

*“Standard” and “Good Cause” Waivers*

The first criterion for a “standard” waiver requires that the number of households in the grantee’s service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the number that received such benefits in the preceding fiscal year. This criterion applies to the total, combined, aggregate number of households receiving these types of benefits in each fiscal year. Grantees are to use their best estimates for each fiscal year of (1) the total or combined number of all households receiving each of these types of assistance (which may involve some duplication, e.g., counting a household twice if it received both regular heating assistance and heating crisis assistance); or (2) the unduplicated number of households receiving heating assistance and heating crisis assistance plus the unduplicated number of households receiving cooling assistance and cooling crisis assistance. Grantees must use the same method of calculation for both fiscal years. Numbers for the earlier fiscal year should be consistent with the numbers included in the grantee’s official report of the number and income levels of households it assisted during that year (as required by 45 CFR 96.82) or with a revised report.

The second criterion requires that the aggregate amount of LIHEAP benefits in the current year will not be less than the aggregate amount of LIHEAP benefits received in the preceding fiscal year. It applies to the total, combined, aggregate amount, in dollars, of LIHEAP heating, cooling, and crisis assistance benefits in each fiscal year—not to the separate totals for each type of assistance. This final rule clarifies at section 96.83(c)(2)(ii) that the LIHEAP benefit amounts must be expressed in dollars. When items such as blankets and fans are provided as benefits, the dollar amount of LIHEAP funds used to purchase them should be included. When services such as emergency repair of furnaces are provided, the dollar amount of LIHEAP funds used to pay for the services should be included.

Grantees will need to project figures for any households to be served and funds to be obligated from the date the waiver request is submitted until the end of the fiscal year for which the waiver is requested.

This final rule clarifies that the first and second criteria apply respectively to the number of households receiving LIHEAP heating, cooling, and crisis assistance, and to the amount of LIHEAP heating, cooling, and crisis assistance, provided by the grantee’s

Federal LIHEAP allotment from regular and supplemental appropriations. It clarifies that assistance provided from other sources, such as the grantee’s own funds, oil overcharge funds, (other) leveraged resources, and leveraging incentive funds, should not be included under these criteria.

The third criterion requires that the weatherization activities have been shown to produce measurable savings in energy expenditures. It applies to all LIHEAP weatherization activities to be carried out by the grantee during the fiscal year for which the waiver is requested, not just to activities proposed to be carried out with amounts above 15 percent of the grantee’s LIHEAP funds. Grantees will not meet this criterion unless all of their LIHEAP weatherization activities for the fiscal year have been shown to produce measurable savings.

The LIHEAP statute and the HHS block grant regulations do not name specific activities which are allowable as weatherization and other energy-related home repair under the LIHEAP program. However, the statute and Federal regulations for the low-income weatherization assistance program (LIWAP) administered by the Department of Energy (DOE) do name certain weatherization measures that are allowable under that program. The statute authorizing LIWAP is the Energy Conservation in Existing Buildings Act of 1976 (title IV of the Energy Conservation and Production Act, Public Law 94–385, as amended; 42 U.S.C. 6851 et seq.). The Federal regulations implementing DOE’s Weatherization Assistance for Low-Income Persons are found at 10 CFR part 440. These regulations include “Standards for Weatherization Materials” at Appendix A. In addition, DOE has allowed other activities by program notice and correspondence.

The DOE weatherization statute and regulations apply specifically to LIWAP, and the LIHEAP statute and regulations apply to LIHEAP. However, to promote consistency in their weatherization programs, LIHEAP grantees may choose to use certain DOE weatherization provisions as guidance in administering their LIHEAP weatherization programs, as long as these provisions are consistent with the LIHEAP statute and regulations.

(Public Law 103–252—the Human Services Amendments of 1994—allows HHS to permit LIHEAP grantees to use LIHEAP weatherization funds under DOE LIWAP rules that are not consistent with the LIHEAP statute. HHS plans to address this new option

in a proposed rule on Public Law 103–252.)

HHS will accept the following as weatherization activities which have been shown to produce measurable savings in energy expenditures, as long as these activities also are consistent with the requirements of the LIHEAP statute and regulations: installation of the specific materials meeting the specific standards listed in Appendix A of the DOE weatherization regulations at 10 CFR part 440; installation of materials meeting the specific standards incorporated by reference in Appendix A; and weatherization activities specifically allowed by official DOE correspondence and memoranda. LIHEAP grantees requesting a waiver of the LIHEAP statutory weatherization maximum who propose to carry out these weatherization activities may cite these sources as the criteria under which they have determined that these activities have been shown to produce measurable savings.

In addition to listing requirements for a “standard” weatherization waiver for grantees that meet the three criteria discussed above, this final rule sets criteria for a “good cause” waiver for grantees that wish to use more than 15 percent of their LIHEAP funds for weatherization, but do not meet one or more of the three criteria for a “standard” waiver. As noted earlier in this preamble, the final rule includes additional requirements at section 96.83(e) for a “good cause” waiver, regarding the length of the grantee’s application period and the grantee’s outreach efforts, for heating, cooling, and/or crisis assistance applications, from the preceding fiscal year to the fiscal year for which the waiver is requested.

Requests for both “standard” and “good cause” waivers must include comparison of the grantee’s best estimates of service and benefit totals for the year for which the waiver is requested with service and benefit totals for the preceding fiscal year. The criteria for a “good cause” waiver include the requirements that grantees explain the reasons they are not maintaining the prior year’s service and/or benefit levels, as appropriate, demonstrating good cause for failing to maintain these levels and justifying use of additional funds for weatherization. Reasons for failing to maintain service levels might include reduction in need and/or fewer applications for assistance due to improvement in economic conditions and decline in unemployment, warmer than normal winter weather, and/or lower home energy costs for low-income households. As indicated earlier in this