



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 09-1B
EFFECTIVE DATE: March 12, 2009

SUBJECT: GRANT GUIDANCE TO ADMINISTER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDING

PURPOSE: To issue grant guidance and management information for accessing funding under the American Recovery and Reinvestment Act of 2009 (Recovery Act). This guidance should be used in conjunction with **Weatherization Program Notice (WPN) 09-1A**, Grant Guidance for Program Years 2008 and 2009 to Access the \$250 Million Supplemental Funding, dated October 27, 2008, and **WPN 09-1**, Program Year 2009 Weatherization Grant Guidance, dated November 17, 2008. Both notices are provided as attachments to this Guidance.

SCOPE: The provisions of this guidance apply to States or other entities named in the Notification of Grant Award as the recipients of financial assistance under the Department of Energy (DOE) Weatherization Assistance Program (WAP), including the recently added Territories.

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer the Weatherization Assistance Program. All grant awards made under this Program shall comply with applicable law including regulations contained in 10 CFR Part 440 (issued February 1, 2002), the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, the American Recovery and Reinvestment Act of 2009 and other procedures applicable to this regulation as DOE may, from time-to-time, prescribe for the administration of financial assistance.

BACKGROUND: The Weatherization Assistance Program has been assigned a significant role in the American Recovery and Reinvestment Act of 2009 (Recovery Act). The successful execution of this Program is an important part of achieving the goals in the Recovery Act set forth below. The Recovery Act will increase the DOE portion of funding for local weatherization efforts by more than twenty times over a two year period based on FY 08 funding levels.

With the additional funds, it is expected that each Grantee will ramp up to meet the goals and expectations laid out for this Program. Project Management Center (PMC) Project Officers and other DOE staff and contractors will assist Grantees throughout the ramp up process. In recent years, several Grantees have received large funding increases for weatherization from non-DOE sources, and thus have gone through a major ramp-up process similar to what will be required of all Grantees with the Recovery Act funding. To assist the network with Recovery Act ramp-up efforts, a variety of resources provided by these Grantees, based on their experiences, will be posted on www.waptac.org.

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009: On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, Public Law 111-005. The purposes of the American Recovery and Reinvestment Act of 2009 are: “To preserve and create jobs and promote economic recovery; to assist those most impacted by the recession; to provide investments needed to increase economic efficiency by spurring technological advances in science and health; to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and, to stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.” The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available for activities that can be initiated not later than June 17, 2009.

With respect to Weatherization, the Act provides \$5 billion in funding and includes the following amendments to the current statute:

**SEC. 407. WEATHERIZATION ASSISTANCE PROGRAM
AMENDMENTS**

(a) INCOME LEVEL – Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking "150 percent" both places it appears and inserting "200 percent".

(b) ASSISTANCE LEVEL PER DWELLING UNIT – Section 415(c)(1) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(1)) is amended by striking "\$2,500" and inserting "\$6,500".

(c) EFFECTIVE USE OF FUNDS – In providing funds made available by this Act for the Weatherization Assistance Program, the Secretary may encourage States to give priority to using such funds for the most cost-effective efficiency activities, which may include insulation of attics, if, in the Secretary's view, such use of funds would increase the effectiveness of the program.

(d) TRAINING AND TECHNICAL ASSISTANCE – Section 416 of the Energy Conservation and Production Act (42 U.S.C. 6866) is amended by striking "10 percent" and inserting "up to 20 percent".

(e) ASSISTANCE FOR PREVIOUSLY WEATHERIZED DWELLING UNITS – Section 415(c)(2) of the Energy Conservation and Production Act (42 U.S.C. 6865(c)(2)) is amended by striking "September 30, 1979" and inserting "September 30, 1994".

GRANT APPLICATION: Due to the extraordinary expansion of Grantee and subgrantee activities required by the Recovery Act, in developing the required application package all Grantees should use the State Plan process to identify the means by which the objectives of the Recovery Act can best be accomplished.

State Plans should explicitly recognize the challenges faced by Grantees in areas that include, but are not limited to, work-force training, monitoring and oversight, quality control, intake and qualification, management information systems, and equipment and supplies, and how these challenges can be met. In addition, State Plans should include provisions to ensure full compliance with the Recovery Act reporting requirements. These plan elements are critical not only to DOE's efforts to provide systematic support and assistance to the Weatherization Grantee and subgrantee network in accomplishing the goals of the Recovery Act, but to ensuring the transparency and accountability that are essential features of the Act.

ADDING THE TERRITORIES: The Energy Independence and Security Act of 2007, Section 411(c) adds Puerto Rico and the territories of the U.S. to the definition of "State" for the purpose of the Weatherization Assistance Program. On March 12, 2009 DOE issued a final rule adding Puerto Rico and the territories to the definition of "State".

PRODUCTION: There is a strong interest by both the Administration and Congress to track the performance of Grantees in the production of weatherized units. DOE will closely monitor Grantee performance through continual communications and monitoring. It is imperative that Grantees and local agencies submit necessary reports on time, in keeping with the intent of the Recovery Act.

DOE APPROPRIATIONS: On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009, Public Law 111-005 which provides \$5 billion in funding for Weatherization. On September 30, 2008, the President signed into law H.R. 2638, the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009, Public Law 110-329, which currently goes through March 6, 2009. Results of the final appropriations bill for Fiscal Year (FY) 2009 will be transmitted in Weatherization Program Notice 09-2.

Grantees are to submit a separate plan for Recovery Act funds under Funding Opportunity Announcement No. DE-FOA-0000051.

ALLOCATION FORMULA: Grantees will notice a significant shift in funding from previous years. In part, this is because the level of funding for FY 2009, including the Recovery Act, triggers the 1995 revised allocation formula. These formula changes increase the overall equity of the allocation of funds among the Grantees by providing warm-weather States a greater share of the funding, while protecting existing program capacity in cold-weather States.

The formula also has been revised with the Recovery Act because it raised the income eligibility for the Program from 150% of poverty to 200% of poverty. The Department of Energy has modified the inputs to the allocation formula using the best available data to take this change in eligibility standards into account.

Initial estimates using 200% of poverty instead of the 150% of poverty show a national average of 54% more low-income households eligible for Weatherization. The increase of eligible households was not equally distributed across all States.

PREVAILING WAGES: All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

WEBSITE INFORMATION: For the purposes of transparency, the Recovery Act requires a website to be established and maintained to track how and where tax dollars are being spent. The url for this website is <http://www.recovery.gov/>. Grantees are required to provide information regarding the expenditure of Recovery funds through this website.

The transparency requirements of the Recovery Act are intended to ensure that the crucial accountability objectives are met:

- Funds are awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and uses of all funds are transparent to the public, and the public benefit of these funds are reported clearly, accurately, and in a timely manner;
- Funds are used for authorized purposes, and instances of fraud, waste, error, and abuse are mitigated;
- Projects funded under this Act avoid unnecessary delays and cost overruns; and
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

These stipulations may require additional information be collected from the Grantees and subgrantees. DOE will provide Grantees with guidance on any additional reporting requirements, once available.

TABLE OF CONTENTS

1.0	Funding
1.1	General Funding
1.2	Federally Appropriated Funds
1.3	Adjusted Average
1.4	Funds for Administrative Purposes
1.5	Petroleum Violation Escrow (PVE) Funds
1.6	Program Income
1.7	Leveraging and Leveraged Resources
1.8	Training and Technical Assistance Funds
2.0	Grant Application
2.1	General
2.2	Intergovernmental Review
2.3	Application Package
2.4	Public Hearing
2.5	Budget
2.6	Liability Insurance
2.7	Financial Audits
3.0	Training and Technical Assistance (T&TA) Plan
3.1	Basic
3.2	Client Education
3.3	Program Evaluation
4.0	Grantee Program Oversight (Program Monitoring)
5.0	Policy, Program Guidance and Regulatory Changes
5.1	Temporary Disqualification of Certain Newly Legalized Aliens from Receipt of Weatherization Benefits
5.2	Multi-Family Eligibility
5.3	Procurement of Building Insulation Products and Materials Containing Recovered Materials
5.4	Rental Requirements
5.5	Energy Audit Criteria
5.6	Use of Weatherization Funds for Renewable Energy Systems
5.7	Disaster Relief
5.8	Energy Crisis Relief
5.9	Determining Eligibility Levels and Defining Income
5.10	Determining Priority Service
5.11	Fuel Switching
5.12	Energy-Related Health and Safety
5.13	Lead Paint Hazard
5.14	Energy-Related Mold and Moisture Impacts
5.15	Reweathering
5.16	Vehicle Purchases
5.17	Policy Advisory Council
5.18	Electric Base Load
5.19	Prevailing Wages
5.20	Administrative Costs
5.21	Adding New Subgrantees
6.0	Reporting
6.1	Reporting Requirements
6.2	Reporting DOE Completed Units
7.0	Protection of Whistleblowers
8.0	Other Provisions
8.1	False Claims Act
8.2	Information in Support of Recovery Act Reporting Obligations
8.3	Access to Records

1.0 FUNDING

1.1 GENERAL FUNDING: No changes were made to this section.

1.2 FEDERALLY APPROPRIATED FUNDS: The Recovery Act provided WAP with \$5 billion. Unless stated otherwise herein, this guidance, along with WPN 09-1 and WPN 09-1A will apply to all FY 2009 allocations.

In keeping with the intent of this funding, Congressional and Department goals are for all Recovery funds to be obligated by September 30, 2010. Allocations for the \$5 billion are attached to this guidance and Grantees should plan accordingly.

1.3 ADJUSTED AVERAGE: In accordance with the Recovery Act, the average expenditure limit per home has been increased to \$6,500 to achieve greater energy savings with WAP funds. The adjusted average expenditure limit per home for all funds appropriated and/or used for PY 2009 is now \$6,500. The Recovery Act did not specifically address the renewable energy measures average cost per home.

1.4 FUNDS FOR ADMINISTRATIVE PURPOSES: No changes were made to this section.

1.5 PETROLEUM VIOLATION ESCROW (PVE) FUNDS: No changes were made to this section.

1.6 PROGRAM INCOME: No changes were made to this section.

1.7 LEVERAGING AND LEVERAGED RESOURCES: Even with the increase in funding, Grantees are reminded that leveraging remains an important component of the Program. Otherwise, there are no changes to this section.

1.8 TRAINING AND TECHNICAL ASSISTANCE FUNDS: The Recovery Act adjusted the allowable percentage DOE may permit the Weatherization Assistance Program to use for T&TA. In the Recovery Act, allowance is made for the Program not to exceed 20 percent of the funds appropriated for T&TA activities. All other aspects of T&TA allowable expenditures remain the same. The percentage of funds for PY 09 reflects the full percentage of T&TA. To effectively address the Weatherization network's needs, DOE will retain 3 percent of the T&TA for national training and technical assistance initiatives and transmit 17 percent to the Grantees.

2.0 GRANT APPLICATION

2.1 GENERAL: No changes were made to this section.

2.2 INTERGOVERNMENTAL REVIEW: Grantees are encouraged to seek priority

and expedited attention in all State processes for Recovery Act efforts, including Intergovernmental Review, if required.

2.3 APPLICATION PACKAGE:

For Recovery Act funding, new grant awards will be issued. Grantees will need to submit an initial application package as specified in the Funding Opportunity Announcement issued by the National Energy Technology Laboratory for the initial disbursement of funds. New awards will direct Grantees to spend obligated funds in accordance with eligible activities allowed by law and in accordance with applicable guidance and regulations. The new awards will also incorporate specific requirements related to the tracking and reporting of Recovery Act funding.

A complete application package will be due within 60 days of issuance of the Funding Opportunity Announcement. The detailed application process will be set forth in the announcement.

2.4 PUBLIC HEARING: All grantees are required to hold a public hearing on funding received through the Recovery Act prior to the submission of their application package. There are no other changes to this section.

Grantees are encouraged to work closely with their subgrantee network to assure that work can be completed within the designated time schedule. Individual subgrantee plans for ramp up are strongly suggested. These plans should to the maximum extent possible identify the increased number of workers/contractors required to effectively utilize PY 2009 funds in the time required and how these workers/contractors will be identified and recruited. The plans also should identify how training of the current and expanded workforce (employees and contractors) will be conducted. Grantees should also build in some flexibility to add or change subgrantees, if necessary, to meet Recovery Act goals. Selection of subgrantees must still meet the requirements outlined in Section 440.14 of the Weatherization rule.

2.5 BUDGET: The intent of the Recovery Act is to put the funding into the economy as quickly as possible, while spending the funds efficiently and wisely. Expending the Recovery Act funding is the first priority; therefore, Grantees are directed to expend the Recovery Act funds first.

Grantees must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Recovery Act funds can be used in conjunction with other funding sources as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and OMB Guidance.

DOE intends to obligate the Recovery Act funds based on the following milestones:

- 10% of total allocation at time of initial award
- 40% of total allocation upon DOE approval of the State Plan (due within 60 days after FOA issuance)
- Balance of total allocation based on DOE review of progress in obligating the funds, complying with all reporting requirements, and creating jobs. If Progress Reviews reveal deficiencies, such as funds not disbursed, jobs not created, insufficient technical monitoring, or failure to meet reporting requirements, DOE reserves the right to place a hold on current balances, and withhold further funding until deficiencies are corrected.

DOE will revise the current monitoring procedure for WAP grants and advise Grantees accordingly. Grantees should expect more frequent and more detailed monitoring by DOE. DOE will conduct periodic progress reviews to assess Grantees compliance with Program requirements. These reviews will include monitoring of subgrantee performance as well. Technical assistance will be provided to assist Grantees and subgrantees in meeting performance requirements.

- **LIABILITY INSURANCE:** No changes were made to this section.

- **FINANCIAL AUDITS:** No changes were made to this section.

However, Grantees

should be cognizant that many of the subgrantees that were previously below the OMB Circular A-133 threshold are now subject to these requirements.

3.0 TRAINING AND TECHNICAL ASSISTANCE (T&TA) PLAN

3.1 BASIC: T&TA activities are intended to maintain or increase the efficiency, quality and effectiveness of the Weatherization Program at all levels. Such activities should be designed to maximize energy savings, minimize production costs, improve program management and crew/contractor “quality of work,” and/or reduce the potential for waste, fraud, abuse and mismanagement. The local service providers should be the primary recipients of T&TA activities.

The T&TA funds may also be used to train contractors at the local agency level participating in the Program. In making the determination to pay for contractor training, Grantees and subgrantees should secure a retention agreement in exchange for the training. The contract agreement should stipulate that contractors will work in the Program, at a minimum, for a specific amount of time and should align with the cost of the T&TA provided.

Section II.6 of the Annual File, which describes specific activities, and Section III.5.4 of the “On-file” Information, which describes the overall approach in the current Application and Forms Package, should be used to describe how Grantees will identify

and address the needs of the subgrantees in this area. At a minimum, such a description must include the following:

- A. How a Grantee assesses the training needs of its subgrantees and contractors in light of increased funding;
- B. What training the Grantee will provide for subgrantee staff and contractors and requirements for attendance;
- C. Whether the Grantee requires any certification or training of subgrantee staff and contractors prior to hire or by date certain of hire.

3.2 CLIENT EDUCATION: No changes were made to this section.

3.3 PROGRAM EVALUATION: No changes were made to this section.

4.0 GRANTEE PROGRAM OVERSIGHT (Program Monitoring)

The Grantee must conduct comprehensive monitoring of each subgrantee at least once a year. The Grantee's Plan must include a monitoring plan to provide adequate oversight of use of DOE funds by subgrantees. The comprehensive monitoring must include review of client files and subgrantees records, as well as inspection of *at least* 5 percent of the completed units or units in the process of being weatherized. DOE strongly encourages a higher percentage of units be inspected. If inspection reveals quality control or other problems, Grantee shall increase the number of units monitored and frequency of inspection until all issues are resolved. Detailed review of subgrantee records and inspections must be maintained by the Grantee and be available at the request of DOE monitors.

5.0 POLICY, PROGRAM GUIDANCE, AND REGULATORY CHANGES

5.1 TEMPORARY DISQUALIFICATION OF CERTAIN NEWLY LEGALIZED ALIENS FROM RECEIPT OF WEATHERIZATION BENEFITS: No changes were made to this section.

5.2 MULTI-FAMILY ELIGIBILITY: In light of the Recovery Act funding, DOE suggests Grantees review any policies that are beyond the DOE minimum requirement that may impede the ability of the Grantee to meet production expectations (e.g., landlord contributions, percentage set asides, etc.). Grantees should promptly notify DOE of any such policies or other obstacles that would prevent or restrict Grantee from achieving projected production levels.

5.3 PROCUREMENT OF BUILDING INSULATION PRODUCTS AND

MATERIALS CONTAINING RECOVERED MATERIALS: No changes were made to this section.

5.4 RENTAL REQUIREMENTS: No changes were made to this section.

5.5 ENERGY AUDIT CRITERIA: No changes were made to this section.

5.6 USE OF WEATHERIZATION FUNDS FOR RENEWABLE ENERGY SYSTEMS: No changes were made to this section.

5.7 DISASTER RELIEF: No changes were made to this section.

5.8 ENERGY CRISIS RELIEF: No changes were made to this section.

5.9 DETERMINING ELIGIBILITY LEVELS AND DEFINING INCOME: The Recovery Act amended the DOE Weatherization eligibility criterion by striking “150 percent” in both places it appears and inserting “200 percent.” This raises the eligibility criterion for DOE Weatherization from 150 percent of poverty to 200 percent of poverty.

This may also cause the Low-Income Home Energy Assistance Program eligibility no longer to be the upper ceiling on the definition of income in any given state. Beginning with issuance of this guidance, the income eligibility level for the DOE Weatherization Program is 200 percent of the Poverty Income Guidelines.

In determining the level of eligibility, the Grantee may use either the DOE criteria of up to 200 percent of poverty or the LIHEAP criteria. This determination, made by the Grantee, must be applied throughout the Grantee’s entire service territory. Grantees shall require all subgrantees to maintain records documenting weatherization assistance recipients’ eligibility. Grantees shall require subgrantees to reimburse DOE funds provided to pay the cost of weatherizing a unit if it is determined that the family unit occupying the residence was not eligible for weatherization assistance at the time such services were provided.

