

§ 96.83 Increase in maximum amount that may be used for weatherization and other energy-related home repair.

(a) *Scope.* This section concerns requests for waivers increasing from 15 percent to up to 25 percent of LIHEAP funds allotted or available to a grantee for a fiscal year, the maximum amount that grantees may use for low-cost residential weatherization and other energy-related home repair for low-income households (hereafter referred to as “weatherization”), pursuant to section 2605(k) of Public Law 97-35 (42 U.S.C. 8624(k)).

(b) *Public inspection and comment.* Before submitting waiver requests to the Department, grantees must make proposed waiver requests available for public inspection within their jurisdictions in a manner that will facilitate timely and meaningful review of, and comment upon, these requests. Written public comments on proposed waiver requests must be made available for public inspection upon their receipt by grantees, as must any summaries prepared of written comments, and transcripts and/or summaries of verbal comments made on proposed requests at public meetings or hearings. Proposed waiver requests, and any preliminary waiver requests, must be made available for public inspection and comment until at least March 15 of the fiscal year for which the waiver is to be requested. Copies of actual waiver requests must be made available for public inspection upon submission of the requests to the Department.

(c) *Waiver request.* After March 31 of each fiscal year, the chief executive officer (or his or her designee) may request a waiver of the weatherization obligation limit for this fiscal year, if the grantee meets criteria in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section, or can show “good cause” for obtaining a waiver despite a failure to meet one or more of these criteria. (If the request is made by the chief executive officer's designee and the Department does not have on file written evidence of the designation, the request also must include evidence of the appropriate delegation of authority.) Waiver requests must be in writing and must include the information specified in paragraphs (c)(1) through (c)(6) of this section. The grantee may submit a preliminary waiver request for a fiscal year, between February 1 and March 31 of the fiscal year for which the waiver is requested. If a grantee chooses to submit a preliminary waiver request, the preliminary request must include the information specified in paragraphs (c)(1) through (c)(6) of this section; in addition, after March 31 the chief executive officer (or his or her designee) must submit the information specified in paragraphs (c)(7) through (c)(10) of this section, to complete the preliminary waiver request.

(1) A statement of the total percent of its LIHEAP funds allotted or available in the fiscal year for which the waiver is requested, that the grantee desires to use for weatherization.

(2) A statement of whether the grantee has met each of the following three criteria:

(i) In the fiscal year for which the waiver is requested, the combined total (aggregate) number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits that are provided from Federal LIHEAP allotments from regular and supplemental appropriations will not be fewer than the combined total (aggregate) number that received such benefits in the preceding fiscal year;

(ii) In the fiscal year for which the waiver is requested, the combined total (aggregate) amount, in dollars, of LIHEAP heating, cooling, and crisis assistance benefits received by the grantee's service population that are provided from Federal LIHEAP allotments from regular and supplemental appropriations will not be less than the combined total (aggregate) amount received in the preceding fiscal year; and

(iii) All LIHEAP weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested have been shown to produce measurable savings in energy expenditures.

(3) With regard to criterion in paragraph (c)(2)(i) of this section, a statement of the grantee's best estimate of the appropriate household totals for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(4) With regard to criterion in paragraph (c)(2)(ii) of this section, a statement of the grantee's best estimate of the appropriate benefit totals, in dollars, for the fiscal year for which the waiver is requested and for the preceding fiscal year.

(5) With regard to criterion in paragraph (c)(2)(iii) of this section, a description of the weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested (with all LIHEAP funds proposed to be used for weatherization, not just with the amount over 15 percent), and an explanation of the specific criteria under which the grantee has determined whether these activities have been shown to produce measurable savings in energy expenditures.

(6) A description of how and when the proposed waiver request was made available for timely and meaningful public review and comment, copies and/or summaries of public comments received on the request (including transcripts and/or summaries of any comments made on the request at public meetings or hearings), 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.

(7) To complete a preliminary waiver request: Official confirmation that the grantee wishes approval of the waiver request.

(8) To complete a preliminary waiver request: A statement of whether any public comments were received after preparation of the preliminary waiver request and, if so, copies and/or summaries of these comments (including transcripts and/or summaries of any comments made on the request at public meetings or hearings), and a statement of the changes, if any, that were made in response to these comments.

(9) To complete a preliminary waiver request: A statement of whether any 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 days, 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.

[60 FR 21358, May 1, 1995; 60 FR 33260, June 27, 1995]