

public access and the opportunity to respond to comments, and by assuring that waiver requests submitted to HHS include verbal as well as written public input.

The final rule also changes section 96.83(b) to require grantees to make all weatherization waiver requests—including the preliminary waiver requests described below—available for public inspection and comment until at least March 15 of the fiscal year for which the waiver is requested. Several grantees said in their FY 1994 LIHEAP plans that they intended to request weatherization waivers in FY 1994. Public participation in the development of the plan—before or early in the fiscal year—took place before the severity of the winter, winter fuel prices, etc., were known. Therefore, public inspection and comment this far in advance of submission of a waiver request is not sufficient; public participation would not be meaningful if the only public notification was before the winter. There should be public notice about a proposed request, after January 1 of the fiscal year for which the waiver is to be requested.

We have tried to balance the interests of the public—the recipients of LIHEAP assistance—and the valid concerns of grantees—the primary administrators of the LIHEAP block grant. We have also tried to write regulations that are consistent with the statute and legislative history, that require grantees to address specific criteria and provide specific information (including quantified data) to justify use of additional funds for weatherization—without imposing unnecessary and burdensome paperwork requirements and without making it virtually impossible to receive a waiver. We are commented to assuring program accountability and fair treatment, meaningful access to information, and meaningful opportunity for input for the public. However, it would be inconsistent with the block grant philosophy clearly expressed by Congress and implemented by HHS to burden grantees with regulatory requirements that do not clearly serve those ends and that are not based on statutory requirements and/or legislative history.

Comments and Response

Finally, the interim rule's preamble said that we were interested in comments about whether the statutory starting date of April 1 for weatherization waiver requests would create problems for administration of grantee programs under forward funding. The forward funding program

year was scheduled to begin July 1 and end June 30, leaving only three months for submission and review of waiver requests and for obligation of most of the funds for which a waiver has been granted. We received two comments in response. A State proposed that HHS ask Congress to amend the LIHEAP statute to allow submission of waiver requests after January 31 if forward funding is implemented. Another commenter said that a submission date two to four weeks before March 31 might be reasonable.

Our November 1993 NPRM on forward funding proposed that grantees be permitted to submit a preliminary waiver request after January 31 of a program year. This would provide sufficient time for HHS to review the waiver request and obtain any additional information that might be needed, and still allow the grantee to obligate its funds by June 30, which was scheduled to be the end of the forward funding program year. In a comment on the NPRM, a State proposed that weatherization waiver requests be submitted with the grantee's initial LIHEAP application for a program year, and that States not be required to submit new waiver requests each time they wanted a waiver. The commenter objected to the (statutory) requirement that HHS make decisions on waiver requests only after March 31.

Seeking earlier feedback on their FY 1994 waiver requests, this State and another submitted these requests before April 1, 1994. These grantees confirmed and completed the requests, and HHS made the decisions to approve them, after March 31.

The LIHEAP statute specifies that HHS may grant a waiver "for a fiscal year" if the grantee submits a written request to the Department "after March 31 of such fiscal year" and if HHS "determines, after reviewing such request and any public comments," that the number of households that will receive LIHEAP benefits other than weatherization, and the aggregate amount of these benefits, will be greater in the fiscal year for which it requests a waiver than they were in the preceding fiscal year, or there is good cause for not meeting these conditions. The grantee cannot know until well into each winter how many households it will (or is likely) to serve and the amount of benefits it will provide, since this often depends on weather and economic conditions that are not known before the winter.

However, the written comment on the NPRM, grantees' submission of early weatherization waiver requests and statements of intent to apply for

waivers, and verbal comments indicated grantees' concern that April 1 is relatively late in the program year—and in the Federal fiscal year as well. It would be mid-April, at the earliest, before a decision was made. This would leave considerably less than three months for additional weatherization funds to be obligated under the proposed July 1 to June 30 program year. It would leave considerably less than six months under the Federal fiscal year.

As noted earlier, Congress has determined that LIHEAP will remain on the Federal fiscal year funding cycle, so there will be more time for weatherization to be implemented. But we have concluded that the option for a grantee that wants a weatherization waiver, to submit a preliminary waiver request between February 1 and March 31, is appropriate for the fiscal year cycle as well as the program year cycle. It will enable HHS to review the preliminary request and discuss any issues or concerns with the grantee as winter is ending. Once the grantee submits updated information and a confirmation of its request after March 31, HHS can more quickly decide and respond, and the grantee will have more time to carry out the weatherization.

This final rule therefore changes section 96.83(c) of the regulations to permit grantees to submit preliminary waiver requests at their option, between February 1 and March 31 of the fiscal year for which the grantee seeks a waiver. The preliminary request should contain the same information required for waiver requests submitted after March 31. Because the LIHEAP statute permits grantees to submit waiver requests for a fiscal year "after March 31 of such fiscal year," grantees that submit preliminary requests must submit formal confirmation of their request after March 31, along with information on any additional public comments received and any changes to the request. HHS will make the decisions on whether to grant waivers after March 31.

Additional Information

The preamble to the January 1992 interim final rule included additional information relating to "standard" and "good cause" waivers, public comment, submission and review of waiver requests, and the effective period for waivers. With indicated modifications and clarifications made in response to comments and our experience with weatherization waiver requests, that information is still effective and is included as the remainder of this final rule's preamble discussion of section 96.83, as follows.