5.10 DETERMINING PRIORITY SERVICE: No changes were made to this section.

5.11 FUEL SWITCHING: No changes were made to this section.

5.12 ENERGY-RELATED HEALTH AND SAFETY: No changes were made to this section.

5.13 LEAD PAINT HAZARD: Not related to the Recovery Act, but since issuance of WPN 09-1, the Environmental Protection Agency (EPA) has recognized two currently available lead test kits for use in determining whether lead paint exists in a pre-1978 house. One of the kits is available for use in only one state—Massachusetts. The other test kit is available at hardware and home renovation stores in most areas and also available online.

EPA intends to release the names of additional EPA-recognized test kits in the near future, which will be posted at <http://www.epa.gov/lead>. DOE will notify Grantees of their availability. Further information on Lead Paint and Lead Safe Weatherization can be found in WPN 09-6 and further guidance on the use of these kits will be issued as WPN 09-6A.

5.14 ENERGY-RELATED MOLD AND MOISTURE IMPACTS: No changes were made to this section.

5.15 REWEATHERIZATION: The Recovery Act amended this provision by striking “September 30, 1979” and inserting “September 30, 1994”.

5.16 VEHICLE AND EQUIPMENT OVER \$5000 PURCHASES: The regulations and guidance that include the requirement for approval for purchase of vehicles and equipment greater than \$5,000 are as follows. (10 CFR Part 440.18 (c) (6) and Weatherization Program Notice 05-1, Program Year 2005 Weatherization Grant Guidance, dated November 12, 2004, explains why this requirement could not be eliminated.)

For approval of Vehicle & Capital Equipment Purchases, the minimum information needed by DOE is:

- Name of requesting Grantee and Local Agency
- Where the vehicle will be used and how it will be used – Specify, full or part time use in Weatherization Program
- A statement of whether this is a replacement or an expansion for ramp-up. If this is a replacement, how is the trade-in being addressed?
- Brief description of how the procurement will be done, and confirmation that Agency, State and Federal procurement guidelines will be met
 - 2 CFR 225 (former OMB Circular A-87) – Cost Principles for State, Local, and Indian Tribal Governments
 - 2 CFR 230 (former OMB Circular A-122) – Cost Principles for Non-Profit Organizations
- What the funding source(s) will be (e.g., DOE Weatherization Program Operations funds). Subgrantee T&TA funds are not an allowable option as noted in bold at the end of Section 2.5 in the annual guidance.
- Copies of bid specs (vehicle description with options requested) and bids received
- Statement that lowest bid will be selected, or a sufficient justification of the “best value selection” if lowest bid not recommended for DOE approval.

This information can be submitted via e-mail, fax, or mailed letter, but the Grantee recommendation for approval must be submitted in writing to the applicable DOE Weatherization PMC Project Officer.

If a Grantee submits the above information via e-mail or fax, the DOE Project Officer should approve the request within three business days; pending all of the minimum information is adequately provided. If extenuating circumstances arise, the Project Officer will follow-up within three days, requesting additional details on the purchase.

Several Grantees have developed forms that help facilitate the process for subgrantees and make the process more consistent. Contact your PMC Project Officer for examples.

Grantees, as well as subgrantees, should consider and weigh the options on leasing versus purchasing. DOE would not need to approve a vehicle lease that does not include a “purchase option.” But if a lease-purchase option is proposed and even if the purchase price is as small as one dollar, DOE would need to approve the purchase of the vehicle.

5.17 POLICY ADVISORY COUNCIL: No changes were made to this section.

5.18 ELECTRIC BASE LOAD: No changes were made to this section.

5.19 PREVAILING WAGES: All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at <http://www.dol.gov/esa/whd/contracts/dbra.htm> . Wage determinations can be found at <http://www.wdol.gov>.

5.20 ADMINISTRATIVE COSTS: No changes were made to this section. However, Grantees should be aware, with the increase in funding to the subgrantee network, many agencies will be above the \$350,000 threshold, which will no longer make these agencies eligible for the additional 5% of administrative funding.

5.21 ADMINISTRATIVE: To meet the intent of the Recovery Act funding, it may be necessary to add additional subgrantees to the Program. Grantees are reminded that both 10 CFR 440.14, State Plans, and 10 CFR 440.15, Subgrantees, apply. 10 CFR 440.15, Subgrantees, states:

a) The Grantee shall ensure that:

- (1) Each subgrantee is a CAA or other public or nonprofit entity;
- (2) Each subgrantee is selected on the basis of public comment received during a public hearing conducted pursuant to Section 440.14(a) and other appropriate findings regarding:

- (i) The subgrantee's experience and performance in Weatherization or housing renovation activities;
- (ii) The subgrantee's experience in assisting low-income persons in the area to be served; and
- (iii) The subgrantee's capacity to undertake a timely and effective Weatherization Program.

(3) In selecting a subgrantee, preference is given to any CAA or other public or nonprofit entity which has, or is currently administering, an effective program under this part or under title II of the Economic Opportunity Act of 1964, with program effectiveness evaluated by consideration of factors including, but not necessarily limited to, the following:

- (i) The extent to which the past or current program achieved or is achieving weatherization goals in a timely fashion;
- (ii) The quality of work performed by the subgrantee;
- (iii) The number, qualifications, and experience of the staff members of the subgrantee; and
- (iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.

(b) The grantee shall ensure that the funds received under this part will be allocated to the entities selected in accordance with paragraph (a) of this section, such that funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons.

(c) If DOE finds that a subgrantee selected to undertake Weatherization activities under this part has failed to comply substantially with the provisions of the Recovery Act or this part and should be replaced, such finding shall be treated as a finding under Section 440.30(i) for purposes of 440.30.

(d) Any new or additional subgrantee shall be selected at a hearing in accordance with Section 440.14(a) and upon the basis of the criteria in paragraph (a) of this section.

(e) A State may terminate financial assistance under a subgrant agreement for a grant period only in accordance with established State procedures that provide to the subgrantee appropriate notice of the State's reasons for termination and afford the subgrantee an adequate opportunity to be heard.

6.0 REPORTING

6.1 REPORTING REQUIREMENTS: The reporting requirements are set forth in Attachment B of Funding Opportunity Announcement DE-FOA-0000051. Financial and progress reports will be used to adhere to the transparency and oversight requirements

detailed in the Recovery Act and posted on <http://www.recovery.gov>. Please note that the due date of certain reports may change.

DOE intends to modify the periodic Progress Report to include reporting on the following, at a minimum:

- Jobs created at the state agency level
- Jobs created using state contractors
- Jobs retained at the state agency level
- Jobs retained with state contractors
- Jobs created at the local agency level
- Jobs created using local agency contractors
- Jobs retained at the local agency level
- Jobs retained with local agency contractors
- State desk monitoring/oversight visits
- State on-site monitoring/oversight visits
- Hours trained at the state agency
- Hours trained at the local agency
- Equipment units purchased that are more than \$5,000.
- DOE may provide additional guidance regarding the calculation of jobs created
- DOE may provide additional guidance regarding the methodology for calculating energy savings.

Grantees also shall continue to report progress of subgrantees in meeting the Production Schedule included in the DOE approved State Plan.

6.2 REPORTING DOE COMPLETED UNITS: No changes were made to this section.

7.0 PROTECTION OF WHISTLEBLOWERS

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross management of an agency contract or grant relating to covered funds;
- Gross waste of covered funds

- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or
- Violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the Recovery Act shall post notice of the rights and remedies as required therein. See www.Recovery.gov for specific requirements of this section and prescribed language for the notices.

8.0 OTHER PROVISIONS

8.1 FALSE CLAIMS ACT: Grantees and subgrantees shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws

pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

8.2 INFORMATION IN SUPPORTING OF RECOVERY ACT REPORTING:

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

8.3 ACCESS TO RECORDS: With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the Recovery Act any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- (1) to examine any records of the Grantee, any of its contractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, Grantee, subgrantee, or agency regarding such transactions.

CONCLUSION: The Weatherization Network is being asked to assist Congress, the Administration and the Nation in increasing the energy efficiency of low-income housing stock, creating and maintaining jobs, and thereby assisting in stimulating the American economy.

Since the Program's inception in 1976, WAP has weatherized over 6.2 million households. That number will grow dramatically in a very short period of time as a result of Recovery Act funds.

This is an extraordinary challenge put before an extraordinary network. At DOE, we pledge to work in partnership with the Grantees, subgrantees and their Associations, to ensure that these purposes are met. We ask that you keep the lines of communication open and that you continue to work collaboratively with us to achieve these objectives.

DOE recognizes the complexity of this challenge and recognizes there may be elements that will require still further clarification. DOE will continue to provide additional updates through PMC Project Officers and, as needed, through Program Notices in an effort to keep the Weatherization network well informed.

It is a pleasure to work with you on this important challenge. I look forward to the growth of this Program and our continued partnership to ensure *Weatherization Works!*



Gilbert P. Sperling
Program Manager
Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy

Attachments:

American Recovery and Reinvestment Act of 2009 Grantee Allocations at \$5 Billion
WPN 08-1, Program Year 2008 Weatherization Grant Guidance
WPN 09-1, Program Year 2009 Weatherization Grant Guidance
WPN 09-1A, Grant Guidance for Program Years 2008 and 2009 to Access the \$250
Million 2009 Supplemental Funding

US Department of Energy
Office of Weatherization and Intergovernmental Programs ARRA Allocations

3/12/2009

NOTE:

1. The totals do not include funding reserved for DOE operations and for technical assistance provided by DOE.
3. Weatherization funding excludes Tribal grants: Navajo for \$9,068,150 and Northern Arapahoe for \$956,210

State/Territory	Weatherization Program Allocation	Weatherization T&TA Allocation	Weatherization Total Allocation
Alabama	\$ 59,210,812	\$ 12,589,787	\$ 71,800,599
Alaska	\$ 14,930,556	\$ 3,212,024	\$ 18,142,580
Arizona	\$ 47,020,236	\$ 10,003,042	\$ 57,023,278
Arkansas	\$ 39,664,241	\$ 8,450,174	\$ 48,114,415
California	\$ 153,295,769	\$ 32,515,292	\$ 185,811,061
Colorado	\$ 65,590,353	\$ 13,940,860	\$ 79,531,213
Connecticut	\$ 53,029,752	\$ 11,280,750	\$ 64,310,502
Delaware	\$ 11,292,186	\$ 2,441,482	\$ 13,733,668
District of Columbia	\$ 6,634,049	\$ 1,454,973	\$ 8,089,022
Florida	\$ 145,186,565	\$ 30,797,909	\$ 175,984,474
Georgia	\$ 102,911,503	\$ 21,844,809	\$ 124,756,312
Hawaii	\$ 3,293,877	\$ 747,584	\$ 4,041,461
Idaho	\$ 24,997,836	\$ 5,344,093	\$ 30,341,929
Illinois	\$ 200,099,200	\$ 42,427,419	\$ 242,526,619
Indiana	\$ 108,763,274	\$ 23,084,109	\$ 131,847,383
Iowa	\$ 66,665,793	\$ 14,168,618	\$ 80,834,411
Kansas	\$ 46,536,232	\$ 9,905,539	\$ 56,441,771
Kentucky	\$ 58,478,957	\$ 12,434,793	\$ 70,913,750
Louisiana	\$ 41,762,855	\$ 8,894,623	\$ 50,657,478
Maine	\$ 34,564,809	\$ 7,370,206	\$ 41,935,015
Maryland	\$ 50,662,365	\$ 10,779,380	\$ 61,441,745
Massachusetts	\$ 100,700,829	\$ 21,376,628	\$ 122,077,457
Michigan	\$ 200,819,095	\$ 42,579,880	\$ 243,398,975
Minnesota	\$ 108,837,568	\$ 23,099,843	\$ 131,937,411
Mississippi	\$ 40,742,634	\$ 8,678,559	\$ 49,421,193
Missouri	\$ 105,710,451	\$ 22,437,576	\$ 128,148,027
Montana	\$ 21,863,484	\$ 4,680,293	\$ 26,543,777
Nebraska	\$ 34,325,032	\$ 7,319,426	\$ 41,644,458
Nevada	\$ 30,724,945	\$ 6,556,992	\$ 37,281,937

**US Department of Energy
Office of Weatherization and Intergovernmental Programs ARRA Allocations**

3/12/2009

State/Territory	Weatherization Program Allocation	Weatherization T&TA Allocation	Weatherization Total Allocation
New Hampshire	\$ 19,119,440	\$ 4,099,154	\$ 23,218,594
New Jersey	\$ 98,013,744	\$ 20,807,552	\$ 118,821,296
New Mexico	\$ 21,818,540	\$ 5,037,063	\$ 26,855,604
New York	\$ 325,666,247	\$ 69,020,266	\$ 394,686,513
North Carolina	\$ 108,851,700	\$ 23,102,836	\$ 131,954,536
North Dakota	\$ 20,809,295	\$ 4,457,035	\$ 25,266,330
Ohio	\$ 220,115,002	\$ 46,666,407	\$ 266,781,409
Oklahoma	\$ 50,217,938	\$ 10,685,258	\$ 60,903,196
Oregon	\$ 31,740,226	\$ 6,772,010	\$ 38,512,236
Pennsylvania	\$ 208,571,386	\$ 44,221,676	\$ 252,793,062
Rhode Island	\$ 16,524,106	\$ 3,549,509	\$ 20,073,615
South Carolina	\$ 48,558,873	\$ 10,333,898	\$ 58,892,771
South Dakota	\$ 20,166,412	\$ 4,320,884	\$ 24,487,296
Tennessee	\$ 81,749,107	\$ 17,362,994	\$ 99,112,101
Texas	\$ 269,789,218	\$ 57,186,514	\$ 326,975,732
Utah	\$ 31,232,682	\$ 6,664,521	\$ 37,897,203
Vermont	\$ 13,857,753	\$ 2,984,823	\$ 16,842,576
Virginia	\$ 77,641,252	\$ 16,493,024	\$ 94,134,276
Washington	\$ 49,097,174	\$ 10,447,900	\$ 59,545,074
West Virginia	\$ 30,974,113	\$ 6,609,761	\$ 37,583,874
Wisconsin	\$ 116,730,672	\$ 24,771,461	\$ 141,502,133
Wyoming	\$ 8,412,017	\$ 1,827,244	\$ 10,239,261
American Samoa	\$ 552,501	\$ 167,010	\$ 719,511
Guam	\$ 882,417	\$ 236,880	\$ 1,119,297
Puerto Rico	\$ 40,284,132	\$ 8,581,456	\$ 48,865,588
Northern Mariana Islands	\$ 614,967	\$ 180,239	\$ 795,206
Virgin Islands	\$ 1,126,794	\$ 288,635	\$ 1,415,429

TOTAL \$3,891,432,966 \$827,292,673 \$4,718,725,640



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 08-1
EFFECTIVE DATE: November 8, 2007

SUBJECT: PROGRAM YEAR 2008 WEATHERIZATION GRANT GUIDANCE

PURPOSE: To issue grant guidance and management information for the Low-Income Weatherization Assistance Program (Weatherization) for Program Year (PY) 2008.

SCOPE: The provisions of this guidance apply to all grantees applying for financial assistance under the Department of Energy (DOE) Weatherization Assistance Program.

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer the Low-Income Weatherization Assistance Program. All grant awards made under this program shall comply with applicable law including regulations contained in 10 CFR Part 440 (issued February 1, 2002), and other procedures applicable to this regulation as DOE may, from time-to-time, prescribe for the administration of financial assistance.

GRANTS.GOV: Use of Grants.gov for receipt of applications became mandatory for all programs in Fiscal Year (FY) 2007. Additional discussion and instructions for using this system is provided in PY 2008 Funding Opportunity Announcement No. DE-FA26-008000008.

NATIONAL EVALUATION: The planning process for the National Weatherization Evaluation has been completed and a contractor has been selected through a competitive process. Implementation of the evaluation itself awaits final approval by the Office of Energy Efficiency and Renewable Energy. States and local agencies will be notified of the implementation schedule and their responsibilities under it by Program Notice if and when the Department determines to proceed with evaluation activity.

WEATHERIZATION PLUS: Weatherization *Plus*, launched in 1999, is the strategic plan to systematically promote the evolution of the Weatherization Assistance Program from a focus on heating and cooling energy conservation to an expanded focus on whole-house energy usage and whole-community efforts. In June 2005, a Weatherization *Plus*

Committee was convened to collectively and collaboratively begin the planning process to take this effort to the year 2010. The Committee, representing the diverse interests of the Network, recommended that the Program focus its efforts on four specific areas: Communication; Expanded Resources: Leveraging/Partnerships; Consistent Delivery of Quality Services; and National Information Exchange Resource. In order to provide adequate attention to the specific areas, the Committee formed three subcommittees: Expanded Resources: Leveraging/Partnerships; Consistent Delivery of Quality Services; and the National Information Exchange Resource subcommittees. The fourth topic, Communication, is an on-going process. A brief summary of the Committee's discussions and the output representing their collective ideas on the Program's next five years was issued for Network review and comment. All three subcommittees have made tremendous progress. Opportunities will continue to be provided for the Network to comment on, and to assist in, shaping the strategic outcomes throughout the process. There are three upcoming or recently held opportunities for face-to-face comment and input. The first was the National Association for State Community Services Programs' (NASCSPP) Fall Training Conference, held September 18-21, 2007, in Boise, Idaho. The second opportunity is the National Community Action Foundation's Leveraging Conference, November 12-14, 2007, in St. Petersburg, Florida. The third face-to-face opportunity for Network input and comment will be at the 2007 National Weatherization Training Conference, December 9-12, 2007, in Orlando, Florida. The Network, particularly States, local agencies and contractors, are strongly encouraged to attend and participate in these events.

PRODUCTION: There remains a strong interest by both the Administration and the Congress to track the performance of States in the production of weatherized units. DOE will closely monitor State performance through the Quarterly Program Report, the quarterly Financial Status Report and the annual Training and Technical Assistance, Monitoring, and Leveraging report. It is imperative that States and local agencies submit these reports on time. States are reminded that no area of a State should go more than one year without Weatherization service.

