



Neighborhood Legal Services
of Los Angeles County

August 7, 2024

Attn: Lilibeth Campos
Utility Assistance Section
Department of Community Services & Development
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

To whom it may concern:

Neighborhood Legal Services of Los Angeles County (NLSLA) offers this written comment in support NLSLA’s oral testimony at the public hearing regarding the Draft Annual 2025 Low Income Home Energy Assistance Program (LIHEAP) State Plan Application for Federal Fiscal Year 2025 (“State Plan”) on August 7, 2024.

NLSLA is a non-profit law firm that has been providing legal assistance to Los Angeles residents on issues that disproportionately affect underserved communities for over 55 years. NLSLA assists individuals and households with legal issues including, but not limited to, family law and restraining orders, education, employment, expungement, public benefits, medical insurance and benefits, landlord-tenant and consumer issues. Our clients are very low income, and many depend on LIHEAP if they face a devastating economic loss such as a pandemic or other disaster, medical emergency, domestic violence incident, divorce, or loss of a job. LIHEAP is essential, especially in Los Angeles, which has an extremely high cost of living and record rates of homelessness.

NLSLA partners with a number of organizations, including the Olive View Hospital Trauma Recovery Center (TRC), through its Medical Legal Community Partnership. In 2023 NLSLA received an inquiry from the TRC regarding whether a low-income victim of violence was eligible for services from the local LIHEAP provider, Maravilla Foundation. NLSLA contacted Maravilla Foundation and their staff stated that only United States citizens were eligible for assistance, a position echoed on its website.ⁱ NLSLA subsequently contacted the two other non-profit LIHEAP service providers in Los Angeles by phone and discovered that they are also making incorrect eligibility determinations based on immigration status.ⁱⁱ Though NLSLA did not have time to survey all 41 LIHEAP providers, we were able to confirm incorrect language regarding immigrant eligibility on other LIHEAP provider’s websites.ⁱⁱⁱ Additionally, the Form CSD 600 Statement of Citizenship or Non-Citizen Status for Public Benefits, which appears to be used by some or all public agency providers to evaluate immigrant eligibility, does not list all eligible non-citizens.^{iv}

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Further, all three non-profit providers in Los Angeles require that applicants provide a Social Security Number as a condition of making a complete application. This screens out potentially eligible qualified non-citizens who have yet to receive their Social Security Numbers and is counter to the California State Plan and policy guidance.

NLSLA's review of federal law and guidance, the California state plan, and the Eligibility and Verification Guide lead us to the conclusion that these erroneous provider-level determinations about eligible immigration status are due to vague and inconsistent statements about qualified non-citizen eligibility for LIHEAP throughout CSD policies and procedures. This comment lays out the issues and provides recommendations to clarify these policies, add measures to prevent unlawful denials of eligible qualified non-citizens, redo standard forms and applications, improve non-profit provider trainings, and enhance clarity around the application process and requirements for applicants.

Additionally, although states are encouraged to allow mixed status households to apply, the California State Plan is silent regarding this issue. The Department of Community Services and Development (CSD) issued guidance in 2011 that states that an application "cannot be submitted in the name of a minor."^v CSD should heed the guidance of the U.S. Health and Human Services and allow an adult to apply on behalf of eligible minor household members so this benefit can be accessed by all eligible, low-income household members.

Finally, CSD should standardize appeal processes and procedures, including providing and requiring standardized forms and letters in the case of a denial. All forms and letters should meet language access requirements.

A. CSD must strengthen language in its policy guidance and non-profit provider procedures to stop the unlawful practice of turning away eligible non-citizens and requiring documentation they cannot provide.

NLSLA can only guess why Los Angeles non-profit LIHEAP providers are so grossly misinterpreting immigrant eligibility for LIHEAP, but it may be because they are misinterpreting the federal rule that they do not have to verify immigrant eligibility, with the determination they do not have to provide LIHEAP to any non-citizens at all. CSD must enhance language in the state plan and policy guidance, as well as revise the non-profit LIHEAP application and cover page, to ensure that non-profit providers are not unlawfully turning away eligible non-citizens from this critical benefit.

