

preamble, we also will consider arguments and documentation (e.g., cost benefit analysis) that greater benefits will accrue to recipients from use of funds for weatherization than for cash assistance. Further, we will consider arguments that service or benefit levels were higher in the preceding year because of supplemental appropriations enacted in response to unusual conditions, such as abnormally cold winter weather and/or large fuel price increases.

"Good cause" waiver requests also must include a comparison of the grantee's LIHEAP heating, cooling, and crisis assistance eligibility standards (eligibility criteria), benefit levels, application periods, and outreach efforts for the fiscal year of the waiver request and for the preceding fiscal year. If the eligibility standards were less restrictive, the benefit levels were higher, the application periods were longer, and/or the outreach efforts were greater for one or more of these program components in the preceding year, the "good cause" waiver request must include an explanation demonstrating good cause why a waiver should be granted in spite of this fact. In addition, other actions that led to a reduction in the number of applications for heating, cooling, and/or crisis assistance must be addressed. We will review this information to determine whether a waiver would be consistent with congressional intent to maintain service and benefit levels.

"Good cause" documentation should cite measurable, quantified data, and the sources for these data. For example, grantees documenting reduction in need for cash benefits may provide comparison of unemployment statistics, Aid to Families with Dependent Children (AFDC) and other public assistance reciprocity data, and the number of applications for LIHEAP assistance, for the current and the preceding fiscal year. Grantees documenting milder weather may cite National Weather Service data comparing heating or cooling degree days for their service area, as appropriate. Grantees documenting decreased home energy costs preferably should cite actual prices/costs in the local service area, as discussed earlier in this preamble.

Public Inspection and Comment

Consistent with the requirements and legislative history of Public Law 101-501, the final rule maintains the requirement from the interim rule that grantees provide opportunity for timely and meaningful public review of, and comment on, their proposed

weatherization waiver requests. The final rule adds the requirement that proposed waiver requests, and any preliminary waiver requests, be made available until at least March 15 of the fiscal year for which the waiver will be requested. As discussed earlier in this preamble, it also adds the requirement that written public comments on the proposed waiver request must be made available for public inspection upon their receipt by grantees, as must any summaries prepared of these written comments, and transcripts and/or summaries of any verbal comments made on the request at public meetings or hearings. Consistent with House of Representatives Conference Report 101-816, this public comment procedure does not require hearings. Once grantees have submitted waiver requests to HHS, copies of the entire waiver request submission must be made available for public inspection.

For example, we expect grantees to provide notification about proposed waiver requests with enough lead time to allow interested parties a reasonable period in which to comment. We also expect grantees to specify what a LIHEAP weatherization waiver request is the (or a) topic of a meeting or request for comments, rather than simply to indicate that issues of general social services interest are involved.

The final rule requires at section 96.83(c) that grantees include with their waiver requests a description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies or summaries of public comments received, a statement of the method for reviewing public comments, and a statement of the changes, if any, that were made in response to these comments. Also, as discussed earlier in this preamble, the final rule adds the requirement that waiver requests include transcripts and/or summaries of any comments made on the request at public meetings or hearings.

Submission and Review of Waiver Requests

Requests for waiver of the weatherization maximum must be made by the grantee's chief executive officer or designee, in writing. They should be sent to the Director, Office of Community Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

HHS may require additional clarification or documentation as it determines necessary to decide whether

a grantee fully satisfies the appropriate waiver requirements.

We will review all requests and make a decision within a maximum of 45 days of receipt of a completed request. We expect that most requests will be handled much more quickly than this. A need for additional information from the grantee will delay the start of this time period and delay the decision.

HHS will approve all waiver requests that, in its judgment, meet all statutory and regulatory requirements for either a "standard" or a "good cause" waiver and that demonstrate adequate solicitation and consideration of public comments.

No waiver will be granted after the end of the fiscal year for which the funds are appropriated. Accordingly, waiver requests must be submitted in sufficient time before the end of the fiscal year to allow for HHS review and grantee obligation of funds that cannot be carried forward.

Effective Period

Waivers will be effective from the date of HHS's written approval until the funds are obligated in accordance with the LIHEAP statute and regulations.

A grantee that has received a waiver is not required to use the full approved amount for weatherization. If a grantee decides to use less than the approved waiver amount for weatherization, it should amend its LIHEAP plan to reflect this decision.

Funds for which a weatherization waiver is granted may be carried over to the following fiscal year, consistent with standard statutory and regulatory requirements for obligation and carryover of LIHEAP funds, and may retain their designation as funds to be used for weatherization, if the grantee so chooses. However, any carried-forward "waiver funds" that retain this designation may not be considered "funds available" or "funds allotted" for the purpose of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

Section 96.84 Miscellaneous

The January 1992 interim final rule consolidated three brief regulatory provisions under section 96.84. They are: a provision relating to rights and responsibilities of territories, a provision concerning applicability of the LIHEAP statutory assurances, and a provision concerning prevention of waste, fraud, and abuse in grantee LIHEAP programs. We consolidated these provisions due to space limitations in the LIHEAP portion of the block grant regulations. Also, the