COMMUNITY ACTION AGENCIES DIVISION[427]

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

427—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

427—2.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A, 22, and 216A.

[Filed emergency 8/19/88 after Notice 5/18/88—published 9/7/88, effective 8/19/88]

CHAPTER 3
PETITIONS FOR RULE MAKING

427—3.1(17A) Adoption by reference. The division of community action agencies hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate office)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

2. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF COMMUNITY ACTION AGENCIES".

3. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

427—4.1(17A) Adoption by reference. The division of community action agencies hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(commission, board, council, director)", insert "administrator".
2. In lieu of the words "(specify time period)", insert "one year".
3. In lieu of the words "(identify office and address)", insert "Administrator, Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
4. In lieu of the words "(designate office and telephone number)", insert "the administrator at (515)281-3268".
5. In lieu of the words "(designate office)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(specify the office and address)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 5
WEATHERIZATION ASSISTANCE PROGRAM
[For rules on Weatherization prior to 9/24/86, see 380—Ch15 and 630—Ch19]

427—5.1(216A) Purpose. Pursuant to a grant from the Department of Energy (DOE), Part A, 42 U.S.C. 6861-6870 of Title IV of the Energy Conservation and Production Act, Public Law 94-385, Title IV, Part A, as amended by Public Law 95-619, 10 Code of Federal Regulations (CFR), Part 440, Title XXVI of the Omnibus Budget Reconciliation Act (Public Law 98-558), and Iowa Code section 216A.99, the Department of Human Rights, Division of Community Action Agencies, will administer the weatherization assistance program.

The purpose of the program is to assist in achieving a healthful dwelling environment and maximum practicable energy conservation in the dwellings of low-income persons, particularly those of elderly and handicapped persons, in order to both aid those persons least able to afford higher utility costs and to conserve needed energy.

427—5.2(216A) Eligible households. All households assisted by this program must meet income eligibility requirements.

5.2(1) Only households with incomes no higher than 150 percent of the poverty guidelines determined in accordance with criteria established by the director of the office of management and budget (OMB) may be assisted by the programs.

5.2(2) Both owner-occupied and renter-occupied dwellings may be weatherized. However, in the latter case, rental units occupied by low-income residents shall be weatherized providing benefits accrue primarily to the low-income tenants, rents are not raised because of the weatherization, and no undue or excessive enhancement occurs to the value of the dwelling unit.

5.2(3) Further program criteria is contained in the Iowa state plan for the weatherization assistance program, which is incorporated by reference as part of these rules. This document, as well as delegate agreements and reporting forms, is available at the Department of Human Rights, Division of Community Action Agencies, Lucas State Office Building, Des Moines, Iowa 50319, and is available for public inspection between the hours of 8 a.m. and 4:30 p.m. Monday to Friday. Copies of these documents and forms may be obtained at cost by contacting the Department of Human Rights at the above address, telephone (515)281-4204.

427—5.3(216A) Local administering agencies (LAA). The department of human rights, division of community action agencies, shall administer this program by utilizing community action agencies (CAAs), their approved subcontractors, or other public or nonprofit entities that have shown the ability or have the capacity to undertake a timely and effective weatherization program.

Funds shall be used for the purchase of weatherization materials, e.g., insulation, storm windows, caulking, weatherstripping and other related items; training and technical assistance; administration; and supportive services.

LAAs will be required to sign a contractual agreement which specifies allowable program activities, regulations and special conditions, participant forms and audit requirements.

427—5.4(216A) Appeal and hearing procedure. The following appeal and hearing procedure shall be used:

5.4(1) When an applicant is denied assistance or wishes to file a complaint about the quality or extent of work performed, the applicant has 90 days from the date of the denial letter or completion of the work to appeal that decision by mailing or delivering the request for appeal to the local administering agency (LAA).

5.4(2) If the LAA neither approves nor denies a complete application within 90 calendar days of receipt, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

5.4(3) To appeal, the applicant (claimant) must contact the agency at which the application was made and tell the agency of the wish to appeal, what action the applicant would like taken, and any other

information which might affect the decision. All appeals must be in writing. Those claimants unable to read or write shall have the LAA assist them in reading, writing or understanding appeals, hearings and their associated procedures.

5.4(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

5.4(5) If the claimant does not agree with the decision reached, the claimant may write the LAA again within 17 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

5.4(6) Within seven calendar days (postmark date if sent by mail) the LAA will forward all information concerning the request for hearing to the state, and a hearing will be scheduled. The claimant will receive written notice of a state-scheduled hearing from the director of the department of human rights, division of community action agencies. The notice will include the date, time and place of the hearing. State hearings may be held by telephone at a mutually convenient time. Prior to the hearing the agency will provide an opportunity for the claimant to review the case file and any written evidence that will be used in the hearing. An informal conference with the director or appropriate state staff personnel may be requested for the purpose of discussing actions taken and resolving the issues raised in the request for hearing.

427—5.5(216A) Public information. All parties interested in further information concerning the weatherization assistance program should contact the Department of Human Rights, Division of Community Action Agencies, Lucas State Office Building, Des Moines, Iowa 50319, telephone (515)281-4204.

Income guidelines, contractual agreements, application and reporting forms are on file at the above address and available for public inspection between the hours of 8 a.m. to 4:30 p.m., Monday to Friday.

427—5.6(216A) Payments.

5.6(1) *Duplicate and fraudulent payment control.* Each LAA is required to provide a system to monitor and prevent possible duplicate and other fraudulent applications and payments. Duplication cross-checks shall be based on household members' names, addresses and social security numbers.

5.6(2) *Referrals.* Each LAA is required to refer all suspected cases of fraud, including duplicate payments and fraudulent statements on applications, to the DHR/DCAA for investigation.

5.6(3) *Overpayments.* If the DHR/DCAA receives information from an LAA or from any source that an overpayment has occurred because of client error, client fraud, client misrepresentation or agency error, the DHR/DCAA may refer the overpayment to the department of inspections and appeals (DIA) for investigation and collection in accordance with the procedures under 481 IAC 71.

These rules are intended to implement Part A, 42 U.S.C. 6861-6870 of Title IV of the Energy Conservation and Production Act, Public Law 94-385,90 Statute 1125 et seq., and Iowa Code section 216A.99.

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NOTE: See Energy Policy Council[380], Chapter 15, prior to 9/24/86

CHAPTER 6
DECLARATORY ORDERS

427—6.1(17A) Adoption by reference. The division of community action agencies hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(designate agency)", insert "division of community action agencies".
2. In lieu of the words "(designate office)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
3. In lieu of the words "(AGENCY NAME)", insert "DIVISION OF COMMUNITY ACTION AGENCIES".
4. In lieu of the words "_____ days (15 or less)", insert "10 days".
5. In lieu of the words "_____ days" in subrule 6.3(1), insert "20 days".
6. In lieu of the words "(designate official by full title and address)", insert "Administrator, Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
7. In lieu of the words "(specify office and address)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
8. In lieu of the words "(agency name)", insert "division of community action agencies".
9. In lieu of the words "(designate agency head)", insert "administrator".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 7
CONTESTED CASES

427—7.1(17A) Adoption by reference. The division of community action agencies hereby adopts the contested cases segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words "(agency name)", insert "division of community action agencies, department of human rights".
2. In lieu of the words "(designate official)", insert "administrator".
3. In subrule 7.3(2) delete the words "or by (specify rule number)".
4. In lieu of the words "(agency specifies class of contested case)", insert "division contested cases".
5. In lieu of the words "(specify office and address)", insert "Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319".
6. In lieu of the words "(designate office)", insert "division of community action agencies".
7. In lieu of the words "(agency to designate person to whom violations should be reported)", insert "administrator".
8. In lieu of the words "(board, commission, director)", insert "administrator".
9. In lieu of the words "(the agency)", insert "division of community action agencies".

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 8
WAIVER RULES

427—8.1(17A) Definition. The term "waiver" as used in this chapter means a prescribed waiver or variance from a specific rule or set of rules of this division applicable only to an identified person on the basis of the particular circumstances of that person.

427—8.2(17A) Scope of chapter. This chapter creates generally applicable standards and a generally applicable process for granting individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

427—8.3(17A) Applicability. This chapter applies only to waivers of those division rules that are within the exclusive rule-making authority of the division. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the division does not possess statutory authority to bind a court, to any extent, with its definition.

427—8.4(17A) Compliance with law. The division may not issue a waiver under this chapter unless (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

427—8.5(17A) Criteria for a waiver. The division may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person, if the division finds that the waiver is consistent with rules 8.3(17A) and 8.4(17A) of this chapter, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. All of the following criteria have been met:

- The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
- The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest.

In determining whether a waiver would be consistent with the public interest, the division administrator shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

427—8.6(17A) Division discretion. The final decision to grant or deny a waiver shall be vested in the division administrator. This decision shall be made at the discretion of the division upon consideration of relevant facts.

427—8.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver based upon the criteria contained in rule 8.5(17A) of this chapter.

427—8.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules from which a waiver is requested.

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the petitioner and the division relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.

6. Any information known to the requester relating to the division's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge of the waiver request to furnish the division with information relevant to the waiver.

427—8.9(17A) Additional information. Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the division to discuss the petition and surrounding circumstances.

427—8.10(17A) Notice. The division shall acknowledge the petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the division attesting to the fact that notice has been provided.

427—8.11(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for waiver of a rule or set of rules filed within a contested case and shall otherwise apply to division proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute or other binding law.

427—8.12(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

427—8.13(17A) Conditions. The division may condition the granting of the waiver on such conditions that the division deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

427—8.14(17A) Time for ruling. The division shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, then the division may grant or deny the petition at the time the final decision in that contested case is issued.

427—8.15(17A) When deemed denied. Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver as required by rule 8.12(17A).

427—8.16(17A) Service of orders. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

427—8.17(17A) Record keeping. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the division shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the division's office during regular business hours.

