That is, for all appropriation levels at or above $2.25 billion, states that would have received less than 1% of a total $2.25 billion appropriation must be allocated the percentage they would have received at a $2.14 billion appropriation level.[46] (This assumes the percentage at $2.14 billion is greater than the percentage originally calculated at the hypothetical $2.25 billion appropriation; this is not true for all states that receive less than 1% of the $2.25 billion appropriation.) Then that state will receive the $2.14 billion allotment proportion for all appropriation levels at or above $2.25 billion. This hold-harmless *rate* ensures a state specific *share* of the total available funds.

As with the Tier II funding level, the allocations to the states with the greatest proportional gains are then ratably reduced again, using the methodology described in the Tier II discussion, until there is no funding shortfall. Column (e) of **Table 3** shows which states benefit from the hold-harmless rate, indicated by a "Y," while column (f) shows the proportion of funds that those states receive. For example, Alaska benefits from the hold-harmless rate and receives 0.513% of the total appropriation when appropriations are at or above $2.25 billion.

The application of the hold-harmless rate creates another layer of discontinuity in the allocation rates. Columns (d) through (h) of **Table A-1** in **Appendix A** show estimated allotments to states at various hypothetical appropriations levels above at or above $2.25 billion. Column (d) shows the estimated allotment of funds that each state receives when the regular appropriation is at $2.25 billion after the hold-harmless rate is applied. Columns (e) through (h) show the estimated allotment each state would receive at $2.5 billion, $3.0 billion, $4.0 billion, and $5.1 billion.

---

[46] "[A]ny State whose allotment percentage out of funds available to States from a total appropriation of $2,250,000,000 would be less than 1 percent, shall not, in any year when total appropriations equal or exceed $2,250,000,000, have its allotment percentage reduced from the percentage it would receive from a total appropriation of $2,140,000,000." 42 U.S.C. §8623(a)(2)(B).

Implementation of the "New" LIHEAP Formula

Until FY2006, appropriations for regular LIHEAP funds had only exceeded the equivalent of a hypothetical FY1984 appropriation of $1.975 billion in 1985 and 1986; therefore, from FY1987 through FY2005, and again in FY2007, states continued to receive the same percentage of LIHEAP funds that they received under the program's predecessor, LIEAP (see column (a) of **Table 3** for these proportions). In FY2006, funds were distributed under the "new" LIHEAP formula when Congress appropriated $2.48 billion in regular funds for the program. In FY2008, perhaps due to an oversight, the new formula was again used to distribute funds. The FY2008 Consolidated Appropriations Act (P.L. 110-161) failed to authorize a set-aside called leveraging incentive grants. As a result, the funds for those grants were added to the LIHEAP regular funds, triggering the new formula.[47] In FY2009, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (P.L. 110-329) appropriated $4.51 billion in regular funds. However, the law further specified that $840 million be distributed according to the "new" LIHEAP formula, with the remaining $3.67 billion distributed according to the proportions of the "old" formula established by LIEAP. See **Table C-1** in **Appendix C** of this report for the distribution of funds to the states in FY2006 through FY2009.

[47] For more information about this issue, see **Appendix C** of this report.

Table 3. Low-Income Home Energy Program (LIHEAP): "Old" and "New" Allotment Rates by State, 2008