FINAL APPROPRIATIONS BILL: Results of the final appropriations bill for FY 2008 will be transmitted in Weatherization Program Notice 08-2. For planning purposes, if a final budget has not been passed by Congress and apportioned by the Office of Management and Budget (OMB), States should proceed with their respective Plans using the same level as the 2006 funding level. Please make certain to indicate that funding to subgrantees may be adjusted based on the final State allocation. States will be notified of their final allocations as soon as the funds are apportioned. As of this date, the House in its report language and the Senate in its bill language directs DOE to make Fiscal Year 2008 Weatherization funds available from October 1, 2008, to March 31, 2009, for States that submit Plans requesting allocations for all or part of this period. Should this provision be in the final funding vehicle, if any State wishes to take advantage of this provision, please so indicate in Section 11, Miscellaneous, of the Annual File of their Program Year 2008 State Application.

ALLOCATION FORMULA: In 1995, the allocation formula was revised to increase the overall equity of the allocation of funds among the States by providing warm-weather States a greater share of the funding, while protecting existing program capacity in cold-weather States. At the appropriations level of \$233 million, the revised allocation formula would have full impact.

WEBSITE INFORMATION: To assist the Weatherization Network in obtaining the most up to date information on programmatic/policy issues, technical issues, and evaluation studies, DOE sponsors the following websites:

<http://www.eere.energy.gov/weatherization/>;

<http://www.waptac.org>;

<http://weatherizationplus.org>;

<http://weatherization.ornl.gov>; and

<https://www.eere.pmc.energy.gov/>

Please visit these websites often to keep abreast of the latest information and new techniques in Weatherization. States should also continue to work with their respective DOE Project Managers at the Project Management Center (PMC).

TABLE OF CONTENTS

1.0 Funding

- 1.1 General Funding
- 1.2 Federally Appropriated Funds
- 1.3 Adjusted Average
- 1.4 Funds for Administrative Purposes
- 1.5 Petroleum Violation Escrow (PVE) Funds
- 1.6 Program Income
- 1.7 Leveraging and Leveraged Resources
- 1.8 Training and Technical Assistance Funds

2.0 Grant Application

- 2.1 General
- 2.2 Intergovernmental Review
- 2.3 Application Package
- 2.4 Public Hearing
- 2.5 Budget
- 2.6 Liability Insurance
- 2.7 Financial Audits

3.0 Training and Technical Assistance (T&TA) Plan

- 3.1 Basic
- 3.2 Client Education
- 3.3 Program Evaluation

4.0 Grantee Program Oversight (Program Monitoring)

5.0 Policy, Program Guidance, and Regulatory Changes

- 5.1 Temporary Disqualification of Certain Newly Legalized Aliens From Receipt of Weatherization Benefits
- 5.2 Multi-Family Eligibility
- 5.3 Procurement of Building Insulation Products and Materials Containing Recovered Materials
- 5.4 Rental Requirements
- 5.5 Energy Audit Criteria
- 5.6 Use of Weatherization Funds for Renewable Energy Systems
- 5.7 Disaster Relief
- 5.8 Energy Crisis Relief
- 5.9 Determining Eligibility Levels and Defining Income
- 5.10 Determining Priority Service
- 5.11 Fuel Switching
- 5.12 Energy-Related Health and Safety
- 5.13 Lead Paint Hazard
- 5.14 Energy-Related Mold and Moisture Impacts

- 5.15 Reweatheringization
- 5.16 Vehicle Purchases
- 5.17 Policy Advisory Council
- 5.18 Electric Base Load
- 5.19 Davis-Bacon Labor Rates
- 5.20 Administrative Costs

- 6.0 Reporting**
- 6.1 Reporting Requirements
- 6.2 Reporting DOE Completed Units

1.0 FUNDING

1.1 GENERAL FUNDING: In PY 2008, funding for the Weatherization Program, requiring DOE approval for expenditure, can come from several sources:

1. Federally appropriated funds.
2. Warner and EXXON oil overcharge funds.
3. Stripper Well and other oil overcharge funds (including Texaco) which are subject to Stripper Well settlement rules.
4. LIHEAP funds designated for expenditure under DOE rules.
5. Utility funds designated for expenditure under DOE rules.
6. Program income.
7. Other.

Note: The expenditure of leveraged funds requires DOE approval only when those funds are acquired using DOE appropriated monies and designated for use in the DOE Weatherization Program. Also, #4, #5, and #7 above only need to be approved by DOE if the State is charging administrative costs to DOE.

1.2 FEDERALLY APPROPRIATED FUNDS: Weatherization Program Notice 08-2 will issue tentative allocations. As in past years, direct grants for Indian Tribes will come out of State allocations. States should hold their public hearings based on their tentative allocations of appropriated funds, plus all petroleum violation escrow (PVE) and any other funds they intend to allocate for use under the Weatherization Program. Grantees are expected to achieve a rate of production and expenditure that will result in all DOE Weatherization funds being spent by the end of the program year.

1.3 ADJUSTED AVERAGE: The new adjusted average expenditure limit for PY 2008 is \$2,966. This adjusted annual average is determined by DOE using the annual Consumer Price Index (CPI) or 3 percent, whichever is less. The CPI for the previous 12-month period (October 2006-September 2007) is 2.8 percent. This amount is then multiplied by the present expenditure limit, thereby setting the new expenditure limit for the upcoming program year. The PY 2008 adjusted average for renewable measures is \$3,149 and is adjusted similarly for inflation. Further discussion on renewable measures can be found in Section 5.6, Use of Weatherization Funds for Renewable Energy Systems.

1.4 FUNDS FOR ADMINISTRATIVE PURPOSES: There is a statutory limit of 10 percent on funds that may be used for administrative purposes. Not more than 5 percent of new funds (total allocation for a program year, including other non-DOE funds that are a part of the grant) may be used by a State for administrative purposes, with the remainder to go to subgrantees. An exception to exceed the 10 percent total administrative requirement may apply to subgrantees funded at **less than \$350,000 of**

new DOE funds. States are to develop criteria to be used for allowing the eligible subgrantees, those who receive less than \$350,000 of new DOE appropriated funds, authority to **use up to an additional 5 percent** of their subgrants for administrative purposes. The criteria must be submitted with the annual file. Funds in administrative category accounts may be carried over from the previous budget period. A State may provide in its annual Plan for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grants for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by DOE pursuant to this part. These policies establish an administrative fund cost pool. States can then also choose to include any administrative carryover funding and/or provide a portion of their State administrative funds to the local providers. **The limit for maximum administrative expenditures by a State remains unchanged at 5 percent of the total funds reported in a State Plan.** States can give a portion of their 5 percent administrative funds to the locals if they wish.

Stripper Well funds used for all administrative purposes, i.e., for all programs, may not, in total, exceed 5 percent of the Stripper Well funds budgeted by a State. To avoid the possibility of disallowed costs, States are reminded of this restriction. Within those parameters, Stripper Well funds allocated to Weatherization may be used for administrative expenses. EXXON funds, however, may not be used for this purpose. A State may use Federal funds appropriated for the Weatherization Program to administer the EXXON and/or Stripper Well funds applied to the program. The new DOE and/or Stripper Well funding that may be used for administrative expenses may not exceed 10 percent of the total of new DOE, plus new EXXON, plus new Stripper Well funding for the program.

Program income and leveraged resources that are used in the DOE Weatherization Program may be treated as appropriated funds, in which case they could be added to the total appropriated funds to determine overall administrative costs. No change to the percentage limits for administrative funds addressed above will occur. For further information on program income see section 1.6. For leveraged resources, see section 1.7 of the grant guidance.

Note: States may use up to 15% of their DOE grant to administer large sums of leveraged non-Federal resources. Please refer to section 1.7 of the grant guidance. A further discussion of DOE policy on administrative costs is discussed in section 5.20.

1.5 PETROLEUM VIOLATION ESCROW (PVE) FUNDS: EXXON and Warner funds are subject to the same rules; Texaco and other subsequent oil overcharge settlement funds are subject to Stripper Well rules. For convenience, in discussing these various funding sources, we will refer to EXXON or Stripper Well as generic categories.

If a State decides to use EXXON funds for its Weatherization Program, these funds are to be treated **in the same way** as appropriated funds. They must be included in the State

Weatherization Plan/Annual Application; they are subject to the same State Plan/Application approval, program oversight, and reporting requirements as appropriated funds; and, their use is subject to the **same** statutory and regulatory constraints as are appropriated funds.

A State may elect to use Stripper Well funds for Weatherization projects either separate from, or included within, the DOE Weatherization Program. Where Stripper Well funds have been approved for use in the program, these funds should be treated exactly as appropriated for EXXON funds. Where their use has been approved for Weatherization activities separate from DOE Weatherization, these funds are encouraged to be included, for informational purposes only, in the State's Plan, but are not subject to DOE rules, oversight, or reporting requirements.

There are no requirements that EXXON or Stripper Well funds be used during a particular period of time, and a State is also permitted to reallocate these funds from one eligible program to another as long as its Plan has been amended and approved by DOE-HQ. If EXXON and/or Stripper Well funds earmarked for expenditure in the prior program year are not expended, the amount of Federal and/or Stripper Well funding that may be used for administrative expenses in the following program year must be adjusted appropriately.

No more than 5 percent of the combined total of EXXON and Stripper Well funds budgeted in a State Plan/application may be used for Training and Technical Assistance (T&TA) purposes. Up to an additional 5 percent of these funds may be used for evaluation of a State's Weatherization Program, and for innovative efforts for leveraging program funds, provided these activities are approved by the PMC.

1.6 PROGRAM INCOME: DOE defines program income as any funds earned by grantees and/or subgrantees from non-Federal sources during the course of performing DOE Weatherization work. The income generated must be used to complete additional dwelling units in accordance with DOE rules.

Program income is subject to the specific guidance provided in the DOE Financial Assistance Rule, 10 CFR 600, Subpart B Section 600.124 and Subpart C, Section 600.225, as appropriate, and should be treated as an addition to program funds and are subject to the same rules as appropriated funds. Because of changes to 10 CFR 600, DOE will stipulate, in the grant award, that program income is to be treated as an addition to program funds. Property owner (i.e., landlord) contributions and leveraged resources (i.e., utility or State funds) are NOT considered to be "program income" for the purposes of the Weatherization Assistance Program.

Note: States requiring further clarification on program income, as it applies to their specific program, should contact their respective Project Manager at the PMC.

1.7 LEVERAGING AND LEVERAGED RESOURCES: DOE program regulations permit grantees to take a percentage of their grant (including PVE funds used under the Weatherization Program, and training and technical assistance funds) to undertake leveraging activities which may supplement the program or be used to run a parallel program (regardless of who initiates the action). Leveraging activities include paying for agency staff or hiring consultant staff to explore and develop partnerships with property owners, utility companies, and other entities that will generate non-Federal resources for Weatherization. Other allowable activities include: holding leveraging meetings; preparing technical materials/briefs; or facilitating voluntary match funds from a non-Federal source. The leveraged resources should expand energy efficiency services and/or increase the number of DOE-eligible dwelling units weatherized.

The work done with leveraged resources must be consistent with an approved energy audit and utilize cost-effective measures. Leveraging efforts will not always be successful, but grantees should aim to produce more than one dollar leveraged for each DOE dollar expended. As of PY 2007, the maximum percentage of Weatherization funds that can be diverted off of the top of the grant for leveraging activities is 15 percent.

Grantees utilizing this option must provide a detailed leveraging implementation plan in their annual file, and must indicate in their annual budget, the estimated DOE resources to be used for leveraging activities. The amount of detail in the plan should be commensurate with the amount of funds used for this effort. Reporting of leveraging activities and results must be submitted on the annual Training, Technical Assistance, Monitoring, and Leveraging Report (see Section 6.1).

Landlord contributions are not considered leveraged resources because they are generally not voluntary and often come with special stipulations or requirements. Grantees requiring further clarification or guidance on leveraging resources should contact their respective Project Manager at the PMC.

1.8 TRAINING AND TECHNICAL ASSISTANCE FUNDS: The Weatherization Assistance Program statute permits DOE to use an amount not to exceed 10 percent of the funds appropriated, for T&TA activities. This percentage is reviewed annually and set only after considering the amount of funds appropriated to the Program and an Annual Operating Plan is developed for Headquarters and PMC T&TA to address national program support needs. The percentage of funds for PY 2008 reflects the full percentage of T&TA, and division of funds for national and for States will be indicated in Weatherization Program Notice 08-2, Tentative Allocations.

2.0 GRANT APPLICATION

2.1 GENERAL: To increase public involvement and obtain timely suggestions in

developing their Application, DOE strongly urges States to hold two meetings: one at the beginning of the planning process, as well as the formal and required public hearing on the completed Plan. DOE may request information in addition to what is required by program rule on a case-by-case basis when warranted by prior program performance.

2.2 INTERGOVERNMENTAL REVIEW: In the development, submission, and review of grant applications, the provisions of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the DOE Implementing Order (10 CFR 1005) remain unchanged.

2.3 APPLICATION PACKAGE: As previously stated, applications **must be** submitted through Grants.gov to be considered for award. You cannot submit an application through Grants.gov unless you are registered. See the submission and registration requirements set forth in Funding Opportunity Announcement No. DE-FA26-008000008. For PY 2008, if an applicant typically prepared its application in WinSAGA, that process can continue and the application can be loaded to Grants.gov via the WinSAGA interface.

For information on the content and preparation of the PY 2008 application package, refer to Part IV, Paragraph C of Funding Opportunity Announcement No. DE-FA26-008000008.

APPLICATION FORMAT: All applicable sections of the Annual File portion of the Application Instructions and Forms Package are to be completed in their entirety and up to date. This includes all information on the Weatherization Annual File Worksheet located on the WAPTAC site (pages V-13 and V-14 and the Subgrantee Information Sheet, page V-17 of the Package).

2.4 PUBLIC HEARING: The PMC will carefully review the reports of the public hearings on the 2008 State Plans to determine that all local agency issues are properly addressed by the State prior to approval of the final State Plan. States should be aware that if major program changes are made after the initial public hearing, then an additional hearing may be required. Also any change in the distribution of funds not addressed in the initial hearing will necessitate another public hearing. DOE will continue to require all areas of the State to be served. However, DOE will consider approving alternative Plans which may require implementing this provision over more than one program year and may include funds from other sources.

DOE reminds States that the public hearing should be held before the State Plan is submitted to DOE for approval, and adequate notice (not less than 10 days) must be given prior to holding a public hearing on the State Plan. A part of this notice should be a summary or highlights of the proposed changes from the previous year's Plan. Providing

this information up front will improve communication between State and local agencies and minimize disputes that may arise at the hearing.

Note: DOE no longer requires an official transcript of the public hearing. However, DOE considers an official hearing transcript as a best practice, particularly if the hearing is of a contentious nature. States must submit the notes or minutes taken by a State staff person as part of the final State Plan. Where discrepancies exist in the minutes or notes, the State must allow participants to provide supplemental submissions. Whenever possible, DOE would like to be informed, in advance, of major proposed program changes or issues of a contentious nature that will be addressed at the hearing. Also, most States have laws governing the conduct of public hearings, including making a copy of the Plan available upon request.

2.5 BUDGET: Grantees should ensure that subgrantees are allowed to charge legitimate program support costs to the program operations category rather than requiring those costs to be charged to the administrative category. For example, salaries, space, utilities, telephone and similar costs associated with program support personnel should be charged to program operations. As of this date, the House in its report language and the Senate in its bill language directs DOE to make Fiscal Year 2008 Weatherization funds available from October 1, 2008, to March 31, 2009, for States that submit Plans requesting allocations for all or part of this period. Should this provision be in the final funding vehicle, if any State wishes to take advantage of this provision, please so indicate in Section 11, Miscellaneous, of the Annual File of their PY 2008 State Application.

Grantees are encouraged to fully utilize the DOE funding in the year it is originally awarded to maximize the opportunity of meeting the Weatherization mission. DOE realizes from time to time that unanticipated circumstances may prevent this from happening. Available carryover funds from previous budget years always need to be included as part of the budget and application for the new year's funding. To the extent possible and allowable within the grantees' organization, each grantee is also encouraged to estimate carryover for the current budget period and include it as part of the application for new funding as well.

When States prepare their budgets for 2008, **it is essential that they include adequate travel expenses for staff to effectively implement the program.** DOE considers attendance by State staff at national and regional conferences, as well as participation on related planning committees, task forces, and other scheduled and related meetings, as high priorities. DOE is aware that many States have travel restrictions due to budgetary constraints. **It should be noted that funds to pay for State and local travel are provided as part of the Weatherization grant, and proper usage of these funds will be closely monitored by DOE to ensure compliance with stated travel indicated in States' Annual Plans.**

Note: States planning to carryover unused training and technical assistance funds from one program year to another must return these monies to the program operations budget category and use them to weatherize additional homes. This provision can be waived provided the State can justify to the PMC the necessity to carryover these funds into the new program year and that they be included as a part of the new training and technical assistance budget.

T&TA funds may not be used to purchase vehicles or equipment for local agencies to perform Weatherization services. The cost of these vehicles or equipment to support the program must be charged to the vehicle/equipment or program operations categories. Only State purchases of vehicles or equipment, which are directly related to specific training and technical assistance activities, such as monitoring, etc., may be purchased with T&TA funds.

2.6 LIABILITY INSURANCE: States and local agencies are reminded that all work performed must be covered by liability insurance. States should inform local agencies and their contractors that sufficient liability coverage for DOE funded activities must be obtained. Liability insurance can be charged to the liability line item in the budget, which was created to ensure that such costs would never have to be charged to the administrative cost category. (See preamble to Federal Register, Volume 45, Number 40, published February 27, 1980, page 13031). Further, most, if not all, regular liability insurance policies do not provide coverage for many health and safety measures such as lead and other pollution occurrence items. Pollution Occurrence Insurance (POI) is a part of, or an addendum to, general liability insurance and is therefore charged on the liability insurance line item. Local agencies shall review their existing policies to ensure that they have adequate coverage. POI is discussed further in Weatherization Program Notice 02-6. Also, local agencies that employ private contractor labor to perform Weatherization services must ensure that each private contractor is adequately insured as well, including pollution insurance coverage. This insurance can be purchased by either the State, local agency or private contractor. In 2003, the National Association for State Community Services Programs (NASCSPP) completed negotiations with a national broker to provide individual POI policies at a cost below market rate. Additional information about this type of POI coverage can be found on the WAPTAC website.