427—8.18(17A) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the division or knowingly misrepresented to the division material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means of ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient, and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

427—8.19(17A) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

427—8.20(17A) Defense. After the division issues an order granting a waiver, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

427—8.21(17A) Appeals. Appeals within the division from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and division rules. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

[Filed 3/28/01, Notice 2/21/01—published 4/18/01, effective 5/23/01]

CHAPTER 9
Reserved

CHAPTER 10
LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM
[Prior to 9/24/86, Energy Policy Council[380] Ch 14]

427—10.1(216A,PL97-35,PL98-558) Purpose. Pursuant to the requirements of the Department of Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, PL 97-35 as amended by PL 98-558, and Iowa Code section 216A.92, the department of human rights, division of community action agencies (DHR, CAA), will administer the low-income home energy assistance program (LIHEAP).

LIHEAP is designed to aid qualifying low-income Iowa households (homeowners and renters) in the payment of a portion of their residential heating costs for the winter heating season, to encourage regular utility payments, to promote energy awareness and to encourage reduction of energy usage through energy efficiency, client education, and weatherization.

427—10.2(216A,PL97-35,PL98-558) Program criteria.

10.2(1) Households with incomes at or below the annually determined guidelines, but not to exceed 150 percent of the Office of Management and Budget's federal poverty income guidelines, revisions of which are published annually in the Federal Register, may be eligible for assistance under LIHEAP. To receive benefits, an application must be made, eligibility determined, and program funds available before any payments may be made.

10.2(2) All payments are contingent upon the availability of federal funds.

10.2(3) The amount of assistance a household may receive depends upon available funding,total household income, household size, dwelling type, type of primary heating fuel the household uses, other targeting factors enumerated in the payment matrix, and whether a household qualifies for a crisis assistance award as described in 10.14(216A,PL97-35,PL98-558) in addition to the basic energy assistance payment.

10.2(4) Residents of publicly assisted housing units who are not billed directly for their primary heating source by a utility company and whose rent is established as a percentage of their income are not eligible for assistance.

10.2(5) All clients applying for this program will simultaneously be making application for weatherization assistance, and 427—Chapter 5 shall govern such weatherization applications.

10.2(6) Both owner-occupied and renter-occupied households will be assisted.

427—10.3(216A,PL97-35,PL98-558) Local administering agencies.

10.3(1) The department of human rights shall administer the LIHEAP program by contracting with local administering agencies (LAAs) meeting program and fiscal guidelines as required by federal law.

10.3(2) Outreach activities. The LAAs will be required to sign a contract which specifies required and allowable program activities, including Department of Health and Human Services regulations, special conditions, transfer of electronic data to fuel vendors and the state, program and fiscal reporting to department of human rights, and audit requirements.

10.3(3) Each LAA will ensure that eligible households are made aware of this program. In addition to its normal outreach functions, each LAA will authorize its workers to take applications in a potential client's home as well as at local community, church, and elderly centers. The program is to be made easily accessible to all who are eligible, especially the elderly and disabled. All LAAs are required to visit each elderly meal site in their geographic area to publicize the Energy Assistance program. When taking applications at a location other than an outreach office, the date and time of the visit should be publicized at least one week in advance.

Applications may be made by mail. A notice of the appeal and hearing procedure must be posted at each intake site, and a copy of the appeal and hearing procedure and any other state-required handouts must be given to each client at the time of application.

427—10.4(216A,PL97-35,PL98-558) Application period. Clients may apply for energy assistance between the first working day of October and April 15 of each year. Applications will be processed and

the applicant and the appropriate energy suppliers notified of eligibility within 30 days of the date of application to comply with the terms of the winter moratorium on disconnections.

427—10.5(216A,PL97-35,PL98-558) Income.

10.5(1) Proof of income eligibility is required. All income shall be verified for each household member based on the 3-month or 12-month period immediately preceding the application date or the most recent calendar year. Verification of income shall be made through documentary evidence in the possession of the applicant household. If documentary evidence is not available from the household, verification shall be obtained from the source of income.

10.5(2) Household income refers to total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money, wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Family Investment Program, Supplemental Security Income, emergency assistance money payments, nonfederally funded general assistance or general relief money payments), training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), regular insurance or annuity payments; college or university scholarships, assistantships; dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

10.5(3) For program eligibility purposes, income does not include the following: capital gains, any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, housing assistance, and other income, the exclusion of which is required by law.

10.5(4) Further income criteria and guidelines are contained in the Iowa state plan for the Low-Income Home Energy Assistance Program and the Low-Income Home Energy Assistance Program Procedures Manual as described in 10.6(216A,PL97-35,PL98-558).

427—10.6(216A,PL97-35,PL98-558) Determining eligibility. The gross income of all household members residing in the household at the time of application shall be counted to determine eligibility. Any individual listed on an LIHEAP-approved application for the current fiscal year may not be listed on another application. Written verification of income is required of all participants before an application is complete. This verification may take the form of pay receipts, payroll checks, or a statement signed by the employer if the salary is paid in cash. Other evidence, such as copies of unemployment checks or Medicaid cards, may also be accepted. If an applicant refuses to produce proof of income and does not authorize the agency to verify earnings, the applicant shall not be eligible for program benefits. Written verification shall be provided before eligibility may be certified. An applicant may elect to use the most recent 90 days, the last 12 months, or the most recent calendar year to qualify. If an applicant is not eligible under the time period first selected, an alternative time period may be selected to qualify.

427—10.7 (216A,PL97-35,PL98-558) Energy assistance payments. No household is entitled to a certain amount or form of assistance from this program. Households must meet the income eligibility guidelines and there must be program funds available before assistance payments can be made. No payments will be made to households that are not responsible for payment of any portion of their heating costs. All payments are contingent upon the availability of federal funds. Both owner-occupied

and renter-occupied households will be assisted. The amount of assistance a household may receive depends upon available funding, total household income, household size, dwelling type, type of primary heating fuel the household uses, and whether a household qualifies for a bonus energy assistance award or a crisis assistance award in addition to the basic energy assistance payment.

10.7(1) *Assistance awards.* The availability of energy assistance awards shall be based on the amount of the annual Low-Income Home Energy Assistance block grant appropriation and the number of qualifying households and will be described in the state plan each year.

10.7(2) *Regulated fuels.* Rescinded IAB 12/4/96, effective 11/5/96.

10.7(3) *Deliverable fuels.* Rescinded IAB 12/4/96, effective 11/5/96.

427—10.8(216A,PL97-35,PL98-558) Payments.

10.8(1) The following types of energy assistance payments may be made:

a. To home energy suppliers in the form of a single payment. One check may be issued to an energy supplier for more than one household. The client's assistance shall remain as a credit on the client account until the program assistance is expended or the account is terminated. The basic energy assistance award is to be applied to the cost of the heating source supplying the household's nonbusiness, residential, primary heating fuel.

b. Eligible households that pay an undesignated portion of the rent toward energy costs will receive assistance sent directly to the household for the full amount.

c. The assistance award for households whose primary source of heat is wood will be forwarded to the household's electric supplier if a suitable wood vendor is not available. If no electric supplier exists, a direct payment for the "wood/coal" award may be made.

10.8(2) Duplicate and fraudulent payment control. Each LAA is required to provide a system to monitor and prevent possible duplicate and other fraudulent applications and payments. Duplication cross-checks shall be based on household members' names, addresses and social security numbers.

10.8(3) Referrals. Each LAA is required to refer all suspected cases of fraud, including duplicate payments and fraudulent statements on applications, to the DHR/DCAA for investigation.

10.8(4) Overpayments. If the DHR/DCAA receives information from an LAA or from any source that an overpayment has occurred because of client error, client fraud, client misrepresentation or agency error, the DHR/DCAA may refer the overpayment to the department of inspections and appeals (DIA) for investigation and collection in accordance with the procedures under 481 IAC 71.

427—10.9(216A,PL97-35,PL98-558) Change in status. The level of assistance for the program year will be determined based on the household's circumstances at the time of approval. If a household moves or ceases to exist, any unused funds remaining with the vendor shall be returned to the local administering agency within 30 days. If the client contacts the local administering agency within 30 days after moving, any unused portion of the assistance award shall be forwarded to the client's new vendor or to the client's address. If the client fails to notify the agency of the new address within 30 days, any unused funds returned to the local administering agency shall be returned to program funds.

427—10.10(216A,PL97-35,PL98-558) Prioritization of applications. Each LAA must notify the department of human rights in writing when 5 percent of its program budget remains unobligated. At that point, payments will be prioritized according to the date and time recorded on the intake form. For homebound and handicapped applications, the date and time of application shall be when the household first contacted the office, not when a home visit to the applicant is made.

427—10.11(216A,PL97-35,PL98-558) Statewide database reporting. Each LAA shall provide the state, via computer diskette, a composite listing of all approved, denied and paid applications, including all client characteristics. This shall be done each time diskettes are sent to vendors, or at least weekly during the application and approval period.

427—10.12(216A,PL97-35,PL98-558) Vendor agreement. A signed vendor agreement must be on file with the LAA before any payments may be made. In the event a particular fuel supplier will not sign a vendor agreement, a direct payment may be made to the eligible applicant.

427—10.13(216A,PL97-35,PL98-558) Crisis assistance. To be eligible for crisis assistance, a household must file an application, must meet the income guidelines of the Energy Assistance Program, and must meet the definition of a "crisis situation."

10.13(1) *Definition.* "Crisis situation" is defined as one which poses an immediate threat to life or health.

10.13(2) *Evaluation.* Each crisis situation will be evaluated individually by the LAA energy coordinator who shall determine the amount of assistance to be made up to the maximum allowed.

The nature of the crisis and the method of determining assistance shall be documented for the file and shall be subject to review by the local agency director.

10.13(3) *Resolution.* Federal regulations require that a life-threatening situation be evaluated and resolved in the following manner.

a. Not later than 48 hours after a household applies for energy crisis benefits, each administering agency must provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits;

b. Not later than 18 hours after a household applies for crisis benefits, each administering agency must provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits and is in a life-threatening situation; and

c. Each administering agency must;

(1) Accept applications for energy crisis benefits at sites that are geographically accessible to all households in the area to be served by such entity; and

(2) Provide to low-income individuals who are physically infirm the means to submit applications for energy crisis benefits without leaving their residences; or to travel to the sites at which such applications are accepted by such entity.

10.13(4) *Crisis appeal procedure.* Any household which has been denied crisis assistance may utilize the regular appeal procedure.