Grantees have flexibility under the block grant structure of LIHEAP to establish procedures for verifying an applicant's U.S. citizenship and immigration status when determining eligibility for LIHEAP services; however, their procedures should be in general accordance with the U.S.

Department of Justice (DOJ) interim guidance on verification of citizenship and qualified non-citizen status (62 FR 61344-61416).^{vi}

Qualified Non-Citizens

An eligible household member for purposes of the LIHEAP Program is a U.S. citizen or qualified non-citizen who is a member of a household that meets the eligibility requirements specified in Section 2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. § 8624(b)(2)). The following list includes immigration statuses that qualify for benefits under PRWORA.

- Citizen or Naturalized Citizen
- Qualified Noncitizen [8 U.S. Code § 1641]
 - LPR

- Asylee [8 USC 1158]
- Refugee [8 USC 1157]
- Parolee for at least 1 year [8 USC 1182(d)(5)]
- Conditional Entrant [8 USC 1153(a)(7)]
- Cuban/Haitian Entrant [501(e) of the Refugee Education Assistance Act of 1980]
- Deportation or Removal Withheld [8 USC 1253 or 8 USC 1231(b)(3)]
- Battered Spouse, Parent, or Child [approved visa petition filed by spouse or parent, approved self-petition under VAWA or prima facie case for relief, or approved application for cancellation of removal under VAWA.]
- Trafficking survivors with ORR certification, T-Visa holders or applicants with prima facie case [8 USC 1101(a)(15)(T), added under TVPRA of 2008]
- Afghan and Iraqi nationals with Special Immigrant status [Dep't of Defense Appropriations Act of 2010]
 - Afghan Humanitarian Parolees [arrived between July 31, 2021 and September 30, 2023, and paroled into the country, are eligible for federal benefits to the same extent as refugees. Eligibility for this groups was set to conclude until March 31, 2023 or end of parole term, whichever later.]
- Ukrainian parolees [Ukraine Supplemental Appropriations Act, 2022]
 - Ukrainians paroled into the U.S. between February 24, 2022 and September 30, 2023 are eligible for federal benefits to the same extent as refugees. Eligibility continues until parole is terminated.

The Eligibility and Verification Guide must be revised to comply with federal law.

Section 1.3 of the CSD Eligibility & Verification Guide (“Guide”) provides a qualified noncitizen list on Pages 8-10, along with examples of verification documentation, but it is incomplete and outdated as it omits trafficking survivors with ORR certification, prima facie notices or approved T-Visas, as well as Ukrainian parolees. This must be revised in this year's state plan as well as under the Guide.

Further, Section 1.3 only addresses “Citizenship and Non-Citizen Status” rules for “Public Agencies.” In Los Angeles, all three of our LIHEAP providers are private non-profits. Section 1.4 of the Guide addresses eligibility based on immigration status for “Private, Non-Profit Agencies.” Notably, Section 1.4 is titled only “Citizenship Status,” and it does not re-list the qualified non-citizens who are eligible for LIHEAP. This improper title and framing of the rules may be why private non-profits are confused about their obligation to provide this benefit to non-citizens. Additionally, this section uses incorrect language that could lead someone to believe only citizens are eligible for the program, such as, “[p]rivate, non-profit agencies are not required to verify citizenship,” when it should say, “...citizenship *and qualified non-citizen status.*” Section 1.4 contains other errors likely to cause confusion, such as stating “[q]ualified non-citizens are those who have both permanent and legal residency. If an applicant has legal residency, but is not here on a permanent basis, they are considered a non-qualified non-citizen.” In fact, many qualified non-citizens have legal status but have yet to adjust to permanent status (green card), such as refugees, ORR certified trafficking survivors, and more. Advocates recommend this section be revised immediately to make clear that public agencies *and* non-profits should be using the same qualified noncitizen list when evaluating eligibility. Further, proper language to refer to immigration statuses must be utilized.