At the 2006 Weatherization State Program Managers' Meeting in Providence, Rhode Island, some States and local agencies requested that DOE consider rescinding the need for POI. DOE has taken this request under consideration and, for a number of reasons, does not feel it can rescind the requirement at this time. Please see Sections 5.12 – Energy-Related Health and Safety and 5.13 – Lead Paint Hazard for further information affecting this decision. DOE will again revisit the need for POI after the implementation of the revised Lead Safe Weatherization requirements.

2.7 FINANCIAL AUDITS: Section 440.23 of the program regulations permits a

separate budget category for financial audits. The cost of these audits was previously charged to the already over-burdened administrative cost category and sometimes resulted in less than adequate, quality financial audits. States are encouraged to provide this relief to their subgrantees by allowing these charges to come off of the top of the grant, if the subgrantees meet the threshold contained in A-133.

Note: OMB Circular A-133, revised June 30, 2003, should be consulted for thresholds, etc. States should refer to Section IV.3 of the current Application Instructions and Forms Package located on the WAPTAC site and/or contact their contracting officer at the National Energy Technology Laboratory (NETL) for further guidance or clarification.

3.0 TRAINING AND TECHNICAL ASSISTANCE (T&TA) PLAN

3.1 BASIC: T&TA activities are intended to maintain or increase the efficiency, quality and effectiveness of the Weatherization Program at all levels. Such activities should be designed to maximize energy savings, minimize production costs, improve program management and crew/contractor "quality of work," and/or reduce the potential for waste, fraud, and mismanagement. The local service providers should be the primary recipients of T&TA activities.

Section II.6 of the Annual File, which describes specific activities, and Section III.5.4 of the "On-file" Information, which describes the overall approach, in the current Application Package should be used to describe how States will identify and address the needs of the subgrantees in this area. As a minimum, such a description must include the following:

- A. How a State assesses the training needs of its subgrantees;
- B. What training the State will provide for subgrantee staff and if attendance is required;
- C. Whether the State requires any certification or training of subgrantee staff prior to hire or by date certain of hire;
- D. How the State compares productivity and energy savings between subgrantees and how these comparisons are used in the development of T&TA activities and priorities;
- E. What portion of State T&TA funds will be allocated for State program oversight (monitoring) efforts, how such funds will be apportioned, and if any other funding sources will be used for this purpose; and,
- F. An assessment of State T&TA activities to determine whether these funds are being spent effectively.

3.2 CLIENT EDUCATION: Client education is a key component of any effective Weatherization Program. The information sharing among the States in this area has brought about a heightened awareness of the importance of client education. DOE will continue its efforts to identify and network successful State initiatives, and provide training and materials as needed.

3.3 PROGRAM EVALUATION: The planning process for the National Weatherization Evaluation has been completed and a contractor has been selected through a competitive process. Implementation of the evaluation awaits final approval from the Office of Energy Efficiency and Renewable Energy. States and local agencies will be notified of the implementation schedule and their responsibilities under it by Program Notice if and when the Department determines to proceed with the evaluation.

DOE will continue to encourage States to proceed with individual State evaluations. We do ask that each State undertaking such an evaluation coordinate its plans with DOE so that we may share this information to gain the maximum results from our program. Technical assistance is available to States through DOE to help with the design and analysis plans for State evaluation studies. DOE published the report, "Estimating the National Effects of the U.S. Department of Energy's Weatherization Assistance Program with State-Level Data: A Metaevaluation Using Studies From 1993 to 2005." The individual evaluations conducted by the States were critical to this effort. Also, DOE completed a non-energy benefits study. Both of these documents can be accessed on the ORNL website.

4.0 GRANTEE PROGRAM OVERSIGHT (Program Monitoring)

DOE issued Weatherization Program Notice 01-6, January 3, 2001, to update the monitoring policy for the Program. The key components of the policy remain unchanged.

A. **ROLE.** The State must conduct a comprehensive monitoring of each subgrantee at least once a year. The comprehensive monitoring must include review of client files and subgrantees records, as well as actual inspection of at least 5 percent of the completed units. States may make as many program assessment visits as necessary and for which resources are available. By the close of the program year, the State is expected to have completed a comprehensive review of each subgrantee, including its last financial audit. Failure to comply with this requirement is sufficient cause to require special conditions to the grant under 10 CFR 600.212.

Note: An exception to the annual subgrantee visit requirement can be made for those agencies designated as exemplary agencies by the State. This designation and a justification for each agency must be included in the State Monitoring Plan and approved by the PMC. The designated exemplary agencies' assessment visit should

occur no less often than every other year. States would be required to continue to provide oversight by reviewing all relevant reports for these designated agencies and act accordingly should a problem arise. States are still required to ensure that these agencies designated as exemplary are satisfying all existing program requirements, including a final inspection of all homes weatherized each program year.

B. VISIT. The subgrantee should be briefed on the observations and findings generated by the visit, usually through an exit interview. Within 30 days after each visit, the State will prepare a written report on its findings and send it to the subgrantee for corrective action, if applicable. Noncompliance findings unresolved within forty-five days should be reported to the PMC. Sensitive or significant noncompliance findings should be reported to the PMC immediately.

C. TRACKING. Major findings from subgrantee monitoring visits and financial audits should be tracked by the State to final resolution. DOE recommends that the tracking record developed by the State include, but not be limited to: findings, including success stories, recommended corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolution.

D. ANALYSIS. Annually the State will summarize and review each subgrantee's audit, program monitoring reports and findings for internal monitoring of State and subgrantee needs, strengths, and weaknesses. The results of this annual monitoring should be considered during annual planning and should be available in the State Office for the PMC staff to review during their State program monitoring visits.

5.0 POLICY, PROGRAM GUIDANCE, AND REGULATORY CHANGES

5.1 TEMPORARY DISQUALIFICATION OF CERTAIN NEWLY LEGALIZED ALIENS FROM RECEIPT OF WEATHERIZATION BENEFITS: Sections 245A and 210A of the Immigration and Nationality Act (INA), as amended, made certain aliens, legalized under the Immigration and Control Act (ICA) of 1986, temporarily ineligible for Weatherization assistance. The provisions of this law have expired. The only potential implications affecting Weatherization services are those individual cases that were open while this law was in effect.

The Welfare Reform Act, officially referred to as the Personal Responsibility and Work Opportunity Act of 1996, H.R. 3734, placed specific restrictions on the eligibility of aliens for "Federal means-tested public benefits" for a period of five years. As defined in a Federal Register notice dated August 26, 1997 (62 FR 45256) the Department of Health and Human Services (HHS) is interpreting "Federal means-tested public benefits" to include only those benefits provided under Federal means-tested, mandatory spending programs.

HHS Information Memorandum LIHEAP-IM-25 dated August 28, 1997, states that all qualified aliens, regardless of when they entered the United States, continue to be eligible to receive assistance and services under the Low-Income Home Energy Assistance Program (LIHEAP) if they meet other program requirements. To eliminate any possible contradiction of eligibility for Weatherization services at the State and local level for qualified aliens, the definition adopted by HHS will also apply to the DOE Weatherization Assistance Program.

HHS issued Information Memorandum LIHEAP-IM-98-25 dated August 6, 1998, outlining procedures for LIHEAP and Weatherization grantees serving non-qualified aliens to implement new status verification requirements. This memorandum is based on a proposed rule issued by the Department of Justice (DOJ) on August 4, 1998. The Welfare Reform Act is a complex issue and there is some confusion on the specific application of this part of the Act. To insure Program continuity between LIHEAP & Weatherization for the many subgrantees operating both programs, the DOE Weatherization Assistance Program will follow the interpretation as adopted by HHS. The primary area of confusion resides in the types of local agencies that are exempt/non-exempt from "status verification requirements." Local agencies that are both charitable and non-profit, which comprise about three-quarters of the local agency network, would be exempt. **However, those agencies which are designated as local government agencies operating the Weatherization Program would not be exempt and, therefore, must conduct "status verification." Under the DOJ ruling, grantees subject to this ruling have 2 years to fully implement this procedure after the publication date of the final rule. As of this date the final rule has not yet been issued.**

Also addressed in the LIHEAP-IM-98-25 is the issue of unqualified aliens residing in multi-family buildings. Since many LIHEAP grantees also use the DOE rules to implement their programs, HHS has adopted the 66 percent provision of the DOE regulations to address this issue. Under DOE rules, a multi-family building may be weatherized if 2/3 of the units are eligible for assistance (2 in the case of a 2 or 4 unit building). HHS has modified the provision concerning verifying citizenship in multi-family buildings. LIHEAP-IM-99-10 issued June 15, 1999, retracts any requirement that Weatherization providers must do any type of certification of citizenship in multi-family buildings.

5.2 MULTI-FAMILY ELIGIBILITY: In the final rule, DOE offered flexibility by adding certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units must be occupied by income-eligible persons. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before Weatherization services can be offered. This exception would apply only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies will be better able to select the most

cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions. This flexibility does not apply to any other type of multi-family unit.

Note: State and local agencies should exercise caution when utilizing flexibility in this area. The key is the investment of DOE funds coupled with leveraged resources which result in significant energy savings. Absent this investment, lowering the eligibility to 50% may lead to disallowed costs. Local agencies which are uncertain on a given multi-family project should seek approval by the PMC through their State Weatherization Program Manager.

5.3 PROCUREMENT OF BUILDING INSULATION PRODUCTS AND MATERIALS CONTAINING RECOVERED MATERIALS: Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), states that if a procuring agency using Federal funds purchases certain designated items, such items must be composed of the highest percentage of recovered materials practical. On February 17, 1989, the Environmental Protection Agency promulgated the final rule containing the guidelines for the procurement of building insulation products. Policy guidance was issued by DOE on February 16, 1990, providing further clarification on this issue.

5.4 RENTAL REQUIREMENTS: All States were required to develop rental procedures which address the provisions of Section 440.22, Eligible Dwelling Units, of the program regulations prior to the submission of their application. In developing these procedures, States were encouraged to open a dialogue with their local agencies to ensure that the procedures adopted are both understood and attainable. As with health and safety, these procedures are not a part of the application; however, they do impact directly on the operation of the program by the subgrantees. DOE strongly encourages States to address their rental procedures, including any changes from the previous year, in a public hearing forum. The hearing on the State Plan offers an excellent opportunity to air these procedures and how they would impact on other components of the Plan, and to accept and consider comments from the public.

5.5 ENERGY AUDIT CRITERIA: Weatherization Program Notice 01-4 explains the criteria DOE will use to approve energy audit procedures and revalidate priority lists every five years as required by the Program regulations. All States whose audit procedures or priority lists were approved more than five years ago must request DOE re-approval.

The Manufactured Home Energy Audit (MHEA) is now available to the Network as part of the Weatherization Assistant. Weatherization Program Notice 03-6, dated September 26, 2003, marked the Network release of the new and improved MHEA and outlined its availability and use. The package is available at no cost to regional, State, and local

Weatherization agencies. The National Energy Audit Tool (NEAT) and MHEA audits are a part of the Weatherization Assistant and are maintained by Oak Ridge National Laboratory (ORNL). The Weatherization Assistant is posted to the WAPTAC and ORNL websites (<http://www.waptac.org/sp.asp?id=8452> and <http://weatherization.ornl.gov>, respectively). The results of the MHEA validation are complete and will be made available in early FY 2008. Future changes to MHEA will be implemented periodically according to a planned maintenance/update schedule similar to that followed by NEAT over the past few years.

DOE requires energy audit procedures to be specifically approved for use on single-family dwellings and mobile homes. Additionally, DOE requires energy audit procedures to be specifically approved for use in multi-family buildings if they represent 20 percent or more of the total units weatherized in the State each year.

States were expected to submit mobile home energy audit procedures to DOE for review by now. However, DOE has yet to receive mobile home energy audit procedures from several States. States that have not yet complied with this requirement need to submit their mobile home energy audit procedures to DOE as soon as possible. Energy audit procedures may include the use of an energy audit or the use of priority lists. In their State Plans for 2008, States must describe a training component to implement their procedures for mobile homes. Full implementation of a mobile home-specific component is required in PY 2009.

For energy audit purposes, DOE considers multi-family buildings to be those containing five dwelling units or more. Approved single-family energy audits can be used in buildings with one to four dwelling units. As approved by DOE on a case-by-case basis, certain single-family energy audits may be used in multi-family buildings containing up to 25 individually heated and cooled dwelling units. For large multi-family buildings, DOE will continue to rely on EA-QUIP and TREAT.

While TREAT was originally developed for use by home performance contractors, it is approved for use in the Weatherization Program on single-family houses, multi-family buildings, and mobile homes. TREAT was developed by TAITEM Engineering and Performance Systems Development (PSD), Inc. There is a fee associated with the use of TREAT. For information on TREAT, contact PSD's Ethan MacCormick at 124 Brindley Street, Suite 4, Ithaca, NY 14850, 607-277-6240 x 209, emaccormick@psdconsulting.com.

EA-QUIP, which stands for Energy Audit using the Queens Information Package, is available from the Association for Energy Affordability, Inc. (AEA) for a nominal fee to Weatherization agencies. The AEA Training Center is located at 105 Bruckner Blvd., Bronx, NY 10454. For more information on AEA's EA-QUIP, call Taina Palombo-Price at (718) 292-6733 x 210.

While it has been modified over the years to handle a variety of multi-family building types, EA-QUIP's focus has traditionally been the larger multi-family buildings found in

New York City and other urban centers. Smaller, garden-style apartment buildings are more typical of many States' multi-family Weatherization efforts. In addition to TREAT, several other energy audit software packages address these smaller multi-family buildings. DOE will inform the Network when these new audit tools receive DOE approval for use in the Weatherization Assistance Program. DOE will rekindle efforts to develop a small multi-family audit for use in the Program. States will be notified when the audit is ready for field-testing.

5.6 USE OF WEATHERIZATION FUNDS FOR RENEWABLE ENERGY

SYSTEMS: Section 206 of the Energy Policy Act of 2005 (EPACT 2005) amended the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.) to clarify that assistance under the Weatherization Assistance Program for low-income persons may be provided for renewable energy systems and to provide definitions and criteria to be used in assessing eligibility. EPACT 2005 set a ceiling of \$3,000 per dwelling for such assistance, subject to annual adjustments as provided in the statute. EPACT 2005 also requires DOE to establish a procedure under which a manufacturer of a technology or system may request the Secretary of Energy to certify the technology or system as an eligible renewable energy system.

Summary of Amendments

DOE amended 10 CFR Part 440 to codify these EPACT provisions. The Direct Final Rule was published on June 22, 2006 and it became final on August 21, 2006. Under a Direct Final Rule, the Rule becomes final if there are no significant "adverse" or "critical" comments received during the comment period. While no such comments were received, there was one issue which requires clarification. Specifically, Section 440.18 (Allowable Expenditures) was amended to incorporate the new statutory provisions addressing renewable energy systems and specifying a ceiling of \$3000 per dwelling for labor, weatherization materials, and related matters.

Several interested parties asked whether the \$3000 for renewable energy systems was intended to be *in addition* to the amount designated for funds used for energy efficiency, or whether this represented the cumulative total average expenditures allowable for labor, materials and related matters per unit.

After reviewing the language of the Act, and consulting with General Counsel, we have determined that the language of the Statute authorizes only the incremental difference between the amount now allowed for the statewide average of "labor, weatherization materials, and related matters" (currently \$2,966 per unit) and the new ceiling of \$3,149 for renewable energy systems, or a total addition of \$183. As the ceiling is adjustable over time according to Section 440.18, the increment will also grow, albeit slowly.

Even though this increment is small, the effect in terms of program implementation is not determined by the size of the increment since using a whole house approach in conjunction with the cost-effectiveness test would limit the use of renewable energy

systems in any case. Thus, the major effects of the regulation are to provide criteria and a procedure for integrating renewables into the Weatherization Program, and to establish a process for evaluating petitions to use new or innovative renewable energy systems in the Weatherization Assistance Program.

The Act and the amended regulations also established criteria that renewable energy systems must meet, and a process that manufacturers may use to petition the Secretary for determining the funding eligibility for new systems. These were codified in 10 CFR § 440.21. In the August 21, 2006, *Federal Register*, a new paragraph (c)(1) was added in this section that specifies performance and quality standards criteria for renewable energy systems. New paragraph (c)(2) was also added to establish a procedure for submission and action on petitions by manufacturers requesting the Secretary of Energy to certify a new technology or system as an eligible renewable energy system.

Approved renewable energy systems will be listed in Appendix A of Part 440, Standards for Weatherization Materials. To the extent that such systems have been approved and used in the Weatherization Program prior to the new EPA Act provisions and amendments to Part 440, they may continue to be used. For example, Solar Water Heating devices which conform to SRCC (Solar Rating and Certification Corporation) OG 300 are listed in Appendix A and may be used.

5.7 DISASTER RELIEF: DOE issued Weatherization Program Notice 93-12 on July 28, 1993, to address disaster relief. Upon request and approval by the PMC, DOE funds may be used for energy-related items, such as replacement water heaters, in those affected homes. Any measure not currently listed in Appendix A of the program rule, or issued in other Program Notices, must be submitted as a part of any Disaster Relief Plan for approval by DOE.

5.8 ENERGY CRISIS RELIEF: DOE issued Weatherization Program Notice 01-7 on January 18, 2001, which permits States, if they choose, to use a portion of their DOE grant for energy crisis relief. Procedures for implementation are discussed in the Program Notice.