10.13(5) *Crisis payments.* A combination of one or more of the following crisis payments may be made to an eligible household to resolve a crisis situation:

a. In a life-threatening situation, an additional payment of up to $200 may be made after regular benefits have been exhausted to ensure an uninterrupted supply of fuel. This portion of the crisis program begins the first working day of November and ends the last working day of March.

b. Payment for repair or replacement of furnace/heating systems for eligible homeowners. A maximum payment of $1000 per household may be made. This component of the crisis program begins the first working day of October and ends the last working day of September.

c. Payment for obtaining temporary shelter, purchase of blankets or heaters. A maximum of $200 per household may be made. This component of the crisis program begins the first working day of October and ends the last working day of March.

d. Bill payment buy-down to avoid disconnection or to ensure reconnection. A payment of up to $100 each year may be made to heat or electric vendors to buy down an account balance upon which an eligible client will be required to arrange a bill payment plan. Applications will be accepted from the first working day of April until the last working day of October.

427—10.14(216A,PL97-35,PL98-558) Client services/assessment and resolution. Client services for assessment and resolution of energy management problems, including budget counseling, energy education, arranging deferred or budget payments, staying disconnects or negotiating payments or reconnections, will be made available to all energy assistance recipients on a year-round basis.

427—10.15(216A,PL97-35,PL98-558) Appeal and hearing procedures. The following appeal and hearing procedures shall be used.

10.15(1) When an applicant is denied assistance or believes that the assistance amount was incorrectly determined, the applicant has 30 calendar days from the date of the approval or denial letter to appeal that decision by mailing or delivering the request for appeal to the LAA.

10.15(2) If the local administering agency neither approves nor denies the application within 30 calendar days of receipt of a complete application, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

10.15(3) To appeal, the applicant (claimant) must contact the agency at which the application was made and tell the agency of the wish to appeal, what action the applicant would like taken, and any other information which might affect the decision. All appeals must be in writing. Those claimants unable to read or write shall have the LAA assist them in reading, writing, or understanding appeals, hearings, and their associated procedures.

10.15(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

10.15(5) If the claimant does not agree with the decision reached, the claimant may write the LAA again within 17 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

10.15(6) The agency will then forward all information about the request for a hearing to the state and a hearing will be scheduled. The claimant will receive written notice of a state scheduled hearing from the Iowa department of inspections and appeals. The notice will include the date, time, and place of the hearing. State hearings may be held by telephone at a mutually convenient time. Prior to the hearing the agency will provide an opportunity for the claimant to review the case file and any written evidence that will be used in the hearing. All hearings will be conducted in accordance with Iowa department of inspections and appeals contested case hearings, 481—Chapter 10.

427—10.16(216A,PL97-35,PL98-558) Further criteria. The low-income home energy assistance program state plan, the low-income home energy assistance program procedures manual and assistance award criteria for the program are incorporated by reference as part of these rules. These documents as well as delegate agreements and department of human rights reporting forms are on file at the address below and are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Copies of these documents may be obtained at cost by contacting the Division of Community Action Agencies, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-3943.

These rules are intended to implement Iowa Code section 216A.92 and PL97-35 as amended by PL98-558.

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NOTE: See Energy Policy Council[380] Chapter 14, prior to 9/24/86

CHAPTER 11
AFFORDABLE HEATING PROGRAM

PREAMBLE

This chapter implements the affordable heating program which is designed to assist certain low-income households in paying for heating costs. The program will provide assistance in addition to the regular low-income home energy assistance program payments. An affordable heating payment for an eligible household is calculated by subtracting from that household's gross income the costs of annual rental payments, mortgage payments, real estate taxes, real estate insurance premiums, unreimbursed medical expenses, child support, alimony payments, water bills, basic local telephone service and nonheating residential electrical service. The remaining income is multiplied by the percentage specified according to the number of household members and that result constitutes the participating client's affordable heating payment. The remaining heating costs plus up to $300 annually in arrearage shall be paid by low-income home energy assistance program block grant funds.

427—11.1(216A) Purpose. The Iowa affordable heating program is established for the purpose of providing additional energy assistance which certain low-income Iowans may require in order to maintain access to their primary heating fuel. Such assistance shall be in addition to the regular low-income home energy assistance program grants.

427—11.2(216A) Definitions.

"Administering agency" shall be department of human rights, division of community action agencies. "Local administering agency" means an agency contracting to provide affordable heating program services at the local level.

"Annual level payment plan" means a plan whereby the predicted annual cost for energy for a 12-month period is paid by the client in 12 equal monthly installments subject to reconciliation in subsequent billing cycles. When applicable, such reconciliation shall be in accordance with provisions of 199 IAC 19.4(11) and 199 IAC 20.4(12).

"Assessment" means such activities as determining the causes of a household's high energy consumption, providing home energy audits, providing energy conservation counseling, arranging payment plans with energy providers as may be required to institute or maintain an affordable heating supply.

"Resolution" means providing corrective actions to make the cost of energy more affordable for eligible households including but not limited to weatherization.

Determination of allowable administrative expenses shall be as defined in the Low-Income Home Energy Assistance Act of 1981, Title XXVI of Public Law 97-35, as amended by the Human Services Reauthorization Acts of 1984, 1986 and 1990 (Public Laws 98-558, 99-425, and 101-501) and as described in U.S. Department of Health and Human Services Information Memorandum FSA-IM-91-8.

427—11.3(216A) Eligibility. Eligibility is limited to households whose income is determined in accordance with 427—Chapter 10 to be at or below 110 percent of the federal poverty income guidelines established by the Office of Management and Budget and whose annual heating costs exceed 12 times the minimum monthly payment defined in subrule 11.7(3), plus low-income home energy assistance program payments. The households are eligible to participate in the affordable heating program if applicants:

11.3(1) Have participated in the low-income home energy assistance program.

11.3(2) Agree to participate in annual level payment plans for both gas and electric services if such plans are available, or in such alternative plan as the division may develop for participants whose energy providers do not provide such plans.

11.3(3) Agree to participate in weatherization assistance programs for which they are eligible.

11.3(4) Submit to the local administering agency, within 30 days of application for participation in the program, third-party verification of the applicant's household income in accordance with the requirements in 427—Chapter 10, and submit proof of all unreimbursed medical expenses for the time period corresponding to that used for the income calculation with proof of personal responsibility for these expenses.

11.3(5) Agree to accept assistance provided by this program to reduce the household's energy consumption.

11.3(6) Agree to give permission to the state of Iowa, the U.S. Department of Energy, U.S. Department of Health and Human Services, the local administering agency and energy suppliers to exchange information about household energy usage and payment status as necessary.

427—11.4(216A) Annual adjusted income. A participant's annual adjusted income, for purposes of calculating affordable heating program financial assistance, shall be determined by subtracting the following expenses from the household income as established in accordance with the regular low-income home energy assistance rules. Proof of such expenses shall be third-party documentation, shall be for the time period corresponding to that used for the income calculation, and shall be submitted within 30 days of application:

11.4(1) Unreimbursed medical expenses with proof of personal responsibility for those expenses to a maximum of $200 per year.

11.4(2) Annual rental payments, mortgage payments, real estate taxes, and real estate insurance premiums, to a maximum of $5,000 annually.

11.4(3) Annual child support and alimony payments.

11.4(4) Annual costs of water bill, basic local telephone service and nonheating residential electrical service for the previous 12 months.

427—11.5(216A) Predicted heating cost. Predicted heating cost shall be the annual total calculated under Iowa Code section 216A.103, subsection 2, paragraph *"b"* for level payment plans. Where these provisions do not apply, the predicted heating cost shall be calculated by determining heating fuel expenses for the 12-month period immediately preceding application, first adjusted for weather and then adjusted for rate changes occurring during the 12-month period immediately preceding application. For those applicants whose heating costs are an undesignated portion of their rent, energy costs shall be calculated by obtaining the total amount paid for the entire housing unit in accordance with Iowa Code section 476.56, and dividing it by the number of individual living units contained therein.

427—11.6(216A) Adjusted heating cost. To determine the participant's adjusted heating cost in calculating affordable heating program financial assistance, the local administering agency shall:

11.6(1) Add to the predicted heating cost figure any scheduled repayment of an arrearage which has been negotiated between the participant and the primary heating fuel provider, provided that such arrearage repayment shall not exceed $300 during any 12-month period. If the arrearage prior to participation in the plan is in excess of $300, the portion remaining shall be considered in subsequent program years to the extent it is eligible. Once the individual becomes a participant in the plan, any usage in excess of the predicted heating costs shall be addressed by the reconciliation process as set forth in subrule 11.7(4).

11.6(2) Subtract from the predicted heating cost the regular low-income energy assistance program grants for which the participant is eligible.

427—11.7(216A) Affordable heating payment. A household's affordable heating payment shall be determined by making the following calculation:

11.7(1) Calculating the household's annual allowable heating expense. Annual allowable heating expense is an amount determined by applying the standard percentage to the household's annual adjusted income. The standard percentage shall be 10 percent for a one-person household, 9 percent for

a household of two persons, 8 percent for a household of three persons, 7 percent for a household of four persons, 6 percent for a household of five persons, 5 percent for a household of six or more persons.

11.7(2) The household shall be eligible for an annual affordable heating payment in the amount by which the adjusted heating cost exceeds the annual affordable heating expense. The local administering agency shall provide for payment of this amount to the primary heating fuel provider in the manner specified in the vendor agreement for credit to the participant's heating account for the year in which affordable heating program eligibility has been established. Those eligible participants whose heating costs are an undesignated portion of rent shall receive the payment directly.

11.7(3) A monthly level payment plan shall be established for the household based on the household's allowable heating expense, provided that the household's minimum monthly payment required for participation in the program shall be $10.

11.7(4) Reconciliation of monthly level payment plans shall occur as prescribed in the rules of the Iowa utilities board or, at a minimum, annually for unregulated heating fuel providers.

11.7(5) All energy suppliers will provide the local administering agency copies of notice of delinquency or anticipated budget billing adjustment.

