

section 96.50(d), to indicate that we will fully resolve complaints within 60 days whenever possible. That sentence now reads,

Under the low-income home energy assistance program, within 60 days after receipt of complaints, the Department will provide a written response to the complainant, stating the actions that it has taken to date and, if the complaint has not yet been fully resolved, the timetable for final resolution of the complaint.

We will make every reasonable effort—while providing sufficient time for grantees to respond to complaints and for HHS to review the complainant's allegations and the grantee's response and to conduct an investigation as necessary—to fully resolve complaints within 60 days from the date we receive them. However, based on our experience over the past decade, we believe that it would not serve the best interests of the complainant, the grantee, or the Department to require by regulation that HHS provide final resolution of formal complaints within 60 days of their receipt.

Subpart H—Low-Income Home Energy Assistance Program

Section 96.83 Increase in Maximum Amount That May Be Sued for Weatherization And Other Energy-Related Home Repair

Public Law 101-501 amended section 2605(k) of the LIHEAP statute, beginning in FY 1991. It provides that grantees may request after March 31 of each fiscal year that HHS grant a waiver for the fiscal year that increases from 15 percent to up to 25 percent of the LIHEAP funds allotted or available to the grantee, the maximum amount of LIHEAP funds the grantee may use for low-cost residential weatherization or other energy-related home repair. Grantees that choose to apply for a waiver may request authority to use for these purposes any amount between 15 percent and 25 percent of their LIHEAP funds.

The statute provides that, after reviewing a grantee's waiver request and any public comments, HHS may grant a waiver if it determines that: (1) the number of households in the grantee's service population that will receive LIHEAP heating assistance, cooling assistance, and crisis assistance (energy crisis intervention) benefits during the fiscal year will not be fewer than the number that received such benefits in the preceding fiscal year; (2) the aggregate amount of LIHEAP benefits that will be received during the fiscal

year will not be less than the aggregate amount received in the preceding fiscal year; and (3) the weatherization activities have been demonstrated to produce measurable savings in energy expenditures. The statute also provides that HHS may grant a waiver if, in accordance with regulations to be published by HHS, the grantee's waiver request demonstrates good cause for failing to satisfy the requirements in the preceding sentence.

The January 1992 interim final rule added a new section 96.83 to the block grant regulations to implement procedures concerning "standard" and "good cause" waivers of the 15 percent weatherization maximum.

The November 1993 NPRM on forward funding proposed that grantees be allowed to submit preliminary weatherization waiver requests after January 31 of the program year, to expedite review and provide more time for obligation of funds.

Public Comments, HHS Responses, and Changes

We received several comments on the provisions in the LIHEAP statute, the interim rule, and the November 1993 NPRM relating to waiver of the weatherization maximum.

Two commenters supported the statutory waiver provision allowing an increase in the percent of LIHEAP funds that can be used for weatherization. One commenter opposed the statutory waiver provision, stating that it makes LIHEAP "cash" heating/cooling/energy crisis assistance and LIHEAP weatherization "continue to compete for limited resources." One commenter said that the rule "reflects our understanding" of the statutory weatherization amendments.

Comment and Response

Another commenter believed that HHS "should have been more explicit in conveying" to grantees that Congress intended that weatherization waivers be granted only "under the most limited of circumstances." A different commenter said that the guidance in the interim rule failed to state Congress' intent, per the Senate report, that a "good cause" waiver be granted only when a grantee has demonstrated "compelling reasons."

While we did not specifically state that waivers—especially "good cause" waivers—would be granted only for compelling reasons and under very limited circumstances, we believe it is clear that grantees must demonstrate that they meet specific, stringent requirements in order to receive a waiver. To date, we have received only eight weatherization waiver requests.

We approved the one request received in FY 1991 and seven requests received in FY 1994. We approved standard waivers for four of the FY 1994 requests.

Comment and Response

A commenter erroneously stated that the interim rule "merely requests that the Grantee submit an explanation of the specific criteria under which the Grantee's weatherization activities have been shown to produce measurable savings" in energy expenditures. The commenter believed that these savings must be "substantial and long term." The commenter proposed that HHS establish "a standard methodology * * * in the regulations for normalizing annual consumption to ensure a common measure for energy savings" and set "a minimum threshold" for "measurable savings."

The interim rule—and this final rule—require at section 96.83(c)(5) that grantees include with their weatherization waiver requests "an explanation of the specific criteria under which the grantee has determined whether" all LIHEAP weatherization activities to be carried out during the fiscal year for which the waiver is requested "have been shown to produce measurable savings in energy expenditures." However, we decline to require that savings be "substantial and long term," to establish a standard methodology to measure energy savings, or to set a minimum threshold for savings. The LIHEAP statute's third criterion for a "standard" waiver specifies that the grantee's "weatherization activities have been demonstrated to produce measurable savings in energy expenditures by low-income households." The regulation uses parallel language; it does not go beyond the substance of the statutory criterion to specify a required level or duration, or a standard measure, of energy savings. We believe that it would be inconsistent with the block grant philosophy expressed by Congress and implemented by HHS to impose such additional requirements. The basic premise of the block grants is that, within the parameters set by the statute, grantees should have maximum flexibility to target resources to meet the needs of their citizens. The regulation limits the circumstances under which waivers will be granted, in accordance with the statutory language and what we understand to be the legislative intent as expressed in the legislative history.

Comment and Response

Another commenter addressed the third criterion that must be met by grantees applying for a "standard"