The only difference between public agencies and private non-profits when it comes to providing LIHEAP to qualified non-citizens is that while public agencies must take additional steps to *verify* immigration status, non-profits do not have a corresponding obligation. As CSD references in Section 1.4 of the Guide, its May 2, 2011 Program Guidance 11-03 states that while non-qualified immigrants cannot get LIHEAP, non-profits are exempt from verifying immigrant eligibility Under Section 432(d) of PRWORA for eligible citizens and qualified non-citizens:

a ‘nonprofit charitable organization’ providing a federal, state or local public benefit covered by the Act is not required under Title IV of the Act to determine, verify, or otherwise require proof of an applicant’s eligibility for such benefits based on the applicant’s status as a U.S. citizen, U.S. non-citizen national or qualified alien.^{vii}

Program Guidance 11-03 (“PG 11-03) makes clear that “suspicion or doubt regarding the citizenship status of an applicant does not require the non-profit service provider to investigate or seek clarity with regard to status. The provider need not go beyond established application procedures that are compliant with CSD and Federal guidance.” Further, non-profits have:

“*no obligation* to verify, i.e. investigate or research an applicant's alien status. It is only when the undocumented status or non-eligibility of an applicant becomes known by other means such as a declaration made by the applicant or the applicant presents documented proof that they are an undocumented alien; the nonprofit provider must deny service to an unqualified applicant.”

Section 1.4 directly contradicts PG 11-03 by encouraging non-profits to look for evidence of concealed immigrant ineligibility. It goes so far as to list “[s]ome indicators of non-qualified non-citizen status ...” One example of alleged documented proof of being undocumented is a driver’s license stating “federal limits apply” issued after 2018. Another example is documents issued by foreign governments, but people easily could have documentation from their country of origin while still having qualified immigration status in the US, including recent refugees, trafficking survivors, etc. Similarly, an individual could have an ITIN number because they have not yet been issued an SSN. Section 1.4 provides other examples of potential indicators of lack of qualified immigration status, but none of them are conclusive of being undocumented. Conclusive evidence might include declaring oneself undocumented, or presenting a deportation order, for example. Further, the Guide provides no meaningful process for checking that the suspicion is correct.

Section 17.4 of the State Plan contains similar misrepresentations of eligibility requirements, and does not clearly lay out the differences in procedure for local agency providers versus non-profit agency providers:

17.4 Citizenship/Legal Residency Verification

- Clients sign an attestation of citizenship or legal residency
- Citizens must provide a copy of their birth certificate, naturalization papers, or passport
- Other – Describe: County Local Service Providers are required to verify citizenship and legal residency. Real IDs can be used to verify citizenship/legal residency.

A non-profit should only deny LIHEAP when someone declares they are undocumented, or provides proof of undocumented status. CSD should revise the application for non-profits to include a qualified non-citizen list that applicants can select, similar to the CSD 600 form used by government agency providers, but without the requirement to provide verifications.

The result of this misapplication of federal and state law is that at least two non-profit providers in Los Angeles, Maravilla Foundation and Long Beach Community Action Partnership, have a rule on their application cover page that if you have a driver's license or ID that states "Federal Limits Apply," you must provide a US Birth Certificate or Passport.^{viii} Anyone who has not gone through the process of applying for a Real ID since 2018—including citizens and qualified non-citizens—would have "federal limits apply" on their driver's licenses. Qualified non-citizens, however, will not have a US birth certificate or a US Passport, which only is issued to citizens. Qualified non-citizens must be permitted to declare their status. If the Guide is not revised, and procedures clarified, non-profit agencies will continue to turn away eligible people.

Under California's state plan, Section 10 discusses monitoring and auditing procedures of local agencies. Per the 2024 plan, local agencies must have an annual audit in compliance with the Single Audit Act and OMB Circular A-133. CSD must incorporate into its audit a review of non-profit procedures for providing LIHEAP to non-citizen households. In reviewing the non-profits, CSD must review their application, and their website language pertaining to eligibility. CSD also should do a "secret shopper exercise" to call the provider hotlines and attempt to make an application as a qualified non-citizen, to make sure that non-profits are providing benefits to qualified non-citizens. We also recommend that CSD standardize procedures for all providers across the state by utilizing the same application process and portal.