427—11.8(216A) Participation requirements. A participant in the affordable heating program who maintains the monthly allowable heating expense payment shall continue to receive service from the participant's primary heating fuel provider until all affordable heating funds are exhausted. A participant who fails to make a monthly payment to all energy suppliers is subject to removal from the affordable heating program. For regulated utilities, notice of removal shall be in accordance with utility board 199—subrules 19.4(15) to 199—20.4(15) on notice of disconnection for nonpayment of utility bills. In the case of deliverable fuels, notice will be per the vendor agreement. Once removed, a participant is not eligible to be restored to participation until the next anniversary for a new even payment billing cycle to begin and all customer account balances have been paid. The local administering agency will provide notification to the primary and, where applicable, secondary energy provider once a participant is removed from the program.

427—11.9(216A) Allocation of funds—discontinuance of the affordable heating program. To ensure equitable treatment, applications for the affordable heating program shall be approved on a first-come, first-served basis until all funds have been obligated. The program shall be discontinued when available funds have been exhausted.

These rules are intended to implement Iowa Code section 216A.103.

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CHAPTERS 12 to 21
Reserved

CHAPTER 22
COMMUNITY SERVICES BLOCK GRANT
[Prior to 12/31/86, see Planning and Programming[6301 Ch 22]

427—22.1(216A) Purpose.

22.1(1) The community services block grant program as established by Title VI, Subtitle B, Public Law 97-35, as amended, the Omnibus Budget Reconciliation Act of 1981, makes available to the state of Iowa funds to be used:

a. To provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

b. To provide activities designed to assist low-income participants including homeless individuals and families, migrants, and the elderly poor:

(1) To secure and retain meaningful employment;

(2) To attain an adequate education;

(3) To make better use of available income;

(4) To obtain and maintain adequate housing and a suitable living environment;

(5) To obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;

(6) To remove obstacles and solve problems which block the achievement of self-sufficiency;

(7) To achieve greater participation in the affairs of the community; and

(8) To make more effective use of other programs related to the purposes of this program;

c. To provide on an emergency basis for the provision of supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor;

d. To coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low-income individuals; and

e. To encourage the use of entities in the private sector of the community in efforts to ameliorate poverty in the community.

22.1(2) Reserved.

427—22.2(216A) Definitions. For the purpose of these rules, unless otherwise defined, the following shall govern:

"CAA" means community action agency.

"Community action agency, community action program or eligible entity" shall mean any organization which was officially recognized as a community action agency or a community action program under the provisions of Public Law 97-35, Subtitle B, section 673(1), as amended, and Iowa Code section 216A.91.

"CSBG" shall mean the community services block grant program.

"DCAA" means the division of community action agencies of the state department of human rights.

"Poverty line" means the official poverty line established by the director of the federal Office of Management and Budget. The Secretary of the Department of Health and Human Services revises the poverty line annually and this poverty line multiplied by 125 percent shall be used as a criteria of eligibility in the community services block grant program.

"Program year" refers to the year beginning October 1 and ending the succeeding September 30. The program year is numbered for that year in which it ends. Funding may extend beyond the program year in which it is awarded.

"Reduction" means funding reduced below the proportional share of funding an eligible entity received in the previous fiscal year.

"Suspension" means temporary withdrawal of the eligible entity's authority to obligate funds pending corrective action by the eligible entity.

"Termination" means permanent withdrawal of the eligible entity's authority to obligate funds before that authority would otherwise expire. If an eligible entity's authority to obligate funds is terminated, no funds may be obligated by the eligible entity after the effective date of the termination. It may also mean the voluntary relinquishment of this authority by the eligible entity.

427—22.3(216A) Apportionment distribution.

22.3(1) *Iowa apportionment.* There is appropriated to DCAA from the fund created by Iowa Code section 8.41, subsection 1, funds to implement the community services block grant as described under Public Law 97-35, Title VI, Subtitle B, as amended. The agency shall expend the funds appropriated as provided in the federal law, making the funds available in conformance with these rules.

22.3(2) *Distribution to eligible entities.* An amount no less than 96 percent of the funds received according to subrule 22.3(1) shall be distributed to eligible entities in accordance with 1994 Iowa Acts, chapter 1194. The administrator of the division of community action agencies of the department of human rights shall allocate not less than 96 percent of the amount of the block grant to eligible community action agencies for programs benefiting low-income persons. Each eligible agency shall receive a minimum allocation of no less than $100,000. The minimum allocation shall be achieved by proportionately redistributing increased funds from agencies experiencing a greater share of available funds. The remaining funds shall be distributed on the basis of the poverty-level population in the area represented by the community action agencies compared to the size of the poverty-level population in the state as established by the federal poverty guidelines as published by the United States Department of Health and Human Services.

22.3(3) *Poverty-level population.* The state shall use U.S. census statistics to determine the poverty-level population in each community action area.

22.3(4) *State administrative fees.* DCAA shall reserve for its administrative expenses of the program no more than 4 percent of the state's apportioned amount described in subrule 22.3(1).

22.3(5) *Local share.* There shall be no local share required under this program.

427—22.4(216A) Eligibility requirements. The eligibility requirements for participation in the community services block grant program are as follows:

22.4(1) *Organization.* The organization must meet the definition of an eligible entity as defined in rule 22.2(216A).

22.4(2) *Accounting system.* Any private agency must obtain an accounting system certification in accordance with Iowa Code section 11.36, if the total amount of grants and contracts received by the organization from the state during the program year will exceed $150,000.

22.4(3) *Board composition.* A recognized community action agency shall be governed by a board of directors composed of at least nine members. The board membership shall be as follows:

a. One-third of the members of the board shall be elected public officials currently holding office or their representatives. However, if the number of elected officials available and willing to serve is less than one-third of the membership of the board, the membership of the board consisting of appointive public officials may be counted as fulfilling the requirement that one-third of the members of the board be elected public officials.

b. At least one-third of the members of the board shall be chosen in accordance with procedures established by the community action agency to ensure representation of the poor in an area served by the agency.

c. The remainder of the members of the board shall be members of business, industry, labor, religious, welfare, education, or other major groups or interests in the community.

22.4(4) *Public agency advisory boards or delegate agencies.* Notwithstanding subrule 22.4(3), a public agency which is acting as a community action agency shall establish an advisory board or may contract with a delegate agency to assist the governing board. The advisory board or delegate agency board shall be composed of the same type of membership as a board of directors under subrule 22.4(3). The advisory board or delegate agency board shall comply with the duties required for the board of

directors for the community action agencies as provided in Iowa Code section 216A.95. However, the public agency acting as the community action agency shall determine annual program budget requests.

22.4(5) *Ineligible recipients.* Individuals, political parties and for-profit organizations, partnerships and corporations are ineligible for direct assistance from the state under this program.

427—22.5(216A) Community action plan. All eligible entities shall submit a proposed community action plan for the purpose of applying for funds. The allocation of funds to eligible entities is on a noncompetitive basis.

22.5(1) *Timing.* Eligible entities shall be informed in writing by the DCAA of the due date for the community action plan and the amount of their allocation in accordance with subrule 22.3(2).

22.5(2) *Contents.* Instructions for preparing a proposed community action plan shall be provided by the DCAA to all eligible entities. In addition to other information specified in the instructions, approvable community action plans will include:

a. A community needs assessment (including food needs);

b. A description of the service delivery system targeted to low-income individuals and families in the service area;

c. A description of how linkages will be developed to fill identified gaps in services through information, referral, case management, and follow-up consultations;

d. A description of how funding will be coordinated with other public and private resources; and

e. A description of outcome measures to be used to monitor success in promoting self-sufficiency, family stability, and community revitalization.

Further information concerning community action plan requirements may be obtained by writing the Department of Human Rights, Division of Community Action Agencies, Bureau of Community Services, Capitol Complex, Des Moines, Iowa 50319, or telephoning (515)281-3951.

22.5(3) *Nondiscrimination provisions.* Applicants must ensure in their community action plans that no person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this program. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified disabled individual under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, shall also apply to any such program or activity.

22.5(4) *Statewide needs assessment.* Applicants must participate in a statewide, comprehensive needs assessment at least once every three years. The needs assessment shall identify the causes and conditions of poverty in each community action area and throughout the entire state. The results of the study shall be used to plan activities contained in the community action plan.

427—22.6(216A) Review and approval of community action plans.

22.6(1) *Compliance review.* All activities proposed for funding shall be reviewed by community services block grant personnel for:

a. Compliance with the specific purposes outlined in rule 22.1(216A);

b. Inclusion of assurances that the applicant will conduct the program in compliance with all applicable laws;

c. Inclusion and proper completion of all forms and instructions included in the request for community action plans; and

d. Compliance with subrule 22.4(2) relative to obtaining an accounting system certification.

22.6(2) *Performance.* Approval of community action plans is dependent on the satisfactory performance of the applicant in the past funding year(s). The minimum standards include: timely and adequate expenditure report submission, program report submission, prudent management of funds, conformance with state and federal law relative to the restrictions in the use of funds, and adequate record keeping. Additionally, available records, audits and determinations from the Office of Community Services—Department of Health and Human Services, Office of Management and Budget, Division of Community Action Agencies, Iowa Department of Public Health, and other relevant state

and federal agencies shall be utilized to the extent possible. Unresolved audit questions and past-due audits shall be a basis for conditional approval or disapproval of a proposed community action plan.

427—22.7(216A) Payments.

22.7(1) *Method of payment.* Any entity receiving a grant under the community services block grant program shall submit a monthly requisition packet consisting of the following forms:

a. Monthly advance request and expenditure report containing a breakdown of the monthly expenditures of the entity in carrying out the activities funded through the grant;

b. State of Iowa claimant's certification for reimbursement of funds. DCAA may refuse reimbursement of funds for good reason such as evidence of fraud, lack of management controls, or noncompliance with grant conditions. Refusal shall be appropriately documented, and the grantee shall be informed of the reason for the refusal and remedial actions they may take.

22.7(2) *Receipt of federal funds.* All payments shall be subject to the receipt of federal grant funds by DCAA. The termination, reduction or delay of federal grant funds to the DCAA shall, at their option, be reflected in a corresponding modification to grants already made.

22.7(3) *Equipment purchases.* Equipment purchases must be approved in writing by the governing board for any piece of equipment involving over $500 of CSBG funds. Additionally, prior state approval of the purchases must be requested by the chairperson and approved by the DCAA.

22.7(4) *Miscellaneous expenses.* Any miscellaneous expenditures involving over $300 per purchase of CSBG funds must be itemized by expense and amount on the monthly CSBG expenditure report.

