

material/substantive changes of fact have occurred in information included in the preliminary waiver request since its submission, and, if so, a description of the change(s).

(10) To complete a preliminary waiver request: A description of any other changes to the preliminary request.

(d) *“Standard waiver.”* If the Department determines that a grantee has met the three criteria in paragraph (c)(2) of this section, has provided all information required by paragraph (c) of this section, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97-35 (42 U.S.C. 8621 *et seq.*) and 45 CFR part 96, the Department will approve a “standard” waiver.

(e) *“Good cause” waiver.*

(1) If a grantee does not meet one or more of the three criteria in paragraph (c)(2) of this section, then the grantee may submit documentation that demonstrates good cause why a waiver should be granted despite the grantee’s failure to meet this criterion or these criteria. “Good cause” waiver requests must include the following information, in addition to the information specified in paragraph (c) of this section:

(i) For each criterion under paragraph (c)(2) of this section that the grantee does not meet, an explanation of the specific reasons demonstrating good cause why the grantee does not meet the criterion and yet proposes to use additional funds for weatherization, citing measurable, quantified data, and stating the source(s) of the data used;

(ii) A statement of the grantee’s LIHEAP heating, cooling, and crisis assistance eligibility standards (eligibility criteria) and benefits levels for the fiscal year for which the waiver is requested and for the preceding fiscal year; and, if eligibility standards were less restrictive and/or benefit levels were higher in the preceding fiscal year for one or more of these program components, an explanation of the reasons demonstrating good cause why a waiver should be granted in spite of this fact;

(iii) A statement of the grantee’s opening and closing dates for applications for LIHEAP heating, cooling, and crisis assistance in the fiscal year for which the waiver is requested and in the preceding fiscal year, and a description of the grantee’s outreach efforts for heating, cooling, and crisis assistance in the fiscal year for which the waiver is requested and in the preceding fiscal year, and, if the grantee’s application period was longer

and/or outreach efforts were greater in the preceding fiscal year for one or more of these program components, an explanation of the reasons demonstrating good cause why a waiver should be granted in spite of this fact; and

(iv) If the grantee took, or will take, other actions that led, or will lead, to a reduction in the number of applications for LIHEAP heating, cooling, and/or crisis assistance, from the preceding fiscal year to the fiscal year for which the waiver is requested, a description of these actions and an explanation demonstrating good cause why a waiver should be granted in spite of these actions.

(2) If the Department determines that a grantee requesting a “good cause” waiver has demonstrated good cause why a waiver should be granted, has provided all information required by paragraphs (c) and (e)(1) of this section, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97-35 (42 U.S.C. 8621 *et seq.*) and 45 CFR part 96, the Department will approve a “good cause” waiver.

(f) *Approvals and disapprovals.* After receiving the grantee’s complete waiver request, the Department will respond in writing within 45-day, informing the grantee whether the request is approved on either a “standard” or “good cause” basis. The Department may request additional information and/or clarification from the grantee. If additional information and/or clarification is requested, the 45-day period for the Department’s response will start when the additional information and/or clarification is received. No waiver will be granted for a previous fiscal year.

(g) *Effective period.* Waivers will be effective from the date of the Department’s written approval until the funds for which the waiver is granted are obligated in accordance with title XXVI of Public Law 97-35 (42 U.S.C. 8621 *et seq.*) and 45 CFR part 96. Funds for which a weatherization waiver was granted that are carried over to the following fiscal year and used for weatherization shall not be considered “funds allotted” or “funds available” for the purposes of calculating the maximum amount that may be used for weatherization in the succeeding fiscal year.

5. Section 96.87 is revised as follows:

**§ 96.87 Leveraging incentive program.**

(a) *Scope and eligible grantees.*

(1) This section concerns the leveraging incentive program authorized by section 2607A of Public Law 97-35 (42 U.S.C. 8626(a)).

(2)(i) The only entities eligible to receive leveraging incentive funds from the Department are States (including the District of Columbia), Indian tribes, tribal organizations, and territories that received direct Federal LIHEAP funding under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)) in both the base period for which leveraged resources are reported, and the award period for which leveraging incentive funds are sought; and tribes and tribal organizations described in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section.

(ii) Indian tribes that received LIHEAP services under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)) through a directly-funded tribal organization in the base period for which leveraged resources are reported, and receive direct Federal LIHEAP funding under section 2602(b) in the award period, will receive leveraging incentive funds allocable to them if they submit leveraging reports meeting all applicable requirements. If the tribal organization continues to receive direct funding under section 2602(b) in the award period, the tribal organization also will receive incentive funds allocable to it if it submits a leveraging report meeting all applicable requirements. In such cases, incentive funds will be allocated among the involved entities that submit leveraging reports, as agreed by these entities. If they cannot agree, HHS will allocate incentive funds based on the comparative role of each entity in obtaining and/or administering the leveraged resources, and/or their relative number of LIHEAP-eligible households.

(iii) If a tribe received direct Federal LIHEAP funding under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)) in the base period for which resources leveraged by the tribe are reported, and the tribe receives LIHEAP services under section 2602(b) through a directly-funded tribal organization in the award period, the tribal organization will receive leveraging incentive funds on behalf of the tribe for the resources if the tribal organization submits a leveraging report meeting all applicable requirements.

(b) *Definitions.*

(1) *Award period* means the fiscal year during which leveraging incentive funds are distributed to grantees by the Department, based on the countable leveraging activities they reported to the Department for the preceding fiscal year (the base period).