State	"Old" Allotment Rate (%) (a)	"New" Allotment Rate (%) (b)	Hold-Harmless Level: Subject to Hold-Harmless Level? (c)	Hold-Harmless Level: Hold-Harmless Level ($Millions) (d)	Hold-Harmless Rate: Subject to Hold-Harmless Rate? (e)	Hold-Harmless Rate: Hold-Harmless Rate (%) (f)
Alabama	0.860	1.650	N	—	N	—
Alaska	0.549	0.317	Y	10.828	Y	0.513
Arizona	0.416	0.813	N	—	N	—
Arkansas	0.656	0.910	N	—	N	—
California	4.614	5.303	N	—	N	—
Colorado	1.609	1.305	Y	31.729	N	—
Connecticut	2.099	2.164	N	—	N	—
Delaware	0.279	0.453	N	—	N	—
District of Columbia	0.326	0.328	N	—	N	—
Florida	1.361	3.781	N	—	N	—
Georgia	1.076	2.734	N	—	N	—
Hawaii	0.108	0.099	Y	2.137	Y	0.101
Idaho	0.628	0.331	Y	12.376	Y	0.587
Illinois	5.809	4.998	Y	114.565	N	—
Indiana	2.630	2.128	Y	51.872	N	—
Iowa	1.864	1.064	Y	36.762	N	—
Kansas	0.856	1.106	N	—	N	—
Kentucky	1.369	1.621	N	—	N	—
Louisiana	0.879	1.514	N	—	N	—
Maine	1.360	0.908	Y	26.815	N	—
Maryland	1.607	2.652	N	—	N	—
Massachusetts	4.198	3.311	Y	82.797	N	—
Michigan	5.515	4.645	Y	108.770	N	—
Minnesota	3.973	1.917	Y	78.363	N	—
Mississippi	0.737	0.951	N	—	N	—
Missouri	2.320	2.309	Y	45.762	N	—
Montana	0.736	0.441	Y	14.517	Y	0.688
Nebraska	0.922	0.558	Y	18.180	Y	0.862
Nevada	0.195	0.576	N	—	N	—
New Hampshire	0.795	0.503	Y	15.672	Y	0.743
New Jersey	3.897	3.621	Y	76.865	N	—
New Mexico	0.521	0.577	N	—	N	—
New York	12.725	9.393	Y	250.974	N	—
North Carolina	1.896	3.261	N	—	N	—
North Dakota	0.800	0.273	Y	15.770	Y	0.748
Ohio	5.139	4.803	Y	101.350	N	—
Oklahoma	0.791	1.275	N	—	N	—
Oregon	1.247	0.750	Y	24.591	N	—
Pennsylvania	6.835	5.731	Y	134.810	N	—
Rhode Island	0.691	0.665	Y	13.629	N	—
South Carolina	0.683	1.349	N	—	N	—
South Dakota	0.649	0.235	Y	12.808	Y	0.607

State	"Old" Allotment Rate (%) (a)	"New" Allotment Rate (%) (b)	Hold-Harmless Level: Subject to Hold-Harmless Level? (c)	Hold-Harmless Level: Hold-Harmless Level ($Millions) (d)	Hold-Harmless Rate: Subject to Hold-Harmless Rate? (e)	Hold-Harmless Rate: Hold-Harmless Rate (%) (f)
Tennessee	1.386	1.801	N	—	N	—
Texas	2.264	6.524	N	—	N	—
Utah	0.748	0.599	Y	14.745	Y	0.699
Vermont	0.596	0.319	Y	11.747	Y	0.557
Virginia	1.957	3.041	N	—	N	—
Washington	2.051	1.204	Y	40.450	N	—
West Virginia	0.906	0.907	N	—	N	—
Wisconsin	3.576	2.080	Y	70.538	N	—
Wyoming	0.299	0.202	Y	5.903	Y	0.280

Source: Congressional Research Service (CRS) calculations based on factors provided by the Department of Health and Human Services (HHS) in September 2008.

Note: The actual proportion of total regular funds each state receives at funding levels above $1.975 billion may differ substantially from the calculated new formula rate due to the hold-harmless provisions and the ratable reductions to cover shortfall from these hold-harmless provisions.

Appendix A: Estimated Appropriations to the States Under Various Hypothetical Appropriation Levels

Table A-1, below, shows estimated allocations to the states at various hypothetical appropriations levels. In column (a) are allotments at the equivalent of a hypothetical FY1984 appropriation of $1.975 billion — under current LIHEAP practice where funds are set aside for leveraging incentive grants and training and technical assistance, the equivalent appropriation level is approximately $2.0023 billion. The remaining columns show estimated allotments at appropriations of $2.14 billion, just under $2.25 billion, $2.25 billion, $3.0 billion, $4.0 billion, and $5.1 billion, the amount at which the LIHEAP program was last authorized in P.L. 109-58.