427—22.8(216A) Amendments. Following are requirements applying to grant amendments.

22.8(1) *Budget.* Any expenditure of funds on a cost category which will exceed that cost category budgeted amount by more than 10 percent must be approved by an amendment to the grant. The total amount of the budget shall not be exceeded and any amounts above the budget total shall not be reimbursable by DCAA unless an amendment has been granted to increase the total. All requests for budget amendments must be approved in writing by the governing board and requested by the chairperson. Budget amendments requested that will have an impact on the approved CSBG work program must be accompanied by a corresponding work program amendment request.

22.8(2) *Work program.* Any change in scope or emphasis among projects funded in the grant must be reflected through a work program amendment. All requests for work program amendments must be approved in writing by the governing board and requested by the chairperson. Work program amendment requests shall provide the reason(s) for the proposed change in adequate detail to facilitate review by DCAA. A reduction in scope shall be evaluated by DCAA to determine what reduction in funds, if any, will be required.

22.8(3) *Recapture of funds.* If at any time during the program year it becomes apparent that the amount allocated to any entity is not being utilized at a rate sufficient to expend their available program funds, the agency may require that the entity amend their grant to release the excess funds. The funds may then be distributed by DCAA to those entities demonstrating the need and ability to appropriately expend the funds, or may be set aside for reappropriation by the general assembly.

22.8(4) *Other requests.* Requests for amendments other than those addressed in this rule, shall be considered on a case-by-case basis in conformance with applicable state and federal laws.

427—22.9(216A) Ineligible items. Ineligible activities or costs are as follows:

22.9(1) *Political activity.* Rescinded IAB 12/7/94, effective 1/11/95.

22.9(2) *Voter assistance.* Any activities to provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity.

22.9(3) *Land and buildings.* The purchase or improvement of land, or the purchase, construction, or improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility. Exceptions to this shall only be provided through the waiver procedure described in section 680, subsection (b), Public Law 97-35 as amended.

427—22.10(216A) Audits and records. Each recipient shall be responsible for the maintenance of appropriate accounting records necessary for the protection of program funds and shall arrange and pay for an annual audit of each grant made under this program, to be submitted within 90 days of the end of the recipient's fiscal year. Audits shall be performed in accordance with generally accepted auditing standards including the standards published by the general accounting office, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." The audit report shall conform to the audit format established for community action agencies by the state auditor. Audit procedures shall conform to OMB Circular A-128, "Audits of State and Local Governments." In addition, DCAA may request more frequent audits or examinations of financial records of the recipient in order to ensure adequate financial controls are in place and operating.

427—22.11(216A) Termination of affiliation. In the event that a political subdivision desires to terminate affiliation with a community action agency currently serving it, the following procedure shall be used:

22.11(1) The board of supervisors or the city council as the case may be will vote to consider:

a. Withdrawal from the service area of the CAA.

b. Revocation of their original designation (if applicable) of the CAA for that area.

c. A proposal to affiliate with another CAA.

22.11(2) The political subdivision shall hold a public hearing for review and comment on the proposed change.

22.11(3) At the next regular meeting of the board or council after the public hearing, a final vote on the resolution shall be taken.

22.11(4) If the board or council votes in favor of terminating affiliation with the community action agency, DCAA shall be provided a written notice within ten days including the following information:

a. Official notification of the vote to terminate the affiliation.

b. A summary of the public comment received by the political subdivision in regard to the proposed termination and affiliation with other CAAs.

c. The political subdivision's recommendation for affiliation with another CAA.

22.11(5) In accordance with Public Law 97-35, Title VI, Subtitle B, as amended, and rule 22.12(216A), the division administrator of DCAA shall accept, reject, or modify the proposed termination and recommendation for affiliation with another CAA.

427—22.12(216A) Establishing new designation.

22.12(1) In any geographic area of the state not served by a CAA due to termination of affiliation, the division administrator of DCAA may decide to serve that area by:

a. Requesting an existing eligible entity which is located and provides services in an area contiguous to the unserved area to serve the unserved area;

b. If no existing CAA eligible entity is located and provides services in an area contiguous to the unserved new area, requesting the CAA eligible entity located closest to the area to be served or an existing CAA eligible entity serving an area within reasonable proximity of the unserved new area to provide services in the unserved new area; or

c. Where no existing CAA requested to serve the unserved area decides to do so, designating any organization which has a board meeting the requirement of rule 22.4(216A), or any political subdivision of the state to serve the unserved area.

The designation of an organization which has a board meeting the requirements of rule 22.4(216A) or a political subdivision of the state to serve the unserved area shall qualify the organization as an eligible entity under Public Law 97-35, Subtitle B, as amended.

22.12(2) DCAA shall conduct a minimum of one public hearing in the affected geographic area to solicit public input concerning the proposed designation. Factors to be considered in reaching a designation decision shall include determination of the most efficient service delivery mechanism, transition time, local views and issues, types of services to be provided, funds available, potential disruption of service to the eligible population, and other relevant data. Utmost consideration shall be

given to the views and wishes of local elected officials and citizens in the unserved area in making a new designation. If necessary, DCAA shall alter the amount of CSBG funding to be received by affected CAAs as a result of the new designation.

427—22.13(216A) Suspension of CSBG funding.

22.13(1) *Suspension in general.* The division administrator of DCAA may suspend CSBG funds to an eligible entity if monitoring, evaluation, or audits reveal significant noncompliance with established state or federal policies, contract requirements, DCAA directives, fiscal procedures, program performance targets, or other willful or negligent failure on the part of the eligible entity to perform its responsibilities. Action to suspend funding will only be taken after less drastic remedies have been tried unless DCAA determines that immediate action is necessary due to the seriousness of the violation or is necessary to protect CSBG funds or property. Serious violations would include, but would not necessarily be limited to, evidence of fraud, embezzlement or gross mismanagement.

22.13(2) *Written notification of suspension.* DCAA shall provide a written "notification of suspension" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the process of suspension. The "notification of suspension" shall specify the reason(s) for the suspension and the effective date of the suspension. In all but extreme cases, eligible entities will be given a reasonable period of time (but in no case more than 60 days) to make necessary improvements, whereupon funding may resume. In extreme cases, when the division administrator of DCAA has determined termination of CSBG funding is appropriate in accordance with rule 22.14(216A), the "notification of suspension" shall be accompanied by a "notification of intent to terminate" as described in rule 22.14(216A).

427—22.14(216A) Termination of CSBG funding.

22.14(1) *Termination in general.* The division administrator of DCAA may terminate CSBG funds to an eligible entity after suspension of CSBG funding in any of the following instances:

a. The division administrator determines that the governing board of the eligible entity cannot or will not take the necessary action to bring the eligible entity into compliance within the time allowed by DCAA.

b. The division administrator determines that the nature or extent of noncompliance is extreme and warrants immediate termination of CSBG funding.

c. The eligible entity is no longer officially recognized as a CAA by DCAA as a result of termination of affiliation procedures described in rule 22.11(216A).

d. The material failure of the eligible entity to comply with the terms of its agreement and community action plan to provide services.

22.14(2) *Written notification of intent to terminate.* DCAA shall provide a written "notification of intent to terminate" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the termination of CSBG funding. The "notification of intent to terminate" shall include:

a. The reason(s) for the termination;

b. A notice of a hearing to be held to consider the intended termination including:

(1) A statement of the date, time, place, nature, and manner of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) Reference to the particular sections of the statutes, rules, or regulations involved;

(4) A short, plain statement of the matters asserted. If the state is unable to recite the matters in detail at the time the notice is given, the notice may be limited to a statement of the issues involved;

(5) A statement informing all parties of their opportunity at a hearing:

1. To request rescheduling of the hearing for good cause;
2. To be represented by an attorney or other representative of their choice;
3. To introduce into the record documentary evidence and bring witnesses to the hearing;
4. To have records or documents relevant to the issues produced by their custodian when the records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;

5. To question any witnesses or parties; and

6. A final written decision provided by the division administrator of DCAA within 30 days of the hearing.

22.14(3) *Prehearing subpoena and discovery rights and procedures.* The presiding officer shall, upon request, issue subpoenas in accordance with the provisions of Iowa Code section 17A.13.

22.14(4) *Conduct of hearing.*

a. The hearing shall be held within 30 days of the date of the "notification of intent to terminate."

b. The hearing may be conducted in whole or in part by telephone. When it is impractical for the state to conduct an in-person hearing, unless either party objects, a telephone hearing may be scheduled.

c. After the presiding officer has called the hearing to order, the parties may be given an opportunity to present opening statements; thereafter the parties shall present their evidence in sequence determined by the presiding officer.

d. When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath or affirmation administered by the presiding officer.

e. The rules of evidence and the contents of the record shall be as allowed under Iowa Code sections 17A.12(7) and 17A.14.

22.14(5) *Decision.* The decision shall conform to the following requirements:

a. The presiding officer shall within 20 days following the hearing provide the division administrator of DCAA with a proposed decision.

b. The division administrator of DCAA shall within 30 days following the hearing issue a final decision on behalf of the state.

c. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record, and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

22.14(6) *Review by the Secretary of Health and Human Services.* In accordance with Public Law 97-35, as amended, the Secretary of the U.S. Department of Health and Human Services shall be requested by the state to review any termination of funding to a community action agency, or migrant and seasonal farmworker organization. As stated in Public Law 97-35, as amended, the review shall be conducted promptly and shall be based upon the record. No decision shall become effective until a finding by the Secretary of Health and Human Services confirming the state's finding of cause for termination.

427—22.15(216A) Reduction of CSBG funding.

22.15(1) *Reduction in general.* The division administrator of the DCAA may reduce CSBG funds to an eligible entity at any point in the grant cycle if the state determines that cause exists. Cause includes:

a. A statewide redistribution of CSBG funds to respond to:

(1) The results of the recently available census or other appropriate data;

(2) The establishment of a new eligible entity;

(3) Severe economic dislocation; and

b. The failure of the eligible entity to comply with the terms of its agreement to provide CSBG services.