5.9 DETERMINING ELIGIBILITY LEVELS AND DEFINING INCOME: The Energy Policy Act of 2005, Section 122(b) states “Eligibility – Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking “125 percent” both places it appears and inserting “150 percent.” The Department of Energy’s Office of General Counsel determined that it is permissible to make this change through this Grant Guidance. Beginning with PY 2006, the income eligibility level for the DOE Weatherization Program is 150 percent of the Poverty Income Guidelines. In determining the level of eligibility, the State may use either the DOE criteria of 150 percent of poverty or the LIHEAP criteria. This determination, made by the State, must be applied statewide.

The program regulations define low income as income in relation to family size. Annually, DOE issues poverty income guidelines for use in the Program along with a definition of what constitutes income. If the State elects to use the DOE level of 150 percent of poverty, then the DOE definition of income provided annually must also be used. However, should a State elect to use the LIHEAP criteria, then the State may either use the DOE definition of income or, as permitted under the LIHEAP regulations, the State may define what constitutes income. Eligibility issues are discussed further in Weatherization Program Notice 99-7 issued August 27, 1999.

5.10 DETERMINING PRIORITY SERVICE: The final rule provides State and local agencies with additional flexibility to target their services to maximize program effectiveness. In adding the terms high residential energy user and household with a high energy burden, DOE intended to provide States and local agencies with two additional categories of priorities for their discretionary use. These are in no way mandatory and may be used in lieu of, or in any combination with, the existing priority categories of elderly, persons with disabilities, or families with children. By adding these categories, State and local agencies are better able to partner with utilities and other programs to leverage additional resources into their programs. If you elect to use either of these categories, please be sure to report on them when you submit your Quarterly Program Report.

5.11 FUEL SWITCHING: The DOE Weatherization Assistance Program does not permit the general practice of non-renewable fuel switching when replacing furnaces/appliances. DOE does allow the changing or converting of a furnace/appliance using one fuel source to another on a limited, case-by-case basis only.

5.12 ENERGY-RELATED HEALTH AND SAFETY: The Program's flexibility to improve the health and safety of the low-income persons served is intended to mean "energy-related" health and safety. States are reminded that the primary goal of the Weatherization Assistance Program is energy efficiency. We are concerned that the achievement of this goal endures even with the program changes which allow DOE funds to be used for health and safety risk mitigation. The final rule has eliminated the requirement that the cost of all energy-related health and safety risk mitigation be within the per home expenditure average. States are still required to identify health and safety procedures and the percentage of costs involved as a part of their overall Health and Safety Plan to be approved by DOE. This change gives States and local agencies greater flexibility and incentive to incorporate new technologies and their costs into their programs by removing health and safety costs from the per-house limitation; if they are budgeted separately. In providing this flexibility, DOE will continue to encourage States to be prudent in their oversight of the percentage of funds approved for health and safety mitigation on homes weatherized by their local agencies. These revised health and safety mitigation issues are discussed in Weatherization Program Notice 02-5 issued July 12, 2002. Some of the more noteworthy changes from the previous guidance include: a

requirement for a five-part State Health and Safety Plan; identification of ten broad areas of potential hazard consideration that must be addressed; and new deferral standards. Also, issues relating to Lead Safe Weatherization (LSW) are discussed in section 5.13 of this grant guidance notice.

Health and safety appears in three sections of the final rule (sections 440.16, 440.18 and 440.21) and impacts directly on the operation of the program by the subgrantees. While these procedures are not a part of the application, in section 440.16(h), States are required to submit their list of health and safety remedies and procedures to DOE for approval at the same time as the annual application. The hearing on the State Plan would offer an excellent opportunity to air these procedures and how they would impact on other components of the Plan, and to accept and consider comments from the public.

The final rule does not mandate a separate health and safety budget cost category, but rather encourages States to budget health and safety costs as a separate category and, thereby, exclude such costs from the average cost calculation. States are reminded that, if health and safety costs are budgeted and reported under the program operations category, the related health and safety costs would be included in the calculation of the average cost per home and cost-justified through the audit.

States should carefully consider the approach to be taken when they draft their health and safety procedures. While ease of accounting is an important consideration, States should keep in mind that activities assigned to the health and safety budget category do not have to be cost-justified by the energy audit. The same items assigned to incidental repair, weatherization material, or installation cost categories must be cost-justified.

The cost of LSW is a health and safety cost. Therefore, all labor, material, and related costs are not subject to the average cost per home limitation for those States which choose to budget health and safety costs separately. Additionally, equipment purchases used specifically for testing for lead or other health risks do not need to be included in the average cost per home limitation. No amortization of equipment costs of \$5,000 or more would be necessary for items not included in the average cost per home. Clearance testing to meet HUD or EPA lead dust standards is NOT an allowable expense for the DOE Weatherization Assistance Program.

DOE will require in PY2009 that areas near doors and windows where Weatherization and LSW is performed in households with children under the age of six must meet certain cleanliness standards. In these cases, testing with dust wipes must be conducted after final site cleanup to demonstrate compliance. Testing must be done by a certified Lead Technician (or as allowed by other State requirements) or the local agency must hire a similarly qualified third-party to perform these tests. Dust wipes must be sent to a certified independent laboratory for testing.

This testing **WILL** be an allowable health and safety expense. However, the expense of returning to clean sites that fail compliance testing will **NOT** be allowable.

The new policies and practices for LSW will be implemented in PY 2009. A Program Notice detailing new LSW policy and practices will be issued later in the 2008 Program Year.

The estimated cost of the testing, while not part of the average cost per home, must be included in the cost of the related measure when calculating the cost-effectiveness of the measure.

Please remember – under the Requirements for Hazard Education Before Renovation of Target Housing (referred to as the Lead-Based Paint Pre-Renovation Education Rule or Lead PRE), local agencies who do not give and document proper notification as described above could incur hefty fines if found doing Weatherization work in pre-1978 housing stock where more than two square feet of paint surfaces are disturbed.

5.13 LEAD PAINT HAZARD: Weatherization Program Notice 02-6, Weatherization Activities and Federal Lead-Based Paint Regulations, issued on July 12, 2002, contains the DOE requirements for States to follow when working in homes with lead-based paint. Please refer to it in developing your individual State Health and Safety Plans to ensure that proper protection is afforded to our Weatherization clients and workers. Proper protection includes the implementation of approved LSW procedures, or Lead-Safe Work Practices, and strict attention to quality control and monitoring of all activities related to lead-based paint in weatherized homes.

Lead-based paint dust and other residues are hazards that Weatherization workers are likely to encounter in older homes. HUD estimates that 26 million homes have significant lead-based paint hazards somewhere in the building or on the premises. Furthermore, Weatherization work may directly disturb lead-based paint, possibly creating hazardous conditions. While the authorizing legislation for DOE's Weatherization Assistance Program does not specifically address lead-based paint hazard reduction, DOE's policy is that Weatherization workers must be aware of the hazard and conduct Weatherization activities in a safe work manner to avoid contaminating homes with lead-based paint dust and debris, and to avoid exposing themselves and their families to this hazard.

Weatherization Program Notice 02-6 will be modified to discuss the various considerations for a LSW Plan, including the requirements for State Applications (now included in the "On-File" Information), to address the applicability of LSW, testing, deferral policy, funding, liability and training. The appendices contain summary discussions of applicable Federal Rules, including the EPA's Rule, 40 CFR Part 745 titled: "Lead: Requirements for Hazard Education Before Renovation of Target Housing (referred to as the Lead-Based Paint Pre-Renovation Education Rule or Lead PRE)." Weatherization providers are required to give a copy of the EPA booklet, *Protect Your Family from Lead in Your Home*, prior to the start of work.

Beginning in PY 2009, States will be required to submit their LSW Plans to the PMC for review and approval as part of their Health and Safety Plan that must be submitted with their State Plan. These LSW Plans must detail how the States intend to conduct LSW training, how they will verify subgrantee compliance with minimum standards and procedures, and how they rectify problems with agencies found not to be in compliance. The PMC will develop a sample Plan that States may use to guide the design of their PY 2009 LSW Plans.

DOE contracted for the development of a LSW curriculum for States to use for their LSW training. This course was modeled after the EPA Lead Safe training and a representative from EPA participated in the committee that reviewed the training. This course in LSW applies only to Weatherization, not other federally funded work. The use of this course material is optional, and States may use other material for training their workers and supervisors in LSW practices. For information on the availability of this LSW curriculum, please see the WAPTAC website.

Please note, this course does not take the place of EPA or HUD approved Lead Safe Work Practices curricula. All work done in federally assisted housing with a lead-based paint hazard, including Weatherization, requires that workers have completed either an EPA- or HUD-approved course. For further information on DOE's LSW curriculum, please go to www.waptac.org.

The Department will determine minimum standards for LSW, including training on LSW. States are allowed to use their own training curricula; however, beginning in PY 2009, each State must submit its training curriculum to DOE for approval, if they are using a curriculum other than the DOE-provided curriculum (the MSU curriculum). Periodic re-approval will be required in a manner similar to that for energy audits and priority lists.

5.14 ENERGY-RELATED MOLD AND MOISTURE IMPACTS: DOE is concerned with the escalating attention and related costs for addressing all of the energy-related health and safety issues in weatherized homes. The costs associated with LSW and pollution occurrence insurance coverage have had a profound impact on reducing the number of clients that can be served in a given year. Mold can have an even more costly impact on this Program if local agencies incur liabilities associated with mold resulting from the weatherization work they perform. As local agencies strive to coordinate energy efficiency concerns with health and safety needs in the homes they serve, it is imperative for them to understand that the goals of other Federal programs may not be attainable in weatherized homes if non-DOE funds are not available. State and local agencies should ensure that regular weatherization work is performed in a manner that doesn't contribute to mold problems.

This guidance serves to clarify the DOE policy on mold, as well as to provide resources to assist educating the Weatherization Network and clients about mold. DOE updated its

Health and Safety Guidance in Weatherization Program Notice 02-5, issued July 12, 2002. All aspects of that guidance remain in full effect.

Remediation

The Weatherization Assistance Program is not a mold remediation program. The use of DOE funds for the removal of mold and other related biological substances is not an allowable Weatherization expense. Generally, DOE funds should not be used to test, abate, remediate, purchase insurance, or alleviate existing mold conditions identified during the audit, the work performance period, or the quality control inspection. Also, in homes where multiple sources of funds are used, **any mold insurance or mold abatement costs must be charged to another funding source - not DOE.** If necessary, Weatherization services may need to be delayed until the existing mold problem can be referred to another agency for funding of remedial action. DOE funds may be used to correct energy-related conditions to allow for effective weatherization work and/or to ensure the immediate health of workers and clients.

Mold-Related Weatherization Procedures

In PY 2005, all States were required to amend their Health and Safety Plans to include a protocol for dealing with mold, which was to include a specific policy when encountering homes with mold growth. This amendment to the Health and Safety Plan should have been included under II.10, Adjustments to On-File Information, of the Annual File. While States need not modify their existing energy audits, the inclusion of a mold protocol or checklist for local agencies does need to be a part of their routine audit inspection. If a mold condition is discovered during the initial inspection of the home by the energy auditor that cannot be adequately addressed by the Weatherization crew, then the unit should be referred to the appropriate public or non-profit agency for remedial action.

Effective since 2005, all States should ensure that their local agencies include some form of notification or disclaimer to the client upon the discovery of a mold condition and what specifically was done to the home that is expected to alleviate the condition and/or that the work performed should not promote new mold growth. This notification/disclaimer should be discussed with and signed by the client and/or landlord. Since most local agencies already have a disclaimer in place, a simple modification to that form should suffice. Another vehicle for getting this information to the client is to augment local agencies' client education practices to include mold.

Also, since PY 2005, States were required to have a Training Plan (along with a schedule for completion of training) on awareness of moisture and mold hazards, and client notification procedures for its local agencies. Now provisions for training of new staff should also be addressed. It is important that Weatherization crews, including new staff, continue to receive specialized training in the recognition of conditions that promote mold growth they may encounter in their weatherization work and how best to prevent

creating new mold conditions. DOE developed a recommended mold training curriculum and provided it to the Network as Weatherization Program Notice 06-4, particularly for States that did not already have a mold training component approved by DOE. Regardless, all initial home inspections must include a mold checklist.

Note: States which already have a set of protocols that address the issues discussed in this section should provide a copy to their respective Project Manager at the PMC and no further actions are necessary.

To assist State and local agencies with the most current information about mold and moisture, please check the WAPTAC website or the resource documents listed below.

U.S. Environmental Protection Agency (EPA), Indoor Environments Division (IED), “A Brief Guide to Mold, Moisture, and Your Home.”
<http://www.epa.gov/iaq/molds/moldguide.html>

5.15 REWEATHERIZATION: The final rule permits State and local agencies to weatherize homes previously weatherized from September 30, 1993, and earlier. DOE gives the States the flexibility to revisit those homes weatherized prior to 1993 that may not have received the full complement of Weatherization services, including the use of an advanced energy audit or addressing health and safety concerns. DOE reminds States and local agencies that in selecting previously weatherized homes to revisit, there still remain more than 28 million federally eligible households that have received no Weatherization services to date. Section 5.7 of this guidance addresses Disaster Relief and references DOE-issued Weatherization Program Notice 93-12, which allows additional work to be done to homes due to natural disasters. Please refer to these sections and follow appropriate procedures if the State wishes to serve homes located in disaster areas.

5.16 VEHICLE PURCHASES: In the final rule, DOE amended the regulations to effectively spread the large cost of purchasing vehicles and/or certain equipment, with an acquisition cost of \$5,000 or more, over the entire life of the vehicle and the number of homes served during that period. DOE retains the cost of purchasing vehicles as a part of the amount of funds used to determine the average cost per home currently in 440.18(c)(6) of the program regulations.

For some local agencies, purchasing vehicles under the existing rule often forced them to seek low-cost Weatherization candidate homes in order to keep their average cost per home within the allowed maximum for the year, while ignoring potentially higher energy savings candidate homes. To address the concerns expressed by State and local agencies that the cost of these vehicles and certain types of equipment included in the average cost per home calculation placed an undue burden on them, DOE amended 440.18(b) by adding paragraph (3) which allows State and local agencies to determine the average cost

per unit by including only that fraction of the cost of a new vehicle or equipment purchase which was actually "used" during the current year.

For example, if a local agency purchases a new vehicle for \$24,000 with an expected useful life of the vehicle of 8 years (96 months), then the cost of that vehicle would be amortized at the rate of \$3,000 per year or \$250 per month. This approach also affects certain types of equipment purchases having a useful life of more than one year and a cost of \$5,000 or more as defined by 10 CFR 600. It permits local agencies to spread these costs out over the useful life of the vehicle or equipment purchase, for the purpose of calculating the average cost per home, even though the full purchase price is reported in the year in which it occurs.

States are encouraged to anticipate the need for vehicle purchases and include these in the annual application which, upon approval by DOE, satisfies the requirement for prior approval without the need for subsequent approvals.

5.17 POLICY ADVISORY COUNCIL: The final rule reflects DOE's intentions in offering States some flexibility in the area of the Policy Advisory Council (PAC). In order to change the PAC to a State council or commission, the State must show cause to DOE that the current PAC is either non-existent or is not functioning as outlined in 440.17 of the Program regulations. DOE does not intend, nor does it mean to imply, that the State has the discretionary authority to replace the PAC without due cause or process.

DOE is aware that in most instances, the PAC does work as it was intended. DOE would also give preference to any legitimate PAC that was replaced for cause by a State council or commission and then later reconstituted the following year. DOE and the States are also concerned that in certain States, the PAC does not function as intended and, in some instances, is simply non-existent. Any State which desires to substitute a State council or commission for a PAC, must address this issue as a part of the public hearing held on the annual State Plan. The DOE PMC will make the final determination on this request as a part of the review of the application and Plan.

Also, the requirement remains that any person(s) employed in any State Weatherization Program can be a member of an existing commission or council, but has to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

5.18 ELECTRIC BASE LOAD: Weatherization Program Notice 00-5 issued October 6, 2000, added the use of replacement refrigerators and replacement electric water heaters to the approved list of measures using DOE funds. Typically, addressing just the heating and/or cooling costs of a dwelling unit accounts for only about half of that unit's energy expenditures.

The addition of cost-effective electric base-load measures gives Weatherization agencies greater flexibility to help low-income households reduce their energy costs, and to partner with sources of leveraged funds.

Since PY 2000, most energy audit software tools have incorporated the capability to analyze the cost effectiveness of refrigerator and water replacement, as well as lighting conversion. Separate analysis tools for refrigerator and water heater replacement are available on WAPTAC.

By adding the term electric base-load (EBL) (or electric plug-load) measures to the program regulations, DOE was describing a new aspect of the evolution of the Program as we move toward whole-house Weatherization. Typically, addressing just the heating and/or cooling costs of a dwelling unit will account for only about half of that unit's energy expenditures. The addition of cost-effective EBL measures gives Weatherization agencies greater flexibility to help low-income households reduce their energy costs, and to partner with sources of leveraged funds.

Weatherization Program Notice 00-5 provided the standards of conformance for these two measures. In order to incorporate these EBL measures into an individual State program, certain changes to the energy audit must be adopted and approved by DOE. In most instances, this will necessitate only an assessment component to be added to the audit which will provide the analysis. The Weatherization Assistant energy audit software that contains NEAT and MHEA has the capability to evaluate refrigerator and water heater replacement, as well as lighting retrofits. Separate analysis tools for refrigerator and water heater replacement are available on WAPTAC.

5.19 DAVIS-BACON LABOR RATES: The Davis-Bacon Act, and related Acts in General, require that contractors and subcontractors pay certain wage rates to laborers and mechanics that are employed on construction projects which receive Federal assistance under those Acts. The Weatherization Assistance Program statute contains no Davis-Bacon wage rate requirements and is, therefore, exempt from any provision of the Davis-Bacon Act.