Table A-1. LIHEAP Estimated State Allotments for Regular Funds at Various Hypothetical Appropriation Levels

($ in millions)

	Tier I	Tier II		Tier III				
State	Hypothetical $1.975 Billion in FY1984 (a)	$2.14 Billion (b)	Just under $2.25 Billion (c)	$2.25 Billion (d)	$2.5 Billion (e)	$3.0 Billion (f)	$4.0 Billion (g)	$5.1 Billion (h)
Alabama	16.963	21.677	26.014	25.613	34.432	48.984	65.463	83.588
Alaska	10.828	10.828	10.828	11.392	12.673	15.235	20.360	25.998
Arizona	8.203	10.483	12.580	12.387	16.652	24.142	32.264	41.197
Arkansas	12.943	16.541	19.850	19.544	22.461	27.003	36.087	46.079
California	91.001	111.879	117.704	117.704	130.942	157.420	210.375	268.626
Colorado	31.729	31.729	31.729	31.729	32.226	38.742	51.774	66.110
Connecticut	41.392	45.660	48.037	48.037	53.440	64.246	85.859	109.632
Delaware	5.494	7.021	8.425	8.296	11.152	13.461	17.989	22.969
District of Columbia	6.428	6.924	7.285	7.285	8.104	9.743	13.020	16.625
Florida	26.840	34.300	41.161	40.527	54.481	79.847	121.835	156.397
Georgia	21.221	27.119	32.544	32.043	43.076	63.131	96.330	123.655
Hawaii	2.137	2.137	2.201	2.248	2.501	3.007	4.019	5.131
Idaho	12.376	12.376	12.376	13.021	14.485	17.415	23.273	29.717
Illinois	114.565	114.565	114.565	114.565	123.428	148.386	198.302	253.210
Indiana	51.872	51.872	51.872	51.872	52.542	63.166	84.415	107.788
Iowa	36.762	36.762	36.762	36.762	36.762	36.762	42.208	53.895
Kansas	16.883	21.575	24.554	24.554	27.315	32.839	43.885	56.037
Kentucky	26.994	34.197	35.977	35.977	40.024	48.117	64.303	82.108
Louisiana	17.342	22.162	26.595	26.185	35.201	44.941	60.059	76.689
Maine	26.815	26.815	26.815	26.815	26.815	26.965	36.036	46.015
Maryland	31.693	40.502	48.603	47.855	64.331	78.717	105.198	134.326
Massachusetts	82.797	82.797	82.797	82.797	82.797	98.293	131.358	167.729
Michigan	108.770	108.770	108.770	108.770	114.704	137.898	184.287	235.314
Minnesota	78.363	78.363	78.363	78.363	78.363	78.363	78.363	97.088
Mississippi	14.543	18.585	21.109	21.109	23.483	28.231	37.728	48.175
Missouri	45.762	48.714	51.250	51.250	57.014	68.543	91.601	116.964
Montana	14.517	14.517	14.517	15.273	16.990	20.426	27.297	34.856

	Tier I	Tier II		Tier III				
State	Hypothetical $1.975 Billion in FY1984 (a)	$2.14 Billion (b)	Just under $2.25 Billion (c)	$2.25 Billion (d)	$2.5 Billion (e)	$3.0 Billion (f)	$4.0 Billion (g)	$5.1 Billion (h)
Nebraska	18.180	18.180	18.180	19.127	21.278	25.581	34.186	43.652
Nevada	3.853	4.924	5.909	5.818	7.821	11.462	17.489	22.451
New Hampshire	15.672	15.672	15.672	16.488	18.342	22.051	29.469	37.629
New Jersey	76.865	76.865	80.379	80.379	89.419	107.501	143.663	183.442
New Mexico	10.270	12.182	12.816	12.816	14.257	17.140	22.906	29.249
New York	250.974	250.974	250.974	250.974	250.974	278.838	372.637	475.817
North Carolina	37.403	47.798	57.359	56.476	75.921	96.804	129.368	165.189
North Dakota	15.770	15.770	15.770	16.591	18.457	22.189	29.653	37.864
Ohio	101.350	101.350	106.614	106.614	118.605	142.588	190.554	243.316
Oklahoma	15.592	19.926	23.912	23.544	31.486	37.853	50.586	64.593
Oregon	24.591	24.591	24.591	24.591	24.591	24.591	29.762	38.002
Pennsylvania	134.810	134.810	134.810	134.810	141.520	170.137	227.370	290.326
Rhode Island	13.629	14.037	14.767	14.767	16.428	19.750	26.394	33.702
South Carolina	13.472	17.216	20.660	20.342	27.346	40.049	53.522	68.341
South Dakota	12.808	12.808	12.808	13.475	14.990	18.021	24.084	30.752
Tennessee	27.344	34.944	39.984	39.984	44.481	53.475	71.464	91.252
Texas	44.653	57.064	68.479	67.424	90.638	132.838	202.694	260.192
Utah	14.745	14.745	14.745	15.512	17.257	20.747	27.726	35.403
Vermont	11.747	11.747	11.747	12.358	13.748	16.528	22.088	28.204
Virginia	38.606	49.336	59.204	58.293	75.098	90.283	120.654	154.061
Washington	40.450	40.450	40.450	40.450	40.450	40.450	47.756	60.979
West Virginia	17.864	19.140	20.136	20.136	22.401	26.931	35.990	45.956
Wisconsin	70.538	70.538	70.538	70.538	70.538	70.538	82.519	105.367
Wyoming	5.903	5.903	5.903	6.211	6.909	8.306	11.101	14.174
Total	1,972.33	2,109.839	2,219.690	2,219.690	2,469.351	2,968.674	3,967.320	5,065.830

