bid"; or (2) they "are appropriated or mandated by the State for distribution . . through the State program"; or (3) they "are appropriated or mandated by the State for distribution . . . under the plan referred to in section 2605(c)(1)(A) to federally qualified low-income households and such benefits are determined by the Secretary to be integrated with the State program."

The first criterion refers to the role of the grantee's LIHEAP program in the acquisition or development of benefits obtained from energy vendors. Based on the discretion in the statute, the interim rule defined the phrase "acquisition or development by the State program" to mean that the grantee's LIHEAP program must have "substantial involvement in the acquisition or development of these benefits. The involvement of the grantee's LIHEAP program" must be "considerable, important, material, and of real value or effect."

The interim rule defined the second criterion to mean that the leveraged resources and benefits must be "provided to low-income households eligible under the grantee's standards, as a part of (through or within) the grantee's LIHEAP program, consistent with the Federal statutes and regulations applicable to the LIHEAP program."

The plan referred to in the third criterion is a part of each grantee's annual application for regular LIHEAP funds; in the plan, the grantee describes how it will carry out statutory assurances to which its chief executive officer has certified and includes other information required by statute. Based on the context in which it appears in the statute, the interim rule defined the phrase, "appropriated or mandated by the State for distribution . . . under the plan . . . ", to mean that the leveraged resources and benefits must be "identified and described in the plan and distributed as indicated in the plan; however, they are not provided to lowincome households as a part of (through or within) the grantee's LIHEAP program.'

The third statutory criterion also requires that the leveraged benefits be "integrated with the State program." The interim rule defined this to mean that the benefits must be "coordinated with the grantee's LIHEAP program and . provided in cooperation and in conjunction with the LIHEAP program.'

We received ten letters that commented on one or more of these three criteria.

Comment and Response

A commenter recommended "that the rules applying" to criteria (i) and (ii) "simply restate the language of the law." The commenter said that HHS implemented an "expanded interpretation" of these criteria that "is unnecessary and inconsistent with the nature of a block grant.'

Much of the language of the LIHEAP statute—including section 2607A—is subject to differing interpretations. As we stated earlier in this preamble, the leveraging incentive program is different from the regular LIHEAP block grant, where different grantees may adopt different interpretations of a statutory provision, as long as the interpretations are not clearly erroneous. In the regular LIHEAP program, one grantee's statutory interpretations and program operations generally do not depend on or affect another's. In the leveraging program, however, where grantees are 'competing" for shares of the same limited amount of leveraging incentive funds, we need to apply common rules to all proposed resources, and all concerned parties should have common understandings about leveraged resources that are countable, and resources that are not. This is why we do not "simply restate that language of the law" in cases where conflicting interpretations of provisions in section 2607A are likely.

Comments and Response

We received several verbal comments about the meaning of the statutory phrase, "the State program," in criterion (i). The same phrase is used in the statute with respect to criteria (ii) and (iii), where it clearly means the grantee's LIHEAP program, and not another State agency or program. We believe it is logical and appropriate to conclude that it has the same meaning in criterion (i). Through these three criteria, the statute and regulations require that the grantee's LIHEAP program have a clear, substantive role in developing, acquiring, administering, and/or coordinating with leveraged resources countable under the LIHEAP leveraging incentive program.

A commenter said that the requirement in criterion (i) that the grantee's LIHEAP program have 'substantial involvement" which is "considerable, important, material, and of real value or effect" in acquisition or development of benefits "is both overly restrictive and subject to subjective interpretation." We do not believe it is overly restrictive to require that the grantee's LIHEAP program play an active role in acquiring or developing a

resource under this criterion. The statute requires that, in order to meet the criterion, the benefits must "result from the acquisition or development by the State program of quantifiable benefits that are obtained from energy vendors through negotiation, regulation or competitive bid." We do not believe that this language should be understood to require the grantee's LIHEAP program to acquire or develop the benefits entirely by itself. On the other hand, in cases where other entities also were involved in the acquisition or development, the grantee's LIHEAP program should have a substantive role. If, for example, grantee LIHEAP staff had simply attended a meeting at which other people negotiated reduced home energy rates for low-income households, that attendance alone should not count as meeting criterion (i). The interim rule therefore required that the grantee's LIHEAP program have "substantial involvement," and the final rule requires that the actions/efforts of grantee LIHEAP program staff be 'substantial and significant'' in obtaining a resource from a vendor.

The same commenter believed that the statutory requirement for criterion (i) is met as long as "the source of leveraged funds are [sic] energy vendors and the funds resulted from negotiation, regulation, or competitive bidding," and the benefits "go to * * * the state program." We do not believe that a resource countable under criterion (i) must "go to" (be administered through or within) the LIHEAP program. Resources leveraged under this criterion are often discounts or waivers for lowincome households, not "funds" that can be administered through the LIHEAP program. We believe that reduced home energy rates and waivers of certain home energy charges that are negotiated with home energy vendors by (or with substantive participation of) LIHEAP program staff should be countable under this criterion—even though reduced rates and waivers usually are not administered through

the LIHEAP program.

This commenter apparently assumed that "development by the State program" means that the State program must be involved in developing "a method of acquiring" the resources, but that "acquisition * * * by the State program" means only that the benefits must "go to" the program. However, we continue to believe that the grantee's LIHEAP program—at the central, regional, and/or local office levelshould play an active, substantial role in acquiring (obtaining) or developing the resource from the home energy vendor, not simply passively "acquire" (receive)