B. CSD must revise its policies and procedures to ensure an eligible household can apply without providing an SSN.

The State Plan at 17.2 makes clear that an SSN is requested, not required. Further, the Guide at 1.2 and 1.10 reiterates that an SSN is requested, but "an applicant cannot be denied for refusing to submit their SSN." Further, Sections 1.2 and 1.10 lay out a process for verifying a person's identity in lieu of them providing an SSN by assigning them a unique applicant identifier. Although the California State Plan at Section 17 and the Guide at Sections 1.2 and 1.10 state that a person cannot be denied for failure to provide an SSN, in practice, providers are mandating an SSN to approve LIHEAP applications. There are several scenarios under which a person will be a qualified non-citizen, but not yet have an SSN. These include people who were recently granted a prima facie notice based on a VAWA self-petition, and trafficking survivors with recent ORR certification or a recently granted prima facie notice based on a T-Visa application.

[2019 LIHEAP IM](#) guidance explains that whether an applicant is required to provide an SSN depends on what the grantee's policy is regarding SSNs. If the grantee's law or policy requires an SSN, then individuals that do not have SSNs may be considered ineligible by the grantee. The Guidance encourages, however, that grantees (a) assist such individuals with obtaining SSNs and the necessary documentation; and (b) avoid delaying or denying LIHEAP assistance to those household members pending such information if the individuals are otherwise eligible to receive LIHEAP benefits.

We support California’s policy of not requiring an SSN, but the actual procedures local providers follow belie this commitment.

Section 1.2, COLLECTION SOCIAL SECURITY NUMBER AND DATE OF BIRTH, of the Guide should be revised as follows:

Current Language: Requirement: agencies are required to obtain and document the SSN and DOB of the applicant on the Energy Intake Form (CSD 43). If the applicant refuses to provide their SSN, the agency must request a unique applicant identifier from CSD. Please refer to pages 16-18 for complete instructions.

Suggested change: Agencies must: (1) request and document the SSN and DOB of the applicant on the Energy Intake Form; and (2) if the applicant does not have a SSN, the agency must request a unique applicant identifier from CSD. Please refer to pages 16-18 for complete instructions.

CSD’s official policy that the SSN can be requested but not required is contradicted by the LIHEAP application, which has the SSN as a required field. The application does not contain any disclaimer that the SSN does not need to be provided; we recommend one be added, such as: “Please provide a Social Security Number; if one is not provided, other forms of identification will be requested.” Further, while Section 1.10 of the Guide contains a procedure for verifying identity without an SSN, local non-profit agencies in Los Angeles do not appear to be following these procedures. This should be enforced with further training and oversight from CSD.

In conclusion, we recommend CSD restructure the Guide to emphasize throughout all relevant sections that a unique applicant identifier should be provided to anyone who is eligible who cannot provide an SSN, revise the application to include a disclaimer about not being required to provide an SSN, and perform greater oversight of local LIHEAP providers, who are not following current rules and procedures around SSN rules.

C. The State Plan, Eligibility and Verification Guide, and PG 11-03 should be revised to indicate that mixed status households that include a citizen/qualified non-citizen under 18 may apply for LIHEAP.

As discussed above, United States citizens and qualified non-citizens may apply for LIHEAP. Many households in the United States have household members with different citizenship statuses. In 2021, 20% of children in California lived in a mixed status household.^{ix} The U.S. Department of Health and Human Services Administration for Children and Families Office of Community Services Division of Energy Assistance (“HHS”) has encouraged states to allow “mixed status households” to apply for LIHEAP.^x

Further, HHS stated, “The “applicant” does not need to be an eligible member of the household, but should be of legal age to apply on behalf of those members of the household who are eligible.”^{xi} Some of the states that allow ineligible parents to apply on behalf of an eligible minor include Alabama,^{xii} Arizona,^{xiii} Wisconsin,^{xiv} Utah,^{xv} Pennsylvania,^{xvi} and Minnesota.^{xvii}

The State Plan does not directly address whether ineligible adults can apply on behalf of eligible minors, but PG 11-03 does state “even if a member of the household can verify legal citizenship status, but the applicant is undocumented, the application must be denied.”^{xviii} The application cannot be

submitted in the name of a minor. As a result, many low-income households with children who meet the immigration qualifications are denied this vital benefit, despite clear federal guidance that it is permissible. This result is even more concerning because children in mixed households are eligible for other federal benefits, such as CalWORKS and CalFresh, that would make the family categorically eligible for LIHEAP. California is often on the forefront of ensuring access to critical safety net services to immigrants; it is disappointing to see the limited access immigrants are afforded to the LIHEAP program.