22.15(2) *Written notification of reduced funding.* The DCAA shall provide a written notification to the eligible entity to be affected by reduced funding. The eligible entity may request a hearing to be held to examine whether cause exists for the planned reduction in funding. The eligible entity must request the hearing in writing to the DCAA within ten days of its receipt of a notification of the planned reduction in funding to impel a hearing. The hearing process shall follow that outlined in rule 22.14(216A) pertaining

to prehearing subpoena and discovery rights and procedures, conduct of hearing, decision and review by the Secretary of Health and Human Services.

These rules are intended to implement Iowa Code sections 216A.91 to 216A.103, Public Law 97-35 as amended, Public Law 103-252, Public Law 103-94, 1990 Iowa Acts, chapter 1263, section 3, and 1994 Iowa Acts, chapter 1194.

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CHAPTER 23
EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

427—23.1(PL100-77) Purposes. The purposes of the program authorized by PL100-77, the Stewart B. McKinney Homeless Assistance Act of 1987, are: (1) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the nation; and (2) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, native Americans, and veterans.

The Iowa emergency community services homeless grant program (EHP) is designed recognizing the following elements: (1) the unique role defined for EHP funds within PL100-77, (2) the availability of resources from PL100-77 for other programs serving the homeless, (3) the unique skills and abilities of Iowa's community action agencies, and (4) the differing nature of homeless problems and resources in different parts of Iowa and among homeless individuals and families in Iowa.

427—23.2(PL100-77) Definitions.

"CAA" means community action agency.

"Community action agency, community action program or eligible entity" means any organization which was officially recognized as a community action agency or a community action program under the provisions of Public Law 97-35, Subtitle B, as amended by Public Law 98-558 and Iowa Code section 216A.91.

"DCAA" means the division of community action agencies of the state department of human rights.

"EHP" means emergency community services homeless grant program.

"Homeless" includes an individual who lacks a fixed, regular, and adequate nighttime residence; and an individual who has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
2. An institution that provides a temporary residence for individuals intended to be institutionalized; or
3. A public or private sleeping place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

An inadequate nighttime residence shall be limited to those residences exhibiting one or more of the following conditions: overcrowding (1.01 or more persons per room); lack of complete plumbing for exclusive use (indoor flush toilet, piped hot and cold water, and bathtub or shower); lack of heat (during cold weather). The potential for these conditions to exist does not constitute inadequate housing.

"Near-homeless" means an individual who has received a notice of foreclosure or eviction.

"Poverty line" means the official poverty line established annually by the Secretary of the U.S. Department of Health and Human Services.

"Suspension" means temporary withdrawal of the eligible entity's authority to obligate funds pending corrective action by the eligible entity.

"Termination" means permanent withdrawal of the eligible entity's authority to obligate funds before that authority would otherwise expire. If an eligible entity's authority to obligate funds is terminated, no funds may be obligated by the eligible entity after the effective date of the termination. It may also mean the voluntary relinquishment of this authority by the eligible entity.

427—23.3(PL100-77) Apportionment distribution.

23.3(1) *Formula.* Funds shall be awarded on a noncompetitive basis to the existing community action agencies using the following formula: Forty-seven and one-half percent of the total state award will be distributed equally among the CAA areas. Forty-seven and one-half percent of the total state award will be distributed among the CAA areas based on their relative share of the state's poverty population.

23.3(2) *State administrative costs.* DCAA shall reserve for its administrative expenses of the program no more than 5 percent of the state's apportioned amount.

23.3(3) *Poverty-level population.* The state shall use the most recent decennial census statistics available to determine the poverty-level population in each CAA area. The state may revise the allocation formula as new census figures become available.

23.3(4) *Unawarded funds.* Funds remaining unawarded due to the failure of prospective grantees to meet program or fiscal requirements will be reprogrammed by the administrator of the DCAA to further benefit homeless individuals and families within the state of Iowa. The administrator of the DCAA shall give prospective grantees a maximum of 45 days from the receipt by the DCAA of the prospective grantee's application for EHP funds to provide the DCAA with satisfactory evidence of the prospective grantee's willingness and ability to meet program and fiscal requirements prior to reprogramming funds.

427—23.4(PL100-77) Eligible applicants. Community action agencies are eligible to receive EHP funds.

427—23.5(PL100-77) Eligible use of funds. As defined by PL100-77, as amended by PL100-628 and PL101-645, EHP funds may only be used for the following purposes:

23.5(1) *Self-sufficiency development.* At least 50 percent of each eligible entity's EHP funds shall be used for the expansion of comprehensive services to homeless individuals to provide follow-up and long-term services to enable homeless individuals and families to make the transition out of poverty. Such programs shall include each of the following components:

a. A written description of the priorities and processes used to select the homeless individuals and families to receive these comprehensive services,

b. The conduct of a comprehensive assessment with selected individuals/families,

c. The development of a written plan toward self-support for each individual/family enrolled,

d. The execution of a written agreement between the client and worker which specifies the actions for which each is responsible during the self-sufficiency development process, and

e. The coordination of all available resources to support the client's self-sufficiency development.

These activities may also be conducted with funds budgeted in this cost category: provision of, or referral to, violence counseling for homeless children and individuals; and the provision of violence counseling training to individuals who work with homeless children and individuals.

23.5(2) *Renovation.* Funds may be used for the renovation of buildings to provide comprehensive services as addressed in subrule 23.5(1) except that not more than 50 percent of each subgrantee's EHP funds may be used for such purpose and must comply with the following:

a. All procedures required under the National Historic Preservation Act must be followed; and

b. Subgrantee renovation plans must be received by the division of community action agencies by December 1 for consideration of inclusion in the next year's funding cycle.

c. The division of community action agencies reserves the right to secure assistance of other state agencies in reviewing renovation plans and will cooperate with these agencies in an effort to maximize program funding.

d. Subgrantees planning renovation are encouraged to contact the division of community action agencies for planning assistance.

23.5(3) *Obtaining income support.* Funds may be used to provide assistance to homeless individuals and families in obtaining social and maintenance services and income support services.

23.5(4) *Promotion/coordination.* Funds may be used to promote private sector and other assistance to homeless individuals and families in the community served. Such activities may include, but are not limited to, assessing homeless needs, performing community planning pertaining to homeless problems and coordinating community level response(s) to the problems of homeless persons.

23.5(5) *Administrative costs.* No more than 12 percent of the EHP funds expended by an eligible entity shall be used for administrative costs.

23.5(6) *Direct financial assistance.* Funds may be used for the provision of direct financial assistance such as cash or vouchers to meet the emergency housing or shelter needs of qualifying individuals.

a. For the near-homeless, this assistance would be limited to mortgage, rental or utility payments (including deposits and reconnect fees) for individuals who have received a notice of foreclosure or eviction. Financial assistance for a near-homeless individual is allowable if:

(1) The inability of the individual to make a mortgage or rental payment is due to a sudden reduction in income;

(2) The assistance is necessary to avoid foreclosure or eviction; and

(3) There is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

b. For the homeless, this assistance would be limited to the payment of housing or shelter costs for an individual who is living on the street, in an abandoned building, house, tent, car, etc., living in an emergency shelter, or living in substantially similar conditions. The payment of utility payments, including deposits and reconnect fees, and other housing deposits is an allowable use of funds, provided that other program requirements are met.

427—23.6(PL100-77) Ineligible use of funds. Ineligible activities and costs include:

23.6(1) Rescinded IAB 5/31/89, effective 7/5/89.

23.6(2) *Supplanting.* The use of EHP funds to supplant other programs for homeless individuals administered by the state.

23.6(3) *Political activities.* Rescinded 2/1/95, effective 3/8/95.

427—23.7(PL100-77) Eligible individuals.

23.7(1) *Income eligibility.* Rescinded IAB 4/1/92, effective 7/1/92.

23.7(2) *Emphasized subgroups.* To the degree practicable, eligible entities shall place special emphasis on assisting homeless who are elderly persons, handicapped persons, families with children, native Americans and veterans.

23.7(3) *Degree of need.* Each eligible entity shall maintain and utilize a plan for serving those homeless individuals with the greatest degree of need first. This provision does not pertain to funds set aside to serve the near-homeless per subrule 23.7(4).

23.7(4) *Near-homeless set-aside.* Each eligible entity may provide services to income eligible near-homeless individuals. The amount of funds which may be expended for this target group may not exceed 25 percent of the total EHP funds expended by the eligible entity.

These rules are intended to implement Public Law 100-77, Emergency Community Services Homeless Grant Program, Subtitle D, as amended by Public Law 100-628, Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

427—23.8(PL100-77) Application submission and approval. All eligible entities shall utilize the EHP combined application and work program packet as provided by DCAA for the purpose of making application for funds.

23.8(1) *Timing.* Eligible entities shall be informed in writing of the due date for application by the DCAA.

23.8(2) *Application forms.* Application instructions shall be provided along with the application packet which shall be sent to all eligible entities. Further information concerning application requirements and format may be obtained by writing to the Bureau of Community Services, Division of Community Action Agencies, Department of Human Rights, Capitol Complex, Des Moines, Iowa 50319, or by calling (515)281-3951.

23.8(3) *Compliance review.* All applications for funding will be reviewed by DCAA personnel for:

a. The number of persons to be served and level of service provided;

b. Compliance with the requirements outlined in Iowa Administrative Code 427—Chapter 23;

c. Inclusion and proper completion of all forms and information required in the application packet; and

d. Compliance with the EHP state plan.

23.8(4) *Performance review.* Approval of applications is dependent on the satisfactory performance of the applicant in past funding year(s) in related program areas. The minimum standards include: timely and adequate expenditure report submission, program report submission, prudent management of funds, conformance with state and federal laws relative to the restrictions in the use of funds, and adequate record keeping: Additionally, available records, audits and determinations from the Office of Community Services — Department of Health and Human Services, department of management, division of community action agencies, Iowa department of public health and other relevant state and federal agencies shall be utilized to the extent possible. Unresolved audit questions and past-due audits shall be a basis for conditional approval or disapproval of an application.

427—23.9(PL100-77) Program reports. Grantees shall submit program performance reports to DCAA as prescribed in the program contract.

427—23.10(PL100-77) Expenditure reports. Grantees shall submit a quarterly combined expenditure report and request for funds in the manner and on the forms prescribed by DCAA.

23.10(1) *Receipt of federal funds.* All payments shall be subject to the receipt of federal grant funds by DCAA. The termination, reduction or delay of federal grant funds to the DCAA shall, at their option, be reflected in a corresponding modification to grants already made.