5.20 ADMINISTRATIVE COSTS: The impact of the 10 percent statutory limit on administrative costs has long been a difficult issue for local agencies, particularly small local agencies, in the management of their Weatherization Programs. As a result, both State and local agencies have appealed to the Congress for many years to provide relief. In 1985, the Congress, while not increasing the ceiling on these costs, did direct DOE to offer guidance to the States in this area. Beginning with the 1985 Annual Grant Guidance to the States, DOE specifically identified instances where certain administrative functions could be charged to the program operations category and encouraged States to permit their local agencies to incorporate these changes. This flexibility has not been uniformly adopted by the States. The only statutory relief provided by the Congress came in 1993, when DOE published regulations which

included a provision to allow local agencies with grants of less than \$350,000 to be permitted to use up to an additional 5 percent for administrative costs. Even with this flexibility, the administrative costs category, in many ways, is still inadequate. It is clear that the Congress is not likely to provide any additional relief on administrative costs for the Weatherization Assistance Program. Therefore, DOE will continue to rely on the program guidance documents still in effect since their issuance in the early 1980s.

The Weatherization authorizing legislation and the Weatherization Program regulations, 10 CFR Part 440, do not specifically define allowable administrative costs. As staff changes throughout the Program occurred, guidance on administrative costs may not have been implemented as it was originally intended or, in some cases, may not have been offered by the State. It is not uncommon to see inconsistent implementation from one State to another and even from one local agency to another within the same State. Within the same State, DOE expects to see consistency in the implementation of program costs. In particular, how the State will define these costs and how they will be charged to either administration or to program operations.

While DOE chose not to change the Program regulations, certain flexibility was afforded States and local agencies through Program guidance. The four separate memoranda provide the only flexibility on charging administrative costs as issued by DOE. Copies of these guidance documents can be found on the WAPTAC website. Included in these memoranda is House Report 98-886 which accompanied the 1985 Appropriations Bill and provided DOE with the original authority to provide relief for local agencies on the issue of administrative costs.

Program guidance in this area does generally lack specificity and it was not mandatory that every State use the guidance uniformly. The fact that the flexibility offered in these memoranda would not be picked up by an A-133 audit does cause concern when an independent financial audit of the Program is conducted. An auditor would note discrepancies in program operations costs that would normally be charged as traditional administrative costs. DOE will attempt to address, through future training venues, how States can best assure that the flexibility offered by DOE is understood and applied uniformly.

6.0 REPORTING

6.1 REPORTING REQUIREMENTS: The reporting requirements are set forth in Attachment 2 of Funding Opportunity Announcement No. DE-FA26-008000008.

6.2 REPORTING DOE COMPLETED UNITS: It is important both to DOE and the Weatherization Network that the most accurate information on how many units were completed with DOE funds are reported. This information will not only help DOE to meet its performance goals, but also help portray the Program in the best light to the

Congress and other interested parties. Meeting performance goals is paramount to the Program, attracting higher appropriations in the future and also assisting States and local agencies with their leveraging efforts. States should ensure that their local agencies report all units in which DOE funds are used as DOE completions.

DOE is aware that this may be difficult where multiple sources of funds are used to weatherize a unit or a complicated leveraging agreement has been reached with non-Federal partners. To assist State and local agencies in determining what a DOE weatherized unit is, DOE offers the following definition. **A DOE Weatherized unit is: A dwelling unit on which a DOE-approved energy audit or priority list has been applied and weatherization work has been completed. As funds allow, the DOE measures installed on this unit have a Savings-to-Investment Ratio (SIR) of 1.0 or greater, but also may include any necessary energy-related health and safety measures. The use of DOE funds on this unit may include, but are not limited to auditing, testing, measure installation, inspection, or use of DOE equipment and/or vehicles, or if DOE provides the training and/or administrative funds. Therefore, a dwelling unit that meets both the definition of a DOE weatherized unit and has DOE funds used directly on it must be counted as a DOE completed unit.**

CONCLUSION: The Weatherization Assistance Program in PY 2008 will continue to address the challenge of achieving increases in production and expenditures, while continuing to maintain and enhance program quality and effectiveness. We remain committed to working together with all the members of the Network to continue laying the groundwork for implementation of Weatherization *Plus* strategies, with the goal of providing more energy savings to more low-income households in the communities we serve throughout the country.

Once again, both the Administration and the Congress have expressed a keen interest in seeing that the Program meets its performance goals while at the same time minimizing the amount of carryover funds.

The effort put forth in recent years by the Weatherization Network was instrumental in exceeding the Weatherization Assistance Program performance goal. I am confident that we can, and will, continue this level of effort in PY 2008 to again meet our expectations while delivering quality Weatherization services to our low-income clients.



Ronald Shaw
Acting Program Manager
Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 09-1
EFFECTIVE DATE: November 17, 2008

SUBJECT: PROGRAM YEAR 2009 WEATHERIZATION GRANT GUIDANCE

PURPOSE: To issue grant guidance and management information for the Low-Income Weatherization Assistance Program (Weatherization) for Program Year (PY) 2009.

SCOPE: The provisions of this guidance apply to States or other entities named in the Notification of Grant Award as the recipient of financial assistance under the Department of Energy (DOE) Weatherization Assistance Program.

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer the Low-Income Weatherization Assistance Program. All grant rewards made under this program shall comply with applicable law including regulations contained in 10 CFR Part 440 (issued February 1, 2002), the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007 and other procedures applicable to this regulation as DOE may, from time-to-time, prescribe for the administration of financial assistance.

GRANTS.GOV: The use of Grants.gov for receipt of applications became mandatory for all programs in Fiscal Year (FY) 2007. Additional discussion and instructions for using this system is provided in PY 2009 Funding Opportunity Announcement No. DE-PS26-09NT01243.

NATIONAL EVALUATION: The Weatherization Assistance Program Office has recently contracted with Deloitte Consulting, LLP to perform a strategic assessment of the Program. Deloitte will conduct a fundamental analysis of Weatherization's objectives, impact metrics, market delivery vehicles and finance mechanisms to aid the program in achieving the maximum weatherization impact. It is intended to identify fundamental improvements in program design and delivery as distinct from the more traditional evaluation of the program benefits that has been done in the past.

Such an evaluation will still be performed, in addition to Deloitte's effort. Some Grantees and subgrantees may be contacted by the contractor hired by the EERE to conduct the assessment to gather facts and opinions from members of the network and cooperation in this effort is requested of contacted parties.

Grantees and local agencies will be notified of the implementation schedule and their responsibilities under it by Program Notice when the Department determines to proceed with the evaluation activity.

WEATHERIZATION PLUS: Weatherization *Plus*, launched in 1999, is the strategic plan to systematically promote the evolution of the Weatherization Assistance Program from a focus on heating and cooling energy conservation to an expanded focus on whole-house energy usage and whole-community efforts. In June 2005, a Weatherization *Plus* Committee was convened to collectively and collaboratively begin the planning process to take this effort to the year 2010. The Committee, representing the diverse interests of the Network, recommended that the Program focus its efforts on four specific areas: Communication; Expanded Resources: Leveraging/Partnerships; Consistent Delivery of Quality Services; and National Information Exchange Resource. To provide adequate attention to the specific areas the Committee formed three subcommittees: Expanded Resources; Leveraging/Partnerships; Consistent Delivery of Quality Services; and the National Information Exchange Resource subcommittees. The fourth topic, Communication, is an on-going process. A brief summary of the Committee's discussions and the output representing their collective ideas on the Program's next five years was issued for Network review and comment. All three subcommittees have made tremendous progress. Opportunities will continue to be provided for the Network to comment on and assist in shaping the strategic outcomes throughout the process.

ADDING THE TERRITORIES: The Energy Independence and Security Act of 2007, Section 411(c), adds Puerto Rico and the territories of the U.S. to the definition of "State" for the purpose of the Weatherization Assistance Program. Beginning with Program Year 2009, the territories of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico and the U.S. Virgin Islands will be added to the Program.

PRODUCTION: There remains a strong interest by both the Administration and the Congress to track the performance of Grantees in the production of weatherized units. DOE will closely monitor Grantee performance through the Quarterly Program Report, the quarterly Financial Status Report, and the annual Training and Technical Assistance, Monitoring and Leveraging Report. It is imperative that Grantees and local agencies submit these reports on time. Grantees are reminded that no area of a State should go more than one year without Weatherization service.

FINAL APPROPRIATIONS BILL: On September 30, 2008, the President signed into law H.R. 2638, the Consolidated Security, Disaster Assistance and Continuing Appropriations Act, 2009, Public Law 110-329, which currently goes through March 6, 2009. The Continuing Resolution provided \$250 million dollars in supplemental funding to Weatherization. Weatherization Program Notice 09-1A, Grant Guidance for Program Years 2008 and 2009 To Access the \$250 Million 2009 Supplemental Funding was issued on October 27, 2009. Results of the final appropriations bill for FY 2009 will be transmitted in Weatherization Program Notice 09-2. For planning purposes, until a final budget has been passed by Congress and apportioned by the Office of Management and Budget (OMB), Grantees should proceed with their respective plans using the supplemental funding and the same level as PY 2008. Grantees should make certain to indicate that funding to subgrantees may be adjusted based on the final Grantee allocation. Grantees will be notified of their final allocations as soon as the funds are apportioned.

As of this date, the House Appropriations Committee Mark for Fiscal Year 2009 is \$250 million, \$245 for grants and \$5 million for Headquarters T&TA. The Senate Appropriations Committee Mark for Fiscal Year 2009 is \$201,181,000. The \$1,181,000 is for Headquarters T&TA.

ALLOCATION FORMULA: In 1995, the allocation formula was revised to increase the overall equity of the allocation of funds among the States by providing warm-weather States a greater share of the funding, while protecting existing program capacity in cold-weather States. The threshold appropriation level that triggers the full impact of the revised formula stays essentially the same with the addition of the territories. Depending on the amount reserved for HQ T&TA, the threshold appropriation can vary a few dollars up or down because of rounding.

The Energy Independence and Security Act of 2007, Section 411(c) adds Puerto Rico and the territories of the U.S. to the definition of "State" for the purpose of the Weatherization Assistance Program DOE will propose that beginning with Program Year 2009, the territories of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the U.S. Virgin Islands will be added to the Program. A Notice of Proposed Rulemaking to expand the definition of "State" to include the territories and to amend the financial assistance allocation procedure to reflect the expanded definition has been developed for issuance.

WEBSITE INFORMATION: To assist the Weatherization Network in obtaining the most up to date information on programmatic/policy issues, technical issues, and evaluation studies, DOE sponsors the following websites:

Energy Efficiency and Renewable Energy:
<http://www.eere.energy.gov/weatherization;>

Weatherization Assistance Program Technical Assistance Center:

<http://www.waptac.org>;

Weatherization *Plus*:

<http://weatherizationplus.org>;

Oak Ridge National Laboratory:

<http://weatherization.ornl.gov>; and

Project Management Center:

<https://www.eere.pmc.energy.gov/>.

Grantees are strongly encouraged to visit these websites often to keep abreast of the latest information and new techniques in Weatherization. Grantees should also continue to work with their respective DOE Project Managers at the Project Management Center (PMC).

TABLE OF CONTENTS

1.0	Funding
1.1	General Funding
1.2	Federally Appropriated Funds
1.3	Adjusted Average
1.4	Funds for Administrative Purposes
1.5	Petroleum Violation Escrow (PVE) Funds
1.6	Program Income
1.7	Leveraging and Leveraged Resources
1.8	Training and Technical Assistance Funds
2.0	Grant Application
2.1	General
2.2	Intergovernmental Review
2.3	Application Package
2.4	Public Hearing
2.5	Budget
2.6	Liability Insurance
2.7	Financial Audits
3.0	Training and Technical Assistance (T&TA) Plan
3.1	Basic
3.2	Client Education
3.3	Program Evaluation
4.0	Grantee Program Oversight (Program Monitoring)
5.0	Policy, Program Guidance and Regulatory Changes
5.1	Temporary Disqualification of Certain Newly Legalized Aliens from Receipt of Weatherization Benefits
5.2	Multi-Family Eligibility
5.3	Procurement of Building Insulation Products and Materials Containing Recovered Materials
5.4	Rental Requirements
5.5	Energy Audit Criteria
5.6	Use of Weatherization Funds for Renewable Energy Systems
5.7	Disaster Relief
5.8	Energy Crisis Relief
5.9	Determining Eligibility Levels and Defining Income
5.10	Determining Priority Service
5.11	Fuel Switching
5.12	Energy-Related Health and Safety
5.13	Lead Paint Hazard
5.14	Energy-Related Mold and Moisture Impacts
5.15	Reweathering
5.16	Vehicle Purchases
5.17	Policy Advisory Council
5.18	Electric Base Load
5.19	Davis-Bacon Labor Rates
5.20	Administrative Costs
6.0	Reporting
6.1	Reporting Requirements
6.2	Reporting DOE Completed Units

1.0 FUNDING

1.1 GENERAL FUNDING: In PY 2009, funding for the Weatherization Program, requiring DOE approval for expenditure, can come from several sources:

1. Federally appropriated funds.
2. Warner and EXXON oil overcharge funds.
3. Stripper Well and other oil overcharge funds (including Texaco) which are subject to Stripper Well settlement rules.
4. LIHEAP funds designated for expenditure under DOE rules.
5. Utility funds designated for expenditure under DOE rules.
6. Program income.
7. Other

Note: The expenditure of leveraged funds requires DOE approval only when those funds are acquired using DOE appropriated monies and designated for use in the DOE Weatherization Program. Also, #4, #5, and #7 above only need to be approved by DOE if the Grantee is charging administrative costs to DOE.

1.2 FEDERALLY APPROPRIATED FUNDS: The Continuing Resolution provided \$250 million dollars in supplemental funding to Weatherization. The final appropriation FY 2009 Weatherization Assistance Program appropriation has not been determined. Weatherization Program Notice 09-2 will issue tentative allocations. As in past years, direct grants for Indian Tribes will come out of State allocations. Grantees should hold their public hearings based on their tentative allocations of appropriated funds, plus all petroleum violated escrow (PVE) and any other funds they intend to allocate for use under the Weatherization Program. As a reminder, those grantees who chose to amend their 2008 Program Year State Plan to access their allocation of the \$250 million supplemental funding needed to hold another public hearing to access the final FY 2009 appropriation funding. Grantees are expected to achieve a rate of production and expenditure that will result in all DOE Weatherization funds being spent by the end of the program year.

1.3 ADJUSTED AVERAGE: The new adjusted average expenditure limit for PY 2009 is \$3,055. This adjusted annual average is determined by DOE using the annual Consumer Price Index (CPI) or 3 percent, whichever is less. The CPI for the previous 12-month period (September 2007 – September 2008) is 4.8 percent. This amount is then multiplied by the present expenditure limit, thereby setting the new expenditure limit for the upcoming Program Year. The PY 2009 adjusted average for renewable energy measures is \$3,243 and is adjusted similarly for inflation. Further discussion on renewable energy measures can be found in Section 5.6, Use of Weatherization Funds for Renewable Energy Systems.

1.4 FUNDS FOR ADMINISTRATIVE PURPOSES: There is a statutory limit of 10 percent on funds that may be used for administrative purposes. Not more than 5 percent of new funds (total allocation for a program year, including other non-DOE funds that are a part of the grant) may be used by a Grantee for administrative purposes, with the remainder to go to subgrantees. An exception to exceed the 10 percent total administrative requirement may apply to subgrantees funded at **less than \$350,000 of new DOE funds**. Grantees are to develop criteria to be used for allowing the eligible subgrantees, those who receive less than \$350,000 of new DOE appropriated funds, authority to use **up to an additional 5 percent** of their subgrants for administrative purposes. The criteria must be submitted with the annual file. Funds in administrative category accounts may be carried over from the previous budget period. A Grantee may provide in its annual Plan for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grants for administration if the Grantee has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by DOE pursuant to this part. These policies establish an administrative fund cost pool. Grantees can then also choose to include any administrative carryover funding and/or provide a portion of their Grantee administrative funds to the local providers. **The limit for maximum administrative expenditures by a Grantee remains unchanged at 5 percent of the total funds reported in a State Plan.** Grantees can give a portion of their 5 percent administrative funds to their subgrantees if they wish.

Stripper Well funds used for all administrative purposes, i.e., for all programs, may not, in total, exceed 5 percent of the Stripper Well funds budgeted by a Grantee. To avoid the possibility of disallowed costs, Grantees are reminded of this restriction. Within those parameters, Stripper Well funds allocated to Weatherization may be used for administrative expenses. EXXON funds, however, may not be used for this purpose. A Grantee may use federal funds appropriated for the Weatherization Program to administer the EXXON and/or Stripper Well funds applied to the program. The new DOE and/or Stripper Well funding that may be used for administrative expenses may not exceed 10 percent of the total of new DOE, plus new EXXON, plus new Stripper Well funding for the program.

Program income and leveraged resources that are used in the DOE Weatherization Program may be treated as appropriated funds, in which case they could be added to the total appropriated funds to determine overall administrative costs. No change to the percentage limits for administrative funds addressed above will occur. For further information on program income see section 1.6. For leveraged resources, see section 1.7 of the grant guidance.

Note: Grantees may use up to 15% of their DOE allocation to administer large sums of leveraged non-Federal resources. Section 1.7 of the grant guidance discusses the use of leveraged resources. Section 5.20 provides further discussion of DOE policy on administrative costs.

1.5 PETROLEUM VIOLATION ESCROW (PVE) FUNDS: EXXON and Warner funds are subject to the same rules; Texaco and other subsequent oil overcharge settlement funds are subject to Stripper Well rules. For convenience, in discussing these various funding sources, we will refer to EXXON or Stripper Well as generic categories.

If a Grantee decides to use EXXON funds for its Weatherization Program, these funds are to be treated **in the same way** as appropriated funds. They must be included in the State Weatherization Plan/Annual Application; they are subject to the same State Plan/Application approval, program oversight, and reporting requirements as appropriated funds; and, their use is subject to the **same** statutory and regulatory constraints as are appropriated funds.

A Grantee may elect to use Stripper Well funds for Weatherization projects either separate from, or included within, the DOE Weatherization Program. Where Stripper Well funds have been approved for use in the program, these funds should be treated exactly as appropriated for EXXON funds. Where their use has been approved for Weatherization activities separate from DOE Weatherization, these funds are encouraged to be included, for informational purposes only, in the State Plan, but are not subject to DOE rules, oversight, or reporting requirements.