Recommended Changes to the State Plan

NLSLA recommends that Section 17.4 “Other - Describe” of the State Plan be edited to add the following language:

Local Service Providers are only required to verify eligibility if an applicant states that they are not qualified or presents proof that they are not a qualified immigrant. If the applicant does not have a qualifying immigration status but a household member, including a minor child, has a qualifying status, then the household may apply.

NLSLA recommends that the State Plan edit Section 17.5 “Income Verification” to reflect the fact that mixed status households can apply and all income must be reported, but the household is only composed of eligible household members when calculating the benefit. NLSLA proposes the following information be added to “Other - Describe”:

All adults must provide income information. However, ineligible household members may be excluded from the total household count when setting the benefit.

Recommended Changes to the Guide.

The following italicized language should be added to the definition of household:

A household is defined as an individual or group of individuals, related or unrelated, who share residential energy and have an energy cost. *If a household member does not qualify for assistance due to their immigration status their income must nevertheless be included in calculating a pro-rated benefit. If there are no adult household members with a qualifying immigration status, but a child with a qualifying immigration status lives in the household, then an adult member of the household may apply on behalf of the eligible child(ren).*

Section 1.6 of the Guide should be amended by striking “Applicants under the age of 18 who are not legally emancipated and do not have a parent or legal guardian to apply on their behalf” from the “Ineligible for Utility Assistance” section.

D. Due Process Concerns

Section 12 of the State Plan, Fair Hearings, shows that only 2 fair hearings were held in the entire year. This shockingly low number indicates serious gaps in access to the appeals process.

Advocates recommend creating standardized appeal rights and procedures letters for all providers to utilize that will be sent upon any final determination, laying out the two levels of appeal and detailing appeal procedures. It would also be helpful to create a standard appeal request form that will be provided to everyone upon a final determination, as well as at the conclusion of the first level of appeal—a review of the denial with the provider—describing how to request an appeal with CSD. These documents must meet language access requirements.

Section 4 of the Guide addresses appeals but has serious shortcomings. Under “Notification Requirements”, the provider is instructed that they must tell an applicant in writing about the reason for denial, but the Guide does not include any requirement that the denial letter contain detailed information about the two levels of appeal and how to request an appeal. In the “Suggested Letter”, there is absolutely no language about the appeal process, how to request an appeal, etc.

Dear Applicant:

Your HEAP application requesting assistance with your energy bill has been received. At this time, you are not eligible to receive services for the following reason(s):

- Did not meet income guidelines
- Did not meet the agency’s priority plan
- Did not provide required information, after agency notification
- Other: (explain)

Due to the overwhelming demand and the limited funding resources available for assistance the State of California requires Local Service Providers (agencies) to establish a priority plan. The priority plan provides a method for serving those with the greatest need. However, if your circumstances change, please feel free to reapply.

This must be revised to include a clear explanation of the right to appeal, the timeframe to appeal, the two levels of appeal, and how to request an appeal.

Additionally, CSD should create standardized language about a person’s right to an appeal, how to request an appeal, the timeframe for requesting an appeal, and the two levels of appeal that they should mandate be placed on all providers’ websites.

Conclusion

We appreciate CSD’s consideration of our comment and would welcome the opportunity to discuss these issues with CSD directly.

Sincerely,

/s/ Lena Silver

Lena Silver
Interim Legal Director
Director of Policy and Administrative Advocacy

ⁱ *Maravilla’s website LIHEAP FAQ states:* Do I need to be a U.S. Citizen? Yes, it is a state requirement to be a citizen of the United States to apply to our program. <https://www.maravilla.org/faqs>, last visited July 31, 2024.

ⁱⁱ On August 2, 2024, an NLSLA intern called Pacific Asian Consortium in Employment (PACE) and the Long Beach Community Action Partnership. PACE said that only United States citizens can apply. Long Beach Community Action said that T Visa applicants are not eligible.