Source: Congressional Research Service (CRS) calculations based on factors provided by the Department of Health and Human Services (HHS) in September 2008.

Notes: These estimates take into account current law, which allows HHS to set aside funds out of regular LIHEAP funds for territories, leverage incentive grants and Residential Energy Assistance Challenge (REACH) grants and training and technical assistance. For each estimate, approximately 0.14% is allocated to the territories, $27 million to leveraging incentive and REACH grants, and $300,000 to training and technical assistance. Differing allocations to leveraging incentive and REACH grants could change state allotments.

Appendix B: Further Depiction of How State Allotments Depend Upon Appropriation Levels

Figure 1 graphically illustrates state allotments for three "typical" types of states over a range of appropriations from $0 to $5.1 billion. Represented are (1) a hold-harmless level state, (2) a hold-harmless level and rate state, and (3) a state whose increased allocations are ratably reduced in order to maintain allocations for the hold-harmless level and rate states.

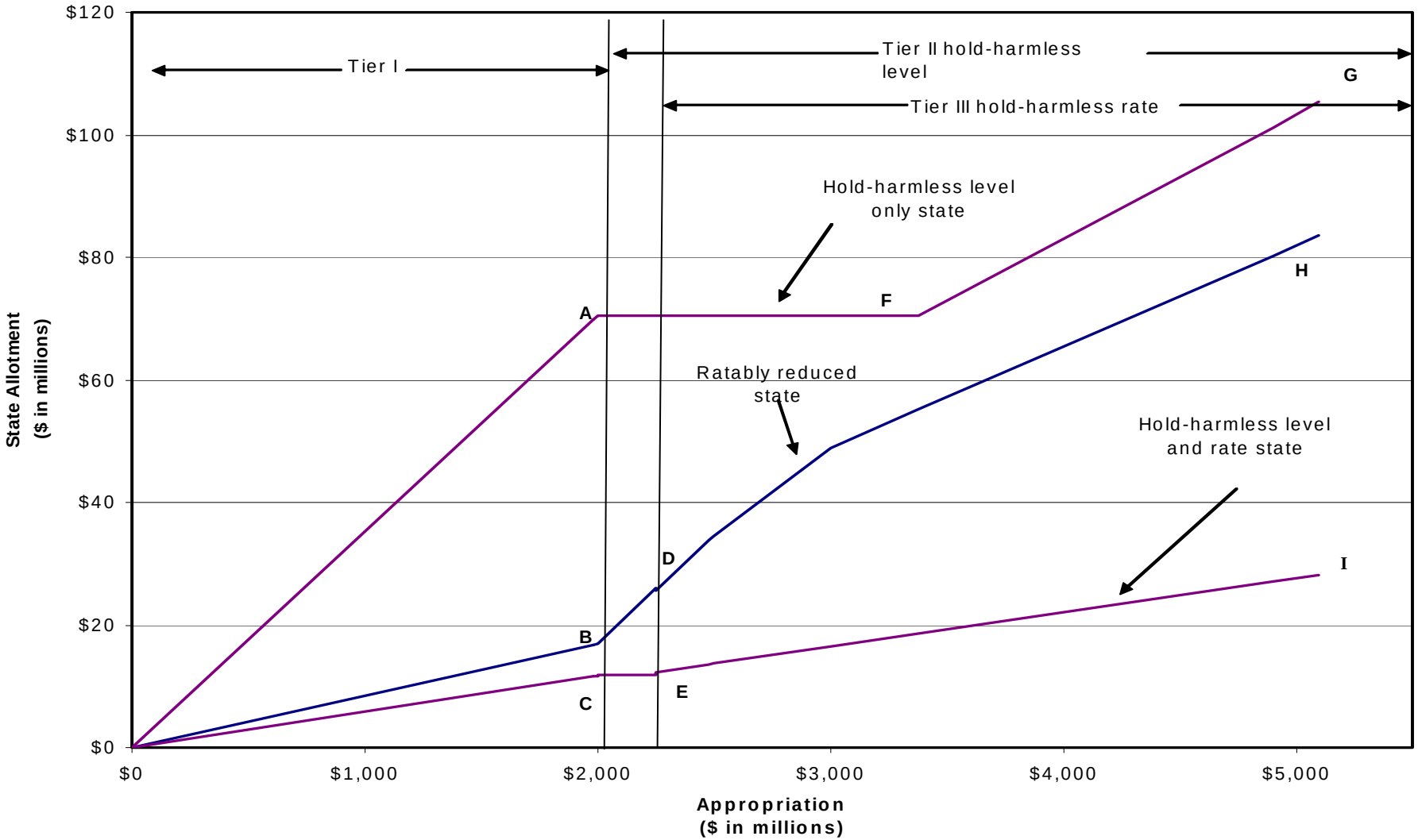
In the figure, there are three vertical areas. These areas separate the three levels of appropriations (Tiers I-III) that are triggers under current law and were explained previously in this report. The figure also graphs the three basic types of states. Reading from top to bottom of **Figure 1**, these three types of states are as follows.