There are no requirements that EXXON or Stripper Well funds be used during a particular period of time, and a Grantee is also permitted to reallocate these funds from one eligible program to another as long as its Plan has been amended and approved by DOE-HQ. If EXXON and/or Stripper Well funds earmarked for expenditure in the prior program year are not expended, the amount of Federal and/or Stripper Well funding that may be used for administrative expenses in the following program year must be adjusted appropriately.

No more than 5 percent of the combined total of EXXON and Stripper Well funds budgeted in a State Plan/application may be used for Training and Technical Assistance (T&TA) purposes. Up to an additional 5 percent of these funds may be used for evaluation of a Grantee's Weatherization Program and for innovative efforts for leveraging program funds, provided these activities are approved by the PMC.

1.6 PROGRAM INCOME: DOE defines program income as any funds earned by grantees and/or subgrantees from non-Federal sources during the course of performing DOE Weatherization work. The income generated must be used to complete additional dwelling units in accordance with DOE rules.

Program income is subject to the specific guidance provided in the DOE Financial Assistance Rule, 10 CFR 600, Subpart B Section 600.124 and Subpart C, Section 600.225, as appropriate, and should be treated as an addition to program funds and are subject to the same rules as appropriated funds. Because of changes to 10 CFR 600, DOE will stipulate, in the grant award, that program income is to be treated as an addition to program funds. Property owner (i.e. landlord) contributions and leveraged resources (i.e.,

utility or Grantee funds) are NOT considered to be “program income” for the purposes of the Weatherization Assistance Program.

Note: Grantees requiring further clarification on program income, as it applies to their specific program, should contact their respective Project Manager at the PMC.

1.7 LEVERAGING AND LEVERAGED RESOURCES: DOE program regulations permit Grantees to take a percentage of their grant (including PVE funds used under the Weatherization Program, and training and technical assistance funds) to undertake leveraging activities which may supplement the program or be used to run a parallel program (regardless of who initiates the action). Leveraging activities include paying for agency staff or hiring consultant staff to explore and develop partnerships with utility companies and other entities that will generate non-Federal resources for Weatherization. Other allowable activities include: holding leveraging meetings; preparing technical materials/briefs; or facilitating voluntary match funds from a non-Federal source. The leveraged resources should expand energy efficiency services and/or increase the number of DOE-eligible dwelling units weatherized.

The work done with leveraged resources must be consistent with an approved energy audit and utilize cost-effective measures. Leveraging efforts will not always be successful but Grantees should aim to produce more than one dollar leveraged for each DOE dollar expended. As of PY 2007, the maximum percentage of Weatherization funds that can be diverted for leveraging activities is 15 percent of the Grantee’s total allocation.

Grantees utilizing this option must provide a detailed leveraging implementation plan in their annual file, and must indicate in their annual budget, the estimated DOE resources to be used for leveraging activities. The amount of detail in the plan should be commensurate with the amount of funds used for this effort. Reporting of leveraging activities and results must be submitted on the annual Training, Technical Assistance, Monitoring and Leveraging Report (see Section 6.1).

Landlord contributions are not considered leveraged resources because they are generally not voluntary and often come with special stipulations or requirements. Grantees requiring further clarifications or guidance on leveraging resources should contact their respective Project Manager at the PMC.

1.8 TRAINING AND TECHNICAL ASSISTANCE FUNDS: The Weatherization Assistance Program statute permits DOE to use an amount not to exceed 10 percent of the fund appropriated, for T&TA activities. This percentage is reviewed annually and set only after considering the amount of funds appropriated to the Program and an Annual Operating Plan is developed for Headquarters and PMC T&TA to address national program support needs. The percentage of funds for PY 2009 reflects the full percentage of T&TA, and the division of funds for national is 1-1/2% and for Grantees is 8-1/2%.

2.0 GRANT APPLICATION

2.1 GENERAL: To increase public involvement and obtain timely suggestions in developing their Application, DOE strongly urges Grantees to hold two meetings: one at the beginning of the planning process, as well as the formal and required public hearing on the completed Plan. DOE may request information in addition to what is required by the program rule on a case-by-case basis when warranted by prior program performance.

2.2 INTERGOVERNMENTAL REVIEW: In the development, submission, and review of grant applications, the provisions of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the DOE Implementing Order (10 CFR 1005) remain unchanged.

2.3 APPLICATION PACKAGE: Applications **must be** submitted through Grants.gov to be considered for award. Grantees cannot submit applications through Grants.gov unless they are registered. See the submission and registration requirements set forth in Funding Opportunity Announcement No. DE-PS26-09NT01243. For PY 2009 a Grantee may prepare its application in WinSAGA, and upload it directly to Grants.gov via WinSAGA.

For information on the content and preparation of the PY 2009 application package, refer to Part IV, Paragraph C of Funding Opportunity Announcement No. DE-PS26-09NT01243.

APPLICATION FORMAT: All applicable sections of the Annual File portion of the Application Instructions and Forms Package dated November 2005, attached to WPN 06-3, are to be completed in their entirety and up to date. This includes all information on the Weatherization Annual File Worksheet (pages V-17 and V-18 and the Subgrantee Information Sheet, page V-21). Electronic forms can also be found on the PMC website. Grantees must list any revisions to their On-File Information in Section II.10 of the Annual File in each year's application. Grantees are not required to submit a complete copy of the current On-File Information with their application each year, but may do so. However, the first year of any new five year grant period should include updated On-File information, and, therefore, a complete copy of the updated On-File Information shall be submitted at least every five years. Grantees are required to keep their On-File Information up-to-date at all times on their premises, and to submit a copy of the current On-File Information to DOE upon request.

2.4 PUBLIC HEARING: The PMC will carefully review the reports of the public hearings on the 2009 State Plans to determine that all local agency issues are properly addressed by the Grantee prior to approval of the final State Plan. This review will

include making certain that the proper number of public hearings were held based on grantees choice whether to access their share of the \$250 million supplemental funding. Grantees should be aware that if major program changes are made after the initial public hearing, then an additional hearing may be required. Also any change in the distribution of funds not addressed in the initial hearing will necessitate another public hearing. DOE will continue to require all areas of the State to be served. However, DOE will consider approving alternative Plans which may require implementing this provision over more than one program year and may include funds from other sources.

DOE reminds Grantees that the public hearing should be held before the State Plan is submitted to the DOE for approval, and adequate notice (not less than 10 days) must be given prior to holding a public hearing on the State Plan. A part of this notice should be a summary or highlights of the proposed changes from the previous year's Plan. Providing this information up front will improve communication between Grantees and local agencies and minimize disputes that may arise at the hearing.

Note: DOE no longer requires an official transcript of the public hearing. However, DOE considers an official hearing transcript as a best practice, particularly if the hearing is of a contentious nature. Grantees must submit the notes or minutes taken by a Grantee staff person as part of the final State Plan. Where discrepancies exist in the minutes or notes, the Grantee must allow participants to provide supplemental submissions. Whenever possible, DOE would like to be informed, in advance, of major proposed program changes or issues of a contentious nature that will be addressed at the hearing. Also, most Grantees have laws governing the conduct of public hearings, including making a copy of the Plan available upon request.

2.5 BUDGET: Grantees should ensure that subgrantees are allowed to charge legitimate program support costs to the program operations category rather than requiring those costs to be charged to the administrative category. For example, salaries, space, utilities, telephone and similar costs associated with program support personnel should be charged to program operations.

Grantees are encouraged to fully utilize the DOE funding in the year it is originally awarded to maximize the opportunity of achieving the Weatherization mission. Available carryover funds from previous budget years always need to be included as part of the budget and application for the new year's funding. To the extent possible and allowable within the grantee's organization, each grantee is also encouraged to estimate carryover for the current budget period and include it as part of the application for new funding.

When the Grantees prepare their budgets for 2009, **it is essential that they include adequate travel expenses for staff to effectively implement the program.** DOE considers attendance by Grantee staff at national and regional conferences, as well as participation on related planning committees, task forces, and other scheduled and related

meetings, as high priorities. DOE is aware that many Grantees have travel restrictions due to budgetary constraints. **It should be noted that funds to pay for Grantee and local agency travel are provided as part of the Weatherization grant, and proper usage of these funds will be closely monitored by DOE to ensure compliance with stated travel indicated in Grantees' Annual Plans.**

Note: Grantees planning to carryover unused training and technical assistance funds from one program year to another must return these monies to the program operations budget category and use them to weatherize additional homes. This provision can be waived provided that the Grantee can justify to the PMC the necessity to carryover these funds into the new program year and that they be included as a part of the new training and technical assistance budget.

T&TA funds may not be used to purchase vehicles or equipment for local agencies to perform Weatherization services. The cost of these vehicles or equipment to support the program must be charged to the vehicle/equipment or program operations categories. Only Grantee purchases of vehicles or equipment, which are directly related to specific training and technical assistance activities, such as monitoring, etc., may be purchased with T&TA funds.

2.6 LIABILITY INSURANCE: Grantees and local agencies are reminded that all work performed must be covered by liability insurance. Grantees should inform local agencies and their contractors that sufficient liability coverage for DOE funded activities must be obtained. Liability insurance can be charged to the liability line item in the budget, which was created to ensure that such costs would never have to be charged to the administrative cost category. (See preamble to Federal Register, Volume 45, Number 40, published February 27, 1980, page 13031).

Most, if not all, regular liability insurance policies do not provide for many health and safety measures such as lead and other pollution occurrence items. Thus, DOE strongly recommends Pollution Occurrence Insurance (POI) as a part of, or an addendum to, general liability insurance and is therefore charged on the liability insurance line item. If Grantees or subgrantees choose **NOT** to obtain POI coverage and damage occurs because of not following all aspects of Lead Safe Weatherization, or there is disturbance to any other environmental pollutants, the cost to do remediation, clean up, relocation, medical expenses or any other resulting costs may not be charged to DOE Weatherization and must be covered by another funding mechanism.

Local agencies that employ private contractor labor to perform Weatherization services must ensure that each private contractor is adequately insured as well. Local agencies shall review their existing policies to ensure that they have adequate coverage, in accordance to their Grantee requirements. POI is discussed further in Weatherization Program Notice 02-6. Additional information about POI coverage can be found on the WAPTAC website.

Sections 5.12 – Energy Related Health and Safety and 5.13 – Lead Paint Hazard provide further information affecting this decision.

2.7 FINANCIAL AUDITS: Section 440.23 of the program regulations permits a separate budget category for financial audits. The cost of these audits was previously charged to the already over-burdened administrative cost category and sometimes resulted in less than adequate, quality financial audits. Grantees are encouraged to provide this relief to their subgrantees by allowing these charges to come off the top of the grant, if the subgrantees meet the threshold contained in A-133.

Note: OMB Circular A-133, revised June 30, 2003, should be consulted for thresholds, etc. Grantees should refer to Section IV.3 of the current Application Instructions and Forms Package attached to WPN 06-3 located on the WAPTAC site and/or contact their contracting officer at the National Energy Technology Laboratory (NETL) for further guidance or clarification.

3.0 TRAINING AND TECHNICAL ASSISTANCE (T&TA) PLAN

3.1 BASIC: T&TA activities are intended to maintain or increase the efficiency, quality and effectiveness of the Weatherization Program at all levels. Such activities should be designed to maximize energy savings, minimize production costs, improve program management and crew/contractor “quality of work,” and/or reduce the potential for waste, fraud and mismanagement. The local service providers should be the primary recipients of T&TA activities.

Section II.6 of the Annual File, which describes specific activities, and Section III.5.4 of the “On-file” Information, which describes the overall approach, in the current Application and Forms Package should be used to describe how Grantees will identify and address the needs of the subgrantees in this area. As a minimum, such a description must include the following:

- A. How a Grantee assesses the training needs of its subgrantees;
- B. What training the Grantee will provide for subgrantee staff and if attendance is required;
- C. Whether the Grantee requires any certification or training of subgrantee staff prior to hire or by date certain of hire;
- D. How the Grantee compares productivity and energy savings between subgrantees and how these comparisons are used in the development of T&TA activities and priorities;

- E. What portion of Grantee T&TA funds will be allocated for Grantee program oversight (monitoring) efforts, how such funds will be apportioned, and if any other funding sources will be used for this purpose; and,
- F. An assessment of Grantee T&TA activities to determine whether these funds are being spent effectively.

3.2 CLIENT EDUCATION: Client education is a key component of any effective Weatherization Program. The information sharing among the Grantees in this area has brought about a heightened awareness of the importance of client education. DOE will continue its efforts to identify and network successful Grantee initiatives, and provide training and materials as needed.

3.3 PROGRAM EVALUATION: Implementation of the national evaluation has been suspended by the Office of Energy Efficiency and Renewable Energy (EERE). Grantees and local agencies will be notified of the implementation schedule and their responsibilities under it by Program Notice if and when the Department determines to proceed with the evaluation.

EERE has commissioned a strategic evaluation of the program to assess a variety of program structures and options for program development. Some Grantee and subgrantee agencies may be contacted by the contractor hired by EERE to conduct the assessment to gather facts and opinions from members of the network and cooperation in this effort is requested of contacted parties.

DOE continues to encourage Grantees to proceed with individual Grantee evaluations. Grantees undertaking such an evaluation are requested to coordinate their plans with DOE so the information may be shared to gain maximum results from the program. Technical assistance is available to Grantees through DOE to help with the design and analysis plans for Grantee evaluation studies. DOE published the report, "Estimating the National Effects of the U.S. Department of Energy's Weatherization Assistance Program with State-Level Data: A Metaevaluation Using Studies from 1993 to 2005." The individual evaluations conducted by the Grantees were critical to this effort. Also, DOE completed a non-energy benefits study. Both of these documents can be accessed on the ORNL website.

4.0 GRANTEE PROGRAM OVERSIGHT (Program Monitoring)

DOE issued Weatherization Program Notice 01-6, January 3, 2001, to update the monitoring policy for the Program. The key components of the policy remain unchanged.

A. ROLE: The Grantee must conduct a comprehensive monitoring of each subgrantee at least once a year. The comprehensive monitoring must include review of client files and

subgrantees records, as well as actual inspection of at least 5 percent of the completed units. Grantees may make as many program assessment visits as necessary and for which resources are available. By the close of the program year, the Grantee is expected to have completed a comprehensive review of each subgrantee, including review of its latest financial audit. Failure to comply with this requirement is sufficient cause to require special conditions to the grant under 10 CFR 600.212.

Note: An exception to the annual subgrantee visit requirement can be made for those agencies designated as exemplary agencies by the Grantee. This designation and a justification for each agency's designation must be included in the Grantee Monitoring Plan and approved by the PMC. The designated exemplary agencies' assessment visit should occur no less often than every other year. Grantees are required to continue to provide oversight by reviewing all relevant reports for these designated agencies and to act accordingly should a problem arise. Grantees are required to ensure that agencies designated as exemplary are satisfying all program requirements, including a final inspection of all homes weatherized.

B. VISIT: The subgrantee should be briefed on the observations and findings generated by the monitoring visit, usually through an exit interview. Within 30 days after each visit, the Grantee will prepare a written report on its findings and send it to the subgrantee for corrective action, if applicable. Noncompliance findings unresolved within forty-five days should be reported to the PMC. Sensitive or significant noncompliance findings should be reported to the PMC immediately.

C. TRACKING: Major findings from subgrantee monitoring visits and financial audits should be tracked by the Grantee to final resolution. DOE recommends that the tracking record developed by the Grantee include, but not be limited to: findings, including success stories, recommended corrective actions, deliverables, due dates, responsible parties, actions taken, and final resolutions.

D. ANALYSIS: Annually the Grantee will summarize and review each subgrantee's audit, program monitoring reports and findings for internal monitoring of Grantee and subgrantee needs, strengths, and weaknesses. The results of this annual monitoring should be considered during annual planning and should be available in the Grantee Office for the PMC staff to review during their Grantee program monitoring visits.

5.0 POLICY, PROGRAM GUIDANCE, AND REGULATORY CHANGES

5.1 TEMPORARY DISQUALIFICATION OF CERTAIN NEWLY LEGALIZED ALIENS FROM RECEIPT OF WEATHERIZATION BENEFITS: Sections 245A and 210A of the Immigration and Nationality Act (INA), as amended, made certain aliens, legalized under the Immigration and Control Act (ICA) of 1986, temporarily ineligible for Weatherization assistance. The provisions of this law have expired. The only potential implications affecting Weatherization services are those individual cases that were open while this law was in effect.

The Welfare Reform Act officially referred to as the Personal Responsibility and Work Opportunity Act of 1996, H.R. 3734, placed specific restrictions on the eligibility of aliens for “Federal means-tested public benefits” for a period of five years. As defined in a Federal Register notice dated August 26, 1997 (62 FR 45256) the Department of Health and Human Services (HHS) is interpreting “Federal means-tested public benefits” to include only those benefits provided under Federal means-tested, mandatory spending programs.

HHS Information Memorandum LIHEAP-IM-25 date August 28, 1997, states that all qualified aliens, regardless of when they entered the United States, continue to be eligible to receive assistance and services under the Low-Income Home Energy Assistance Program (LIHEAP) if they meet other program requirements. To eliminate any possible contradiction of eligibility for Weatherization services at the Grantee and local level for qualified aliens, the definition adopted by HHS will also apply to the DOE Weatherization Assistance Program.

HHS issued Information Memorandum LIHEAP-IM-98-25 dated August 6, 1998, outlining procedures for LIHEAP and Weatherization grantees serving non-qualified aliens to implement new status verification requirements. This memorandum is based on a proposed rule issued by the Department of Justice (DOJ) on August 4, 1998. The Welfare Reform Act is a complex issue and there is some confusion on the specific application of this part of the Act. To insure Program continuity between LIHEAP and Weatherization for the many subgrantees operating both programs, the DOE Weatherization Assistance Program will follow the interpretation as adopted by HHS. The primary area of confusion resides in the types of local agencies that are exempt/non-exempt from “status verification requirements.” Local agencies that are both charitable and non-profit, which comprise about three-quarters of the local agency network, would be exempt. **However, those agencies which are designated as local government agencies operating the Weatherization Program would not be exempt and, therefore, must conduct “status verification.” Under the DOJ ruling, Grantees subject to this ruling have two years to fully implement this procedure after the publication date of the final rule. As of this date, the final rule has not been issued.**

Also addressed in the LIHEAP-IM-98-25 is the issue of unqualified aliens residing in multi-family buildings. Since many LIHEAP grantees also use the DOE rules to implement their programs, HHS has adopted the 66 percent provision of the DOE regulations to address this issue. Under DOE rules, a multi-family building may be weatherized if 2/3 of the units are eligible for assistance (2 in the case of a 2 or 4-unit building). HHS has modified the provision concerning verifying citizenship in multi-family buildings. LIHEAP-IM-99-10 issued June 15, 1999, retracts any requirement that Weatherization providers must do any type of certification of citizenship in multi-family buildings.