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- ⁱⁱⁱ <https://energy.capk.org/> Help with Utility Assistance and Energy Efficiency upgrades may be available if you meet the following requirements:
18 years of age or older;
A U.S. Citizen or Legal and Permanent Resident;
- ^{iv} <https://ehsd.org/wp-content/uploads/2015/02/4.-CSD-600-Citizenship-English.pdf>
- ^v PG-11-03
- ^{vi} The guidance is available at: <https://www.gpo.gov/fdsys/pkg/FR-1997-11-17/pdf/97-29851.pdf>
- ^{vii} See also: <https://www.govinfo.gov/content/pkg/FR-1997-11-17/pdf/97-29851.pdf> ; Section 432(d) of the 42 USC 1305 (Public Law 104-193, 110 Stat. 2168, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)),
- ^{viii} See Long Beach Community Action Partnership LIHEAP application packet at: [HEAP-APP.2024-VER-3.11.24.pdf \(lbcap.org\)](#) . See Maravilla Foundation LIHEAP application packet at: [Updated+HEAP+Application+7.23.2024.pdf \(squarespace.com\)](#)
- ^{ix} “Mixed Status Families California,” California Immigrant Data Portal, available at: [Mixed-Status Families | CIDP \(immigrantdataca.org\)](#), last visited August 1, 2024
- ^x LIHEAP IM HHS Guidance on the Use of Social Security Numbers (SSNs) and Citizenship Status Verification | The Administration for Children and Families available at: [LIHEAP IM HHS Guidance on the Use of Social Security Numbers \(SSNs\) and Citizenship Status Verification | The Administration for Children and Families](#), December 12, 2014
- ^{xi} Id.
- ^{xii} State of Alabama Low-Income Home Energy Assistance Program (LIHEAP) Policy Manual, available at: <https://adeca.alabama.gov/wp-content/uploads/LIHEAP-Manual.pdf>, revised February 2024, see pg. 2 “Mixed-Status Household - households in which the immigration status of at least one member is different from the others. A common example is a household with one or more parents that are non-qualified aliens and one or more children that are U.S. citizens or qualified aliens.”
- ^{xiii} Low-Income Home Energy Assistance Program Policy and Procedures, available at: <https://des.az.gov/sites/default/files/dl/DCAD-LIHEAP-Policy.pdf?time=1722982638027>, pg. 3, “Applicant: A person who is 18 years or older requesting LIHEAP benefits. An Applicant may either be an Eligible Household Member, or an ineligible household member acting on behalf of their Eligible Household Member child.”
- ^{xiv} Wisconsin Home Energy Assistance Program Manual, available at: <https://energyandhousing.wi.gov/PublishingImages/Pages/AgencyResources/energy-assistance/Program%20Year%202024%20WHEAP%20Manual%20April.pdf>, Pg. 18, “A case head must be 18 years or older, or be a minor head-of-household, or be a child who meets one of the following exceptions: 1. All adults in the household are ineligible non-citizens, and: a. The dependent child is either a citizen or an eligible non-citizen; and b. The child has an SSN.”
- ^{xv} Heat Program Policy Manual, available at <https://jobs.utah.gov/housing/scso/seal/documents/heatpolicymanual.pdf>, pg. 8, “The application should be put in the name of one of the eligible adult household members, unless the following conditions apply: a) If all the adults in the household are undocumented, open the HEAT file using the adult’s name and leave the Social Security number field blank. eREP will not count the ineligible residents in the household; however, their income will be counted.”
- ^{xvi} Pennsylvania Low Income Home Assistance Program Policy Manual, available at http://services.dpw.state.pa.us/oimpolicymanuals/liheap/LIHEAP_Handbook.htm, “Chapter 6.10: Households” “A noncitizen household member who does not qualify for benefits can be the [payment name](#) for the household.”
- ^{xvii} Energy Assistance Policy Manual FFY 2024, available at <https://mn.gov/commerce-stat/pdfs/eap/providers/2024/FINAL-FFY24-EAP-Policy-Manual.pdf>, pg. 10, “All adults are ineligible non-citizens residing with one or more eligible children • The application should be signed by an adult applicant on behalf of the eligible child(ren).”
- ^{xviii} Note, this guidance misstates the general framework for eligibility, in addition to excluding mixed-status households. It should say “...can verify legal citizenship or *qualified non-citizen* status...”