- **Hold-Harmless Level Only States.** These states are subject to only the hold-harmless level provision. They do not qualify for the hold-harmless rate because each state's share of the regular funds at $2.25 billion is greater than 1%. An example of a hold-harmless level only state is represented by the line that runs from $0 to point G. The hold-harmless level is evident from point A to point F. Here, despite increases in the appropriations level, the state allotment remains fixed. *In **Table 3**, these are the states that have a "Y" in the "Subject to hold-harmless level?" column and a "N" in the "Subject to hold-harmless rate?" column.*

- **Ratable Reduction States.** These states are subject to a ratable reduction. Their new formula rate is greater than their old, FY1984, rate. An example of these states is depicted by the line that runs from $0 to point H. There is a small decrease in state allotments at point D that is attributable to the increased shortfall on the distribution of funds that the hold-harmless *rate* imposes. *In **Table 3**, these are the states that have a "N" in the "Subject to hold-harmless level?" column and a "N" in the "Subject to hold-harmless rate?" column.*

- **Hold-Harmless Level *and* Rate States.** These states are subject to both the hold-harmless level and the hold harmless rate provisions. An example of a typical level and rate state is shown by the line that runs from $0 to point I. The hold-harmless level is evident by the fixed state allotment from point C to point E. However, the (subtle) jump at exactly $2.25 billion signals that this state is subject to the hold-harmless *rate* provision. After the allotment jump at $2.25 billion, the state's allotment continues to increase (at a rate lower than the old rate, but higher than the new rate). *In **Table 3**, these are the states that have a "Y" in the "Subject to hold-harmless level?" column and a "Y" in the "Subject to hold-harmless rate?" column.*

Figure 1. Estimated Low Income Home Energy Assistance (LIHEAP) Allocations at Various Hypothetical Appropriations Level for Three Types of States



Source: Figure created by Congressional Research Service (CRS) calculations using allotment rates provided by the Department of Health and Human Services in September 2008.

Appendix C: Actual LIHEAP Allocations to the States, FY2006-FY2009

In the most recent regular fund appropriation for LIHEAP, the FY2009 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (P.L. 110-329), Congress appropriated $4.51 billion. However, of that amount, $840 million was to be distributed according to the "new" formula and the remainder under the "old" formula proportions. Column (e) of **Table C-1** shows the amount of regular funds that each state received under P.L. 110-329.