5.2 MULTI-FAMILY ELIGIBILITY: In the Final Rule, published in the Friday, December 8, 2000, Federal Register/Vol. 65, No. 237, DOE offered flexibility by adding certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units must be occupied by income eligible persons. In these large multi-family buildings, as few as 50 percent of the unit, would have to be certified as eligible before Weatherization can be offered. This exception would apply only to those large multi-family buildings where an investment of DOE funds would result in a significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies will be better able to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions. This flexibility does not apply to any other type of multi-family unit.

In the Preamble to the Final Rule, December 8, 2000, at the top of page 77216, it states: “In the proposed rule, DOE made it clear that this flexibility will be targeted to only these certain types of buildings because of the large investment involved and the greater potential for greater energy savings.”

During the Grant Guidance session at the 2008 State Managers’ Meeting, it was requested that DOE rethink the premise that large multi-family buildings are “100 units or more.” Based on this input and the strength of the preamble language in the Final Rule, DOE has removed the “100 units or more” reference from the guidance. However, also based on the preamble language, DOE does not believe this flexibility includes complexes.

As a reminder, when addressing multi-family units with DOE funds, please multiply the total number of income-eligible units in the multi-family building by the current statewide average cost per unit to determine the amount of DOE funding available for weatherizing the building. Further, all units in the building can be served and all units should be reported to DOE.

Currently, approval of buildings that meet the “significant energy improvement” threshold has been handled on a case-by-case basis through the PMC. Uniform guidance is being discussed by DOE to provide grantees clarity on what constitutes “significant energy improvement.”

Note: Grantee and subgrantee agencies should exercise caution when utilizing flexibility in this area. The key is the investment of DOE funds coupled with leveraged resources which result in significant energy savings. Absent this investment, lowering the eligibility to 50% may lead to disallowed costs. Subgrantee agencies who are uncertain on a given multi-family project should seek approval by the PMC through their Grantee Weatherization Program Manager.

5.3 PROCUREMENT OF BUILDING INSULATION PRODUCTS AND MATERIALS CONTAINING RECOVERED MATERIALS: Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), states that if a procuring agency using Federal funds purchases certain designated items, such items must be composed of the highest percentage of recovered materials practical. On February 17, 1989, the Environmental Protection Agency promulgated the Final Rule containing the guidelines for the procurement of building insulation products. Policy guidance was issued by the DOE on February 16, 1990, providing further clarification on this issue.

5.4 RENTAL REQUIREMENTS: All Grantees were required to develop rental procedures prior to the submission of their application to address the provisions of Section 440.22, Eligible Dwelling Units, of the program regulations. In developing these procedures, Grantees were encouraged to open a dialogue with their local agencies to ensure that the procedures adopted are both understood and attainable. As with health and safety protocols, these procedures are not a part of the application; however, they do impact directly on the operation of the program by the subgrantees. DOE strongly encourages Grantees to address their rental procedures, including any changes from the previous year in a public hearing forum. The hearing on the State Plan offers an excellent opportunity to air these procedures and how they would impact other components of the Plan, and to accept and consider comments from the public.

5.5 ENERGY AUDIT CRITERIA: Weatherization Program Notice 01-4 explains the criteria DOE will use to approve energy audit procedures and revalidate priority lists every five years as required by the Program regulations. All Grantees whose audit procedures or priority lists were approved more than five years ago must request DOE re-approval. DOE requires energy audit procedures be approved specifically for use on single-family dwellings and mobile homes. Additionally, DOE requires energy audit procedures be approved specifically for use on multi-family buildings if they represent 20 percent or more of the total units weatherized by the Grantee each year.

Single Family Audits:

The National Energy Audit Tool (NEAT) has been developed by DOE for use by the network. NEAT is part of the Weatherization Assistant and is maintained by Oak Ridge National Laboratory (ORNL). The Weatherization Assistant is posted to the WAPTAC and ORNL websites (<http://www.waptac.org/sp.asp?id=8452> and <http://weatherization.ornl.gov>, respectively). Grantees may elect to use alternative energy audits that are approved by DOE.

Mobile Home Audits:

Beginning in PY 2009, Grantees are required to have a DOE-approved Mobile Home Energy Audit. The Manufactured Home Energy Audit (MHEA) is now available to the

Network as part of the Weatherization Assistant. Weatherization Program Notice 03-6, dated September 26, 2003, marked the Network release of the new and improved MHEA and outlined its availability and use. The package is available at no cost to regional, grantee, and subgrantee Weatherization agencies. The National Energy Audit Tool (NEAT) and MHEA audits are a part of the Weatherization Assistant and are maintained by Oak Ridge National Laboratory (ORNL). The Weatherization Assistant is posted to the WAPTAC and ORNL websites (<http://www.waptac.org/sp.asp?mc=tech-aids-audits> and <http://weatherization.ornl.gov>, respectively). The results of the MHEA validation are complete. Grantees will be encouraged to adopt this latest version of the Weatherization Assistant to insure that cost-effective measures are selected and installed in eligible mobile homes. Grantees that use priority lists on mobile homes that were developed with previous version of MHEA should revisit them using the latest revised version.

Grantees must submit mobile home energy audit procedures to DOE for review in PY 2009. All 2009 State Plans must include a training component to implement their procedures for mobile homes. Full implementation of a mobile home-specific component is required in PY 2009.

Multi-Family Audits:

For energy audit purposes, DOE considers multi-family buildings to be those containing five dwelling units or more. Approved single-family energy audits can be used in buildings with one to four dwelling units. As approved by DOE on a case-by-case basis, certain single-family energy audits may be used in multi-family buildings containing up to 25 individually heated and cooled dwelling units. For large multi-family buildings, DOE will continue to rely on EA-QUIP and TREAT.

While TREAT was originally developed for use by home performance contractors, it is approved for use in the Weatherization Program on single-family houses, multi-family buildings, and mobile homes. TREAT was developed by TAITEM Engineering and Performance Systems Development (PSD), Inc. There is a fee associated with the use of TREAT. For information on TREAT, contact PSD's Ethan MacCormick at 124 Brindley Street, Suite 4, Ithaca, NY 14850, 607-277-6240 x 209, emaccormick@psdconsulting.com.

EA-QUIP, which stands for Energy Audit using the Queens Information Package, is available from the Association for Energy Affordability, Inc. (AEA) for a nominal fee to Weatherization agencies. A web-based version of EA-QUIP is currently in development. The AEA Training Center is located at 105 Bruckner Blvd., Bronx, NY 10454. For more information on AEA's EA-QUIP, call Taina Palombo-Price at (718) 292-6733 x 210.

While it has been modified over the years to handle a variety of multi-family building types, EA-QUIP's focus has traditionally been the larger multi-family buildings found in New York City and other urban centers. Smaller, garden-style apartment buildings are more typical of many States' multi-family Weatherization efforts. In addition to TREAT, several other energy audit software packages address these smaller multi-family

buildings. DOE will inform the Network when these new audit tools receive DOE approval for use in the Weatherization Assistance Program.

5.6 USE OF WEATHERIZATION FUNDS FOR RENEWABLE ENERGY

SYSTEMS: Section 206 of the Energy Policy Act of 2005 (EPACT 2005) amended the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.) to clarify that assistance under the Weatherization Assistance Program for low-income persons may be provided for renewable energy systems and to provide definitions and criteria to be used in assessing eligibility. EPACT 2005 set a ceiling for \$3,000 per dwelling for such assistance, subject to annual adjustments as provided in the statute. EPACT 2005 also requires DOE to establish a procedure under which a manufacturer of a technology or system may request the Secretary of Energy to certify the technology or system as an eligible renewable energy system.

Summary of Amendments

DOE amended 10 CFR Part 440 to codify these EPACT provisions. The Direct Final Rule was published on June 22, 2006, and it became final on August 21, 2006. Section 440.18 (Allowable Expenditures) was amended to incorporate the new statutory provisions addressing renewable energy systems and specifying a ceiling of \$3000 per dwelling for labor, weatherization materials, and related matters.

The language of the Statute authorizes only the incremental difference between the amount now allowed for the statewide average of “labor, weatherization materials, and related matters” (currently \$3,055 per unit) and the new ceiling of \$3,243 for renewable energy systems, or a total addition of \$188. In other words, the calculation by a Grantee of its compliance with the average cost ceiling with and without renewable energy installations should differ by no more than the additional value of \$188 times the number of renewable energy installations. As the ceiling is adjustable over time, according to Section 440.18, the increment will also grow, albeit slowly.

Even though this increment is small, the effect in terms of program implementation is not determined by the size of the increment since using a whole house approach in conjunction with the cost-effectiveness test would limit the use of renewable energy systems in any case. Thus, the major effects of the regulation are to provide criteria and a procedure for integrating renewables into the Weatherization Program, and to establish a process for evaluating petitions to use new or innovative renewable energy systems in the Weatherization Assistance Program.

Section 440.21 was amended to add a new paragraph (c)(1) that specifies performance and quality standards criteria for renewable energy systems. New paragraph (c)(2) was also added to establish a procedure for submission and action on petitions by manufacturers requesting the Secretary of Energy to certify a new technology or system as an eligible renewable energy system.

Approved renewable energy systems will be listed in Appendix A of Part 440, Standards for Weatherization Materials.

5.7 DISASTER RELIEF: DOE issued Weatherization Program Notice 08-5, Disaster Planning and Relief, on September, 22, 2008, which supersedes WPN 93-12. This guidance details the process and procedures Grantees should follow to use Weatherization resources to assist in areas that are affected by disasters.

5.8 ENERGY CRISIS RELIEF: DOE issued Weatherization Program Notice 01-7 on January 18, 2001, which permits States, if they choose, to use a portion of their DOE grant for energy crisis relief. Procedures for implementation are discussed in the program notice.

5.9 DETERMINING ELIGIBILITY LEVELS AND DEFINING INCOME: The Energy Policy Act of 2005, Section 122(b) states “Eligibility” – Section 412(7) of the Energy Conservation and Production Act (42 U.S.C. 6862(7)) is amended by striking “125 percent” both places it appears and inserting “150 percent.” The Department of Energy’s Office of General Counsel determined that it is permissible to make this change through this Grant Guidance. Beginning with PY 2006, the income eligibility level for the DOE Weatherization Program is 150 percent of the Poverty Income Guidelines. In determining the level of eligibility, the State may use either the DOE criteria of 150 percent of poverty or the LIHEAP criteria. This determination, made by the Grantee, must be applied throughout its entire service territory.

The program regulations define low income as income in relation to family size. Annually, DOE issues poverty income guidelines for use in the Program along with a definition of what constitutes income. If the State elects to use the DOE level of 150 percent of poverty then the DOE definition of income provided annually must also be used. However, should a State elect to use the LIHEAP criteria, then the Grantee may either use the DOE definition of income or, as permitted under the LIHEAP regulations, the Grantee may define what constitutes income.

The Economic Stimulus Act of 2008 provided rebate checks to qualifying individuals and families. With respect to those payments the IRS emphasizes the stimulus payments will not count toward or negatively impact any other income-based government benefits such as Social Security benefits, food stamps, and other programs. Therefore, for the purpose of WAP, the Economic Stimulus Payment will NOT count as income when determining eligibility.

Eligibility issues are discussed further in Weatherization Program Notice 99-7 issued August 27, 1999.

5.10 DETERMINING PRIORITY SERVICE: The final rule provides Grantee and local agencies with additional flexibility to target their services to maximize program effectiveness. In adding the terms high residential energy user and household with a high energy burden, DOE intended to provide Grantee and local agencies with two additional categories of priorities for their discretionary use. These are in no way mandatory and may be used in lieu of, or in any combination with, the existing priority categories of elderly, persons with disabilities, or families with children. By adding these categories, Grantee and local agencies are better able to partner with utilities and other programs to leverage additional resources into their programs. If a Grantee elects to use either of these categories, these should be reported on the Quarterly Program Report.

5.11 FUEL SWITCHING: The DOE Weatherization Assistance Program does not permit the general practice on non-renewable fuel switching when replacing furnaces/appliances. DOE does allow the changing or converting of a furnace/appliance using one fuel source to another on a limited, case-by-case basis only.

5.12 ENERGY-RELATED HEALTH AND SAFETY: The Program's flexibility to improve the health and safety of the low-income persons served is intended to mean "energy-related" health and safety. Grantees are reminded, the primary goal of the Weatherization Assistance Program is energy efficiency. Achievement of this goal endures even with the program changes which allow the DOE funds to be used for health and safety risk mitigation. The final rule has eliminated the requirement that the cost of all energy-related health and safety risk mitigating be within the per home expenditure average. Grantees are still required to identify health and safety procedures and the percentage of costs involved as a part of their overall Health and Safety Plan to be approved by DOE. This change gives States and local agencies greater flexibility and incentive to incorporate new technologies and their costs into their programs by removing health and safety costs from the per-house limitation; if they are budgeted separately. In providing this flexibility, DOE will continue to encourage States to be prudent in their oversight of the percentage of funds approved for health and safety mitigation on homes weatherized by their local agencies. These revised health and safety mitigation issues are discussed in Weatherization Program Notice 02-5 issued July 12, 2002. Some of the more noteworthy changes from the previous guidance include: a requirement for a five-part State Health and Safety Plan; identification of ten broad areas of potential hazard consideration that must be addressed; and new deferral standards.

Health and safety appears in three sections of the final rule (Sections 440.16, 440.18 and 440.21) and directly affects operation of the program by subgrantees. For PY 2009, this guidance has been revised and Grantees are required to submit a revised Health and Safety Plan which includes a strengthened Lead Safe Weatherization (LSW) Plan. The hearing on the State Plan offers an excellent opportunity to air these procedures and their potential impact on other components on the Plan, and to accept and consider comments from the public.

The final rule does not mandate a separate health and safety budget cost category, but rather encourages Grantees to budget health and safety costs as a separate category and, thereby, exclude such costs from the average per-unit cost calculation. This separate category also allows these costs to be isolated from energy efficiency costs in program evaluations. Grantees are reminded that, if health and safety costs are budgeted and reported under the program operations category, the related health and safety costs would be included in the calculation of the average cost per home and cost-justified through the audit.

Grantees should carefully consider the approach to be taken when they draft their health and safety procedures. While ease of accounting is an important consideration, Grantees should keep in mind that activities assigned to the health and safety budget category do not have to be cost-justified by the energy audit. The same items assigned to incidental repair, weatherization material, or installation cost categories must be cost-justified.

5.13 LEAD PAINT HAZARD: To provide additional guidance to Grantees, DOE issued Weatherization Program Notice (WPN) 08-6 on September 22, 2008, as Interim Lead-Safe Weatherization Guidance, for a LSW component of the Health and Safety Plan. This guidance builds on the foundation provided in Weatherization Program Notice (WPN) 02-6, Weatherization Activities and Federal Lead Based Paint Regulations, issued on July 12, 2002, that contain the DOE requirements for Grantees to follow when working in homes with lead-based paint. Please refer to it in developing your individual State Health and Safety Plans to ensure that proper protection is afforded to our Weatherization clients and workers.

In April 2008, EPA published the “Lead; Renovation, Repair, and Painting Program” (LRRPP) Final Rule. This rule specifically cites Weatherization activities (in the context of “renovation”) in several places and has a direct impact on how the Weatherization Program proceeds in implementing Lead Safe Weatherization. Full implementation of the rule will be required for the Weatherization Program. DOE will continue to issue guidance in Program Notices with the information necessary for Grantees to strengthen LSW and prepare to meet the new EPA requirements that are slated to go into effect in PY 2010.

5.14 ENERGY-RELATED MOLD AND MOISTURE IMPACTS: DOE is concerned with the escalating attention and related costs for addressing all of the energy-related health and safety issues in weatherized homes. The costs associated with LSW and pollution occurrence insurance coverage have had a profound impact on reducing the number of clients that can be served in a given year. Mold can have an even more costly impact on this Program if local agencies incur liabilities associated with mold resulting from weatherization work they perform. As local agencies strive to coordinate energy efficiency concerns with health and safety needs in the homes they serve, it is imperative for them to understand that the goals of other Federal programs may not be attainable in weatherized homes if non-DOE funds are not available. Grantees and local agencies should ensure that regular weatherization work is performed in a manner that doesn't contribute to mold problems.

This guidance serves to clarify the DOE policy on mold, as well as to provide resources to assist in educating the Weatherization Network and clients about mold. DOE updated its Health and Safety Guidance in Weatherization Program Notice 02-5, issued July 12, 2002. All aspects of that guidance remain in full effect.

Remediation

The Weatherization Assistance Program is not a mold remediation program. The use of DOE funds for the removal of mold and other related biological substances is not an allowable Weatherization expense. Generally, DOE funds should not be used to test, abate, remediate, purchase insurance, or alleviate existing mold conditions identified during the audit, the work performance period, or the quality control inspection. Also, in homes where multiple sources of funds are used, **any mold insurance or mold abatement costs must be charged to another funding source—not DOE.** If necessary, Weatherization services may need to be delayed until the existing mold problem can be referred to another agency for funding of remedial action. DOE funds may be used to correct energy-related conditions to allow for effective weatherization work and/or to ensure the immediate health of workers and clients.

Mold-Related Weatherization Procedures

Grantee Health and Safety Plans are required to include a protocol for dealing with mold found in client homes. The protocol should include a method of identifying the presence of mold during the initial audