

This change was effective beginning with FY 1991 funds carried forward to FY 1992. In addition, Public Law 101-501 amended section 2604(f)(2) of the statute, ending grantees' authority to transfer LIHEAP funds to other HHS block grants, beginning in FY 1994.

The final rule makes technical and conforming corrections to section 96.14(a)(2) of the block grant regulations, which concerns obligation and carryover of LIHEAP funds, to reflect these statutory changes. Consistent with a change to section 96.81 that was included in the interim rule, the final rule specifies the current reduced amount that grantees may carry forward to the next fiscal year. Also, it omits reference to transfer of LIHEAP funds, beginning with FY 1994 allotments.

Also, the final rule clarifies that section 96.14(a)(2) applies to regular LIHEAP block grant funds and not to LIHEAP leveraging incentive funds. (Section 96.87 of the regulations deals with leveraging incentive funds.)

These technical changes are consistent with language in the notice of proposed rulemaking published November 16, 1993, except that the final rule deletes references to funding on a program year cycle, since Congress determined in the Human Services Amendments of 1994 that LIHEAP will remain on a Federal fiscal year cycle. We received no comments on these changes in the NPRM.

Subpart E—Enforcement

Section 96.50 Complaints

Public Law 101-501 amended section 2608(a)(2) of the LIHEAP statute, effective beginning in FY 1991. Section 2608(a)(2) concerns formal complaints of a substantial or serious nature that a grantee has failed to use funds in accordance with the LIHEAP statute. The previous statutory language had required HHS to "respond in an expeditious and speedy manner to" such complaints. The amended language sets a specific time period within which HHS must respond to complaints; it requires HHS to "respond in writing in no more than 60 days to matters raised in" complaints.

As originally published in July 1982, the block grant regulations stated at 45 CFR 96.50(d):

The Department will provide a written response to complaints [concerning grantee administration of the block grants] within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

Section 96.50(c) of the regulations provides that HHS will "promptly furnish a copy of any complaint" to the grantee against which the complaint was made and that, in responding to the complaint, HHS will consider any comments received from the grantee within 60 days, or a longer period agreed on by the grantee and HHS.

The preamble to the interim final rule published in January 1992 explained that our experience has shown that, because of the serious and generally complex nature of the formal complaints we have received, LIHEAP grantees usually require a full 60 days to respond to complaints made against them. The interim rule therefore amended section 96.50(d) by adding a new sentence stating that, within 60 days after HHS receives a complaint concerning the low-income home energy assistance program, it "will provide a written response to the complainant, stating the actions that it has taken to date and the timetable for final resolution of the complaint."

This amendment implemented the requirement in Public Law 101-501, that HHS respond within 60 days to complaints, while acknowledging the amount of time generally needed for grantees to respond to complaints, and for HHS to review and resolve these complaints. The interim rule's preamble explained that HHS will continue to provide final resolution as soon as possible, consistent with our responsibility to provide the affected grantee sufficient opportunity to respond and to provide thorough Federal review, and that we will continue to advise the complainant of the final action taken.

Public Comments, HHS Responses, and Change

We received three comments on this amendment. Two commenters said that they believed the revised schedule for HHS response to complaints was reasonable and adequate.

The third commenter said that, while HHS changed the regulation "to provide a written response to complaints under the LIHEAP statute within 60 days, rather than the previous 180 days, the response envisioned by HHS' language appears to be no more than a status report." The commenter also said that Public Law 101-501 requires HHS to "establish a procedure for reviewing and investigating any complaint regarding State program compliance with Federal statutes and regulations. . . ." The commenter asserted that "HHS does not establish 'a procedure for reviewing and investigating any complaint regarding

State program compliance'" and noted that 45 CFR 96.50(c), "relating generally to block grants, states that HHS will conduct an investigation of complaints [only] 'where appropriate.'" The commenter believed that "this regulatory language is contrary to the statute" and must be amended "to establish for LIHEAP the procedure called for by this statutory change."

However, the language cited by the commenter is not the language of Public Law 101-501. Further, the block grant regulations provide a procedure under paragraphs (c), (d), and (e) of 45 CFR 96.50, for reviewing the resolving complaints, and the January 1992 interim rule modified that procedure to implement the requirement in Public Law 101-501 for a written response within 60 days to complaints involving LIHEAP.

Where section 96.50(c) states that HHS "will conduct an investigation of complaints where appropriate," "investigation" means a formal and systematic, thorough and detailed effort to learn facts, that is carried out after a review conducted in response to a complaint shows evidence of possible illegal action, such as commission of fraud or theft. An investigation typically would result in a recommendation for civil or criminal prosecution and/or administrative sanctions. (This is consistent with the use of the term by the HHS Office of Inspector General.) In most cases, complaints are resolved without conducting a formal investigation. We will conduct an investigation if our review of a complaint indicates a need to do so.

The same commenter also referred to Senate Report 101-421 accompanying H.R. 4151 (the predecessor to Public Law 101-501), that "explains this proposed change as 'designed to respond to concerns regarding the need for a more expeditious and effective response to complaints. . . .'"

Since the start of the LIHEAP block grant in FY 1982, we have tried to respond expeditiously and effectively to the formal complaints we have received. In addition, we have worked to reach expeditious and effective resolution of other concerns expressed to us about grantee LIHEAP programs. During this time, the only comments we have received on the timeliness and effectiveness of our response to complaints have been the cited sentence in the Senate Report and the comments of this commenter. Neither included any specific examples.

In response to this commenter, the final rule adds the phrase, "if the complaint has not yet been fully resolved," to the last sentence under