In the FY2008 Consolidated Appropriations Act (P.L. 110-161), Congress appropriated $1.98 billion in LIHEAP regular funds.[48] The first distribution to the states of the regular funds appropriated in P.L. 110-161 occurred in December 2007; allocations were made on the basis of the proportions of the "old" LIHEAP formula. The amount of funds that each state received under this allotment is in column (c) of **Table C-1**. Then, on June 26, 2008, HHS announced that it would distribute funds that were thought to have been allocated to leveraging incentive and REACH grants in the FY2008 Appropriations Act as part of the regular fund formula grants. Since the early 1990s, leveraging incentive and REACH grants have been made to states and tribes on the basis of their ability to obtain non-LIHEAP resources for energy assistance (leveraging incentive grants) and for increasing energy efficiency of low-income households (REACH grants). In recent years, Congress has allocated about $27 million for these two funds. However, in FY2008, P.L. 110-161 did not appropriate funds for leveraging incentive and REACH grants. When HHS discovered that language to appropriate the funds was missing from the law, it released the $26.7 million that would otherwise have been distributed as leveraging incentive and REACH grants as part of the LIHEAP formula distribution. The addition of nearly $27 million to the formula grants caused the funds to be released under the "new" LIHEAP formula. Column (d) of **Table C-1** shows the total amount of funds that each state received after $26.7 million was added and funds were distributed under the new formula.

Column (b) of **Table C-1** shows the amounts allocated to the states in FY2007 when Congress appropriated $1.98 billion in regular LIHEAP funds as part of a year-long continuing resolution (P.L. 110-5). Funds were distributed according to the proportions of the old formula. Column (a) shows the amount allotted to each state in FY2006, when $2.48 billion was appropriated for LIHEAP regular funds through two different laws. The FY2006 Departments of Labor, Health and Human Services, and Education Appropriations Act (P.L. 109-149) appropriated $1.98 billion for LIHEAP and a bill to make available funds in the Deficit Reduction Act of 2005 for LIHEAP (P.L. 109-204) appropriated $500 million.

---

[48] P.L. 110-161 contained an across-the-board rescission of 1.747% that reduced the stated amounts appropriated for most Departments of Labor, Health and Human Services, and Education programs. See Division G, Section 528 of P.L. 110-161. The $1.98 billion appropriation for regular funds was the amount available after this rescission.

Table C-1. LIHEAP Actual State Regular Fund Allotments for FY2006 through FY2009

($ in millions)

State	FY2006 Allotments: $2.48 billion[a] (a)	FY2007 Allotments: $1.98 billion[b] (b)	FY2008 Allotments Prior to 6-26-08: $1.98 billion[c] (c)	FY2008 Allotments After 6-26-08: $1.98 billion[d] (d)	FY2009 Allotments: $4.5 billion[e] (e)
Alabama	31.310	16.769	16.774	17.111	60.063
Alaska	12.572	10.704	10.707	10.828	23.568
Arizona	15.142	8.110	8.112	8.275	29.047
Arkansas	22.765	12.796	12.799	13.057	36.497
California	153.184	89.963	89.985	91.797	225.894
Colorado	31.729	31.367	31.375	31.729	63.474
Connecticut	47.809	40.920	40.930	41.754	95.783
Delaware	10.141	5.431	5.433	5.542	17.384
District of Columbia	7.852	6.355	6.356	6.484	14.653
Florida	49.542	26.534	26.541	27.075	95.037
Georgia	39.170	20.979	20.985	21.407	75.141
Hawaii	2.555	2.113	2.113	2.137	4.652
Idaho	14.370	12.235	12.238	12.376	26.939
Illinois	145.959	113.259	113.287	114.565	237.236
Indiana	53.986	51.280	51.293	51.872	103.609
Iowa	36.762	36.343	36.352	36.762	67.803
Kansas	26.798	16.690	16.695	17.031	45.349
Kentucky	44.347	26.686	26.693	27.230	68.353
Louisiana	32.010	17.144	17.148	17.494	57.196
Maine	26.815	26.509	26.516	26.815	49.457
Maryland	58.499	31.332	31.340	31.971	101.296
Massachusetts	82.797	81.853	81.873	82.797	162.981
Michigan	108.770	107.529	107.556	108.770	222.412
Minnesota	78.363	77.469	77.488	78.363	144.528
Mississippi	26.843	14.377	14.381	14.670	39.011
Missouri	59.541	45.240	45.251	45.762	103.541
Montana	16.856	14.351	14.355	14.517	31.598
Nebraska	21.109	17.973	17.978	18.180	39.573
Nevada	7.112	3.809	3.810	3.887	13.643
New Hampshire	18.197	15.493	15.497	15.672	34.112
New Jersey	77.540	75.988	76.007	76.865	166.690
New Mexico	11.925	10.153	10.156	10.360	24.901
New York	250.974	248.112	248.173	250.974	475.935
North Carolina	69.038	36.976	36.985	37.730	123.243
North Dakota	18.310	15.590	15.594	15.770	34.325
Ohio	122.259	100.194	100.219	101.350	220.588
Oklahoma	28.780	15.415	15.418	15.729	49.007
Oregon	24.591	24.311	24.317	24.591	45.355
Pennsylvania	134.810	133.273	133.306	134.810	274.925
Rhode Island	15.825	13.473	13.477	13.629	30.209
South Carolina	24.867	13.318	13.322	13.590	47.702

State	FY2006 Allotments: $2.48 billion[a] (a)	FY2007 Allotments: $1.98 billion[b] (b)	FY2008 Allotments Prior to 6-26-08: $1.98 billion[c] (c)	FY2008 Allotments After 6-26-08: $1.98 billion[d] (d)	FY2009 Allotments: $4.5 billion[e] (e)
South Dakota	14.871	12.662	12.665	12.808	27.878
Tennessee	46.363	27.033	27.039	27.584	73.723
Texas	82.421	44.144	44.155	45.044	158.110
Utah	17.120	14.576	14.580	14.745	32.094
Vermont	13.639	11.613	11.616	11.747	25.568
Virginia	71.259	38.166	38.175	38.944	118.084
Washington	40.450	39.988	39.998	40.450	74.603
West Virginia	23.818	17.660	17.665	17.935	40.584
Wisconsin	70.538	69.733	69.750	70.538	130.096
Wyoming	6.854	5.836	5.838	5.903	12.850
Total	**2,449.16**	**1,949.83**	**1,950.314**	**1,977.027**	**4,476.302**

Source: Department of Health and Human Services (HHS) final regular fund allocations for FY2006 through FY2009. These include tribal allotments.

a. The total regular fund appropriation for FY2006 was $2.48 billion, $1.98 billion of which was appropriated in P.L. 109-149, and $500 million in P.L. 109-204. Initially, P.L. 109-149 appropriated $2.0 billion for regular funds, but the amount was subject to a 1% across-the-board rescission, resulting in a $1.98 billion appropriation (P.L. 109-148). In addition, both training and technical assistance and the leveraging incentive and REACH funds were reduced by 1% in column (a).

b. Congress approved a year-long continuing resolution for FY2007 (P.L. 110-5), which was enacted on February 15, 2007. The law provided that LIHEAP receive the same amount of funds for FY2007 that was appropriated for FY2006 in P.L. 109-149, as reduced by a 1% rescission (P.L. 109-148).

c. The initial allotments for FY2008 were slightly greater than for FY2007, despite the similar appropriations levels, due to a 1.747% across-the-board rescission for most Departments of Labor, Health and Human Services, and Education programs. See P.L. 110-161, Division G, Section 528. This meant that set asides for leveraging incentive and REACH grants, and for training and technical assistance, were slightly reduced from FY2007 levels.

d. On June 26, 2008, HHS released an additional $26.7 million in formula grants to the states. These funds had been set aside for leveraging incentive and REACH grants until HHS realized that Congress had not appropriated these funds in P.L. 110-161. As a result, distributions were re-calculated under the "new" LIHEAP formula, and additional funds were provided to the states.

e. Congress appropriated approximately $4.5 billion for LIHEAP as part of a continuing resolution (P.L. 110-329). Of this amount, $840 million was allocated under the "new" LIHEAP formula, with the remainder allocated according to the proportions of the "old" LIHEAP formula.