23.10(2) Reserved.

427—23.11(PL100-77) Amendments. Following are requirements pertaining to grant amendments.

23.11(1) *Budget.* Any expenditure of funds on a line item which will exceed that line item budgeted amount by more than 10 percent must be approved by an amendment to the program contract. At least 50 percent of each program contract's funds must be spent for the purpose defined in subrule 23.5(1). The total amount of the budget shall not be exceeded and any amounts above the budget total shall not be reimbursable by DCAA unless an amendment has been granted to increase the total. All requests for budget amendments must be approved in writing by the governing board and requested by the chairperson. Budget amendments requested that would have an impact on the approved work program must be accompanied by a corresponding work program amendment request.

23.11(2) *Work program.* Any change in scope or emphasis among the activities funded with EHP funds must be reflected through a work program amendment. All requests for work program amendments must be approved in writing by the governing board and requested by the chairperson. Work program amendment requests shall provide the reason(s) for the proposed change in adequate detail to facilitate review by DCAA. A reduction in scope shall be evaluated by the DCAA to determine what reduction in funds, if any, shall be required.

23.11(3) *Recapture of funds.* If at any time during the program year it becomes apparent that the amount allocated to any entity is not being utilized at a rate sufficient to expend their available program funds, the agency may require that the entity amend their grant to release the excess funds. The funds may then be distributed by DCAA to those entities demonstrating the need and ability to appropriately expend the funds or returned to the U.S. Treasury as timing permits.

23.11(4) *Other requests.* Requests for amendments other than those addressed in this rule shall be considered on a case-by-case basis in conformance with applicable state and federal laws.

427—23.12(PL100-77) Audits and records. Each recipient shall be responsible for the maintenance of appropriate accounting records necessary for the protection of program funds and shall arrange and pay for an annual audit of each grant made under this program, to be submitted within 90 days of the end of the recipient's fiscal year. Audits shall be performed in accordance with generally accepted auditing standards including the standards published by the general accounting office, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." Audit procedures shall conform to OMB Circular A-128, "Audits of State and Local Governments." In addition, DCAA may request more frequent audits or examinations of financial records of the recipient in order to ensure adequate financial controls are in place and operating.

427—23.13(PL100-77) Compliance with applicable federal and state laws and regulations. Each grantee shall adhere to all applicable federal and state guidelines, laws and regulations pertaining to the EHP program. In addition to other requirements which may apply to grantees, grantees must comply with the following requirements:

23.13(1) *OMB circulars.* The requirements of OMB Circulars A-110 and A-122 as they relate to the use of EHP funds by private nonprofit organizations. The requirements of OMB Circulars A-87 and A-102 as they relate to the use of EHP funds by local governments.

23.13(2) *Civil rights provisions.* The state and federal requirements pertaining to nondiscrimination and equal opportunity as specified in the program contract.

23.13(3) *Coordination.* Grantees shall coordinate all activities with all agencies administering homeless services in their target area.

23.13(4) *State plan.* Grantee EHP activities will be conducted in conformance with the approved EHP state plan.

427—23.14(PL100-77) Suspension of EHP funding.

23.14(1) *Suspension in general.* The division administrator of DCAA may suspend EHP funds to an eligible entity if monitoring, evaluations, or audits reveal significant noncompliance with established state or federal policies, contract requirements, DCAA directives, fiscal procedures, program performance targets, or other willful or negligent failure on the part of the eligible entity to perform its responsibilities. Action to suspend funding will only be taken after less drastic remedies have been tried unless DCAA determines that immediate action is necessary due to the seriousness of the violation or is necessary to protect EHP funds or property. Serious violations would include, but would not necessarily be limited to, evidence of fraud, embezzlement or gross mismanagement.

23.14(2) *Written notification of suspension.* DCAA shall provide a written "notification of suspension" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the process of suspension. The "notification of suspension" shall specify the reason(s) for the suspension and the effective date of the suspension. In all but extreme cases, eligible entities will be given a reasonable period of time, but in no case more than 60 days, to make the necessary improvements, whereupon funding may resume. In extreme cases, when the division administrator of DCAA has determined termination of EHP funding is appropriate in accordance with rule 22.14(216A), the "notification of suspension" shall be accompanied by a "notification of intent to terminate" as described in rule 23.15(PL100-77).

427—23.15(PL100-77) Termination of EHP funding.

23.15(1) *Termination in general.* The division administrator of DCAA may terminate EHP funds to an eligible entity after suspension of EHP funding in any of the following instances:

a. The division administrator determines that the governing board of the eligible entity cannot or will not take the necessary action to bring the eligible entity into compliance within the time allowed by DCAA.

b. The division administrator determines that the nature or extent of noncompliance is extreme and warrants immediate termination of EHP funding.

c. The eligible entity is no longer officially recognized as a CAA by DCAA as a result of termination of affiliation procedures described in rule 427—22.11(216A).

23.15(2) *Written notification of intent to terminate.* DCAA shall provide a written "notification of intent to terminate" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the termination of EHP funding. The "notification of intent to terminate" shall include:

a. The reason(s) for the termination;

b. A notice of a hearing to be held to consider the intended termination including:

(1) A statement of the date, time, place, nature, and manner of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) Reference to the particular sections of the statutes, rules or regulations involved;

(4) A short, plain statement of the matters asserted. If the state is unable to recite the matters in detail at the time the notice is given, the notice may be limited to a statement of the issues involved;

(5) A statement informing all parties of their opportunity at a hearing:

1. To request rescheduling of the hearing for good cause;
2. To be represented by an attorney or other representative of their choice;
3. To introduce into the record documentary evidence and bring witnesses to the hearing;
4. To have records or documents relevant to the issues produced by their custodian when the records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;
5. To question any witnesses or parties; and
6. A final written decision provided by the division administrator of DCAA within 30 days of the hearing.

23.15(3) *Prehearing subpoena and discovery rights and procedures.* The presiding officer shall, upon request, issue subpoenas in accordance with the provisions of Iowa Code section 17A.13.

23.15(4) *Conduct of hearing.*

a. The hearing shall be held within 30 days of the date of the "notification of intent to terminate."

b. The hearing may be conducted in whole or in part by telephone. When it is impractical for the state to conduct an in-person hearing, unless either party objects, a telephone hearing may be scheduled.

c. After the presiding officer has called the hearing to order, the parties may be given an opportunity to present opening statements; thereafter the parties shall present their evidence in sequence determined by the presiding officer.

d. When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath or affirmation administered by the presiding officer.

e. The rules of evidence and the contents of the record shall be as allowed under Iowa Code sections 17A.12(7) and 17A.14.

23.15(5) *Decision.* The decision shall conform to the following requirements:

a. The presiding officer shall within 20 days following the hearing provide the division administrator of DCAA with a proposed decision.

b. The division administrator of DCAA shall within 30 days following the hearing issue a final decision on behalf of the state.

c. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

These rules are intended to implement Public Law 100-77 in 1987 as amended by Public Law 100-628 in 1988 and Public Law 101-645 in 1990.

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CHAPTER 24
COMMUNITY SERVICES BLOCK GRANT FLOOD RELIEF PROGRAM

427—24.1(PL103-75) Purpose. The Emergency Supplemental Appropriations Act of 1993, P.L. 103-75, appropriated funds in response to flooding along the Mississippi River and its tributaries. A portion of these funds has been awarded to the state of Iowa for the community services block grant (CSBG) flood relief program. This program is intended to support services as authorized by the Community Services Block Grant Act, P.L. 97-35, for individuals and families directly affected by the flood disaster.

427—24.2(PL103-75) Definitions. For the purpose of these rules, unless otherwise defined, the following shall govern:

"CAA" means community action agency.

"Community action agency" shall mean any organization which was officially recognized as a community action agency or a community action program under the provision of Public Law 97-35, Subtitle B, Section 673(l), and Iowa Code section 216A.91.

"CSBG" shall mean the community services block grant program.

"DCAA" means the division of community action agencies of the state department of human rights.

"Directly affected by the flood disaster" means there is a primary relationship between the flood and the problem being addressed with program funds. For example, persons whose homes, automobiles, jobs, or businesses were directly and negatively impacted could be assisted if otherwise eligible.

"FEMA" shall mean the Federal Emergency Management Agency.

"Poverty level" means the official poverty line established by the director of the federal Office of Management and Budget. The Secretary of the Department of Health and Human Services revises the poverty line annually and this poverty line multiplied by 125 percent shall be used as a criterion of eligibility in the community services block grant flood relief program.

"Suspension" means temporary withdrawal of the CAA's authority to obligate funds pending corrective action by the CAA.

"Termination" means permanent withdrawal of the CAA's authority to obligate funds before that authority would otherwise expire. If a CAA's authority to obligate funds is terminated, no funds may be obligated by the CAA after the effective date of the termination. It may also mean the voluntary relinquishment of this authority by the CAA.

427—24.3(PL103-75) Apportionment distribution.

24.3(l)*Formula*. Subgrantee funds shall initially be awarded on a noncompetitive basis to the existing community action agencies using the following formula: 75 percent on the basis of the relative share of the state's flood damage in the community action area as determined by the number of applications for assistance received by the Federal Emergency Management Agency for the disaster housing assistance program and the individual and family grants program; 25 percent on the basis of the relative share of the state's poverty population in the community action area as determined by the 1990 U.S. Census.

24.3(2) *Reallocation of unobligated funds.* The DCAA shall review the amount of unobligated funds and the unmet needs reported by each CAA as of March 31, 1994, and shall reallocate funds among the CAA areas in order to release any unobligated funds to areas demonstrating unmet needs. Additionally, CAAs may voluntarily release unobligated funds for reallocation by the DCAA at any time.

24.3(3) *State administrative costs.* The DCAA shall reserve for its administrative expenses of the program no more than 3 percent of the state's apportioned amount.

427—24.4(PL103-75) Program period. Contracts in support of the program shall be effective from July 9, 1993, through September 30, 1994. All funds must be expended by September 30, 1994. The program shall have five quarterly reporting periods for program and fiscal reports, with the first quarter ending September 30, 1993.

427—24.5(PL103-75) Eligible individuals. Individuals and families assisted with these funds must meet the following criteria:

1. The problem to be addressed must be the direct result of the flood disaster.
2. Individuals and families who receive direct benefits must have incomes at or below 125 percent of the poverty level.

427—24.6(PL103-75) Eligible use of funds.

24.6(1) *CSBG Act uses.* All funds shall be treated as funds allotted to carry out the purposes of the CSBG Act as delineated in Section 675(c)(11) of Title VI, Subtitle B, Public Law 97-35 for the benefit of low-income, flood-affected individuals and families. Any of these activities, if otherwise allowable, are acceptable program activities:

a. To provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

b. To provide activities designed to assist low-income participants including the elderly poor:

(1) To secure and retain meaningful employment;

(2) To attain an adequate education;

(3) To make better use of available income;

(4) To obtain and maintain adequate housing and a suitable living environment;

(5) To obtain emergency assistance through loans or grants to meet immediate and urgent individual and family needs including the need for health services, nutritious food, housing, and employment-related assistance;

(6) To remove obstacles and solve problems which block the achievements of self-sufficiency;

(7) To achieve greater participation in the affairs of the community; and

(8) To make more effective use of other programs related to the purposes of this program;

c. To provide on an emergency basis for the provision of supplies and services, nutritious foodstuffs, and related services, as may be necessary to counteract conditions of starvation and malnutrition among the poor;

d. To coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low-income individuals; and

e. To encourage the use of entities in the private sector of the community in efforts to ameliorate poverty in the community.

24.6(2) *Anticipated uses of funds.* The DCAA, in consultation with CAAs, has developed an application for federal funds which outlines many of the activities, more narrowly targeted to the flood disaster, which are expected to be conducted with CSBG flood relief funds. This outline shall serve as the framework for programmatic and financial reporting. The outline follows:

a. Category 1—Outreach, assessment, information and referral, and follow-up. This includes activities such as outreach and identification of persons with flood-caused poverty conditions, comprehensive assessments of persons' needs, case management, coordination, information and referral and follow-up to solve problems.

b. Category 2—Home repair fund. This includes activities such as engineering assessments, structural repairs, foundation repairs, basement backfill with sand, adding furnace rooms, wells, septic tanks, lead abatement, furnace repair, furnace replacement, water heater repair, water heater replacement, sump pumps, fresh water pumps, and asbestos removal.

c. Category 3—Assistance to obtain permanent housing. This includes such activities as moving expenses, deposits, utility connection fees, down payment assistance and mortgage payments.

d. Category 4—Family restart program. This component is intended to fill gaps to reestablish suitable living conditions, reestablish transportation, and ensure that children can fully participate in school. This includes such activities as emergency food, emergency shelter, clothing, furniture, appliances, auto repair and gasoline, household goods, school fees, school supplies and emergency child care.

e. Category 5—Repair of CAA offices. This activity includes costs associated with the repair, relocation, cleaning and repair or replacement of flood-damaged office contents. Insurance claims and FEMA resources must be exhausted prior to using funds for this purpose.

f. Category 6—Other. This area consists of activities eligible under the CSBG Act provided to individuals and families directly impacted by the flood disaster which do not fit categories 1 through 5 above.

427—24.7(PL103-75) Ineligible uses of funds. Ineligible uses of funds include, but are not limited to:

24.7(1) *Political activity.* Any political activity defined in Chapter 15, Title 5, United States Code ("Political Activity by Certain State and Local Employees"). Any nonprofit private organization receiving assistance under this program which has responsibility for planning, developing, and coordinating community antipoverty programs shall be deemed to be a state or local agency. For purpose of clauses (1) and (2) of Section 1502(a) of Title 5, any organization receiving assistance under this program shall be deemed to be a state or local agency.

24.7(2) *Voter assistance.* Any activities to provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity.

427—24.8(PL103-75) Federal and state laws and regulations. Each CAA shall adhere to all applicable federal and state guidelines, laws and regulations in implementing the CSBG flood relief program.

427—24.9(PL103-75) Coordination and relationship to related programs. Each CAA shall coordinate its efforts with federal, state and local disaster relief officials to ensure the targeting of resources to populations of greatest need and to avoid duplication of services or activities. Coordination should include, but not be limited to, consultation and planning with Area Aging Agencies, Department of Human Services, Federal Emergency Management Agency, Regional Councils of Government, Salvation Army and American Red Cross.

427—24.10(PL103-75) Use of qualified technicians. When conducting activities under the home repair fund or the repair of CAA offices, CAAs shall use technicians who are professionally qualified to conduct the type of work being financed.

427—24.11(PL103-75) Waivers for land and buildings. The CAA is required to request a waiver for the use of funds for the purchase or improvement of land, the purchase of buildings or other facilities or major home construction, except that no waiver is required for the use of funds for residential home repairs to ensure that flood victims have adequate heating, i.e., the installation of furnaces and stoves. If waivers are requested, the CAA must certify to the DCAA that there is no potential for future insurance claims and that FEMA resources have been exhausted.

427—24.12(PL103-75) Program reports. CAAs shall submit program reports to the DCAA as prescribed in the program contract.

427—24.13(PL 103-75) Expenditure reports. CAAs shall submit financial reports as prescribed in the program contract.

427—24.14(PL103-75) Audits and records. Each recipient shall be responsible for the maintenance of appropriate accounting records necessary for the protection of program funds and shall arrange and pay for an annual audit of each grant made under this program, to be submitted within 90 days of the end of the recipient's fiscal year. Audits shall be performed in accordance with generally accepted auditing standards including the standards published by the general accounting office "Standard for Audit of Governmental Organizations, Programs, Activities and Functions." The audit report shall conform to the audit format established for community action agencies by the state auditor. Audit procedures shall conform to OMB Circular A-128, "Audits of State and Local Governments." In addition, DCAA may

request more frequent audits or examinations of financial records of the recipient in order to ensure adequate financial controls are in place and operating.

427—24.15(PL103-75) Suspension of CSBG flood relief funding.

24.15(1) *Suspension in general.* The division administrator of DCAA may suspend CSBG flood relief funds to a CAA if monitoring, evaluation, or audits reveal significant noncompliance with established state or federal policies, contract requirements, DCAA directives, fiscal procedures, program performance targets, or other willful or negligent failure on the part of the CAA to perform its responsibilities. Action to suspend funding will only be taken after less drastic remedies have been tried unless DCAA determines that immediate action is necessary due to the seriousness of the violation or is necessary to protect funds or property. Serious violations would include, but would not necessarily be limited to, evidence of fraud, embezzlement, or gross mismanagement.

24.15(2) *Written notification of suspension.* DCAA shall provide a written "notification of suspension" by certified mail to the chairperson of the governing board of the CAA to effectuate the process of suspension. The "notification of suspension" shall specify the reason(s) for the suspension and the effective date of the suspension. In all but extreme cases, the CAA will be given a reasonable period of time (but in no case more than 60 days) to make necessary improvements, whereupon funding may resume. In extreme cases, when the division administrator of DCAA has determined termination of funding is appropriate in accordance with rule 427—24.6(PL103-75), the "notification of suspension" shall be accompanied by a "notification of intent to terminate" as described in this subrule.

427—24.16(PL103-75) Termination of CSBG flood relief funding.

24.16(1) *Termination in general.* The division administrator of DCAA may terminate CSBG flood relief funds to a CAA after suspension of funding in any of the following instances:

a. The division administrator determines that the governing board of the CAA cannot or will not take the necessary action to bring the eligible entity into compliance within the time allowed by DCAA.

b. The division administrator determines that the nature or event of noncompliance is extreme and warrants immediate termination of funding.

c. The entity is no longer officially recognized as a CAA by DCAA as a result of termination of affiliation procedures in 427 IAC 22.11(216A).

24.16(2) *Written notification of intent to terminate.* DCAA shall provide a written "notification of intent to terminate" by certified mail to the chairperson of the governing board of the entity to effectuate the termination of funding. The "notification of intent to terminate" shall include:

a. The reason(s) for the termination;

b. A notice of a hearing to be held to consider the intended termination including:

(1) A statement of the date, time, place, nature, and manner of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) Reference to the particular sections of the statutes, rules, or regulations involved;

(4) A short, plain statement of the matters asserted. If the state is unable to recite the matter in detail at the time the notice is given, the notice may be limited to a statement of the issues involved;

(5) A statement informing all parties of their opportunity at a hearing:

1. To request rescheduling of the hearing for good cause;
2. To be represented by an attorney or other representative of their choice;
3. To introduce into the record documentary evidence and bring witnesses to the hearing;
4. To have records or documents relevant to the issues produced by the parties' custodian when the records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;
5. To question any witnesses or parties; and

(6) A final written decision provided by the division administrator of DCAA within 30 days of the hearing.

24.16(3) *Prehearing subpoena and discovery rights and procedures.* The presiding officer shall, upon request, issue subpoenas in accordance with the provisions of Iowa Code section 17A.13.

24.16(4) *Conduct of hearing.*

a. The hearing shall be held within 30 days of the date of the "notification of intent to terminate."

b. The hearing may be conducted in whole or in part by telephone. When it is impractical for the state to conduct an in-person hearing, unless either party objects, a telephone hearing may be scheduled.

c. After the presiding officer has called the hearing to order, the parties may be given an opportunity to present opening statements; thereafter the parties shall present their evidence in sequence determined by the presiding officer.

d. When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath or affirmation administered by the presiding officer.

e. The rules of evidence and the contents of the record shall be allowed under Iowa Code sections 17A.12(7) and 17A.14.

24.16(5) *Decision.* The decision shall conform to the following requirements:

a. The presiding officer shall within 20 days following the hearing provide the division administrator of DCAA with a proposed decision.

b. The division administrator of DCAA shall within 30 days following the hearing issue a final decision on behalf of the state.

c. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

24.16(6) *Review by the Secretary of Health and Human Services.* In accordance with Public Law 97-35 the Secretary of the U.S. Department of Health and Human Services shall be requested by the state to review any termination of funding to a community action agency. As stated in Public Law 97-35 the review shall be conducted promptly and shall be based upon the record. No decision shall become effective until a finding by the Secretary of Health and Human Services confirming the state's finding of cause for termination.

These rules are intended to implement Public Law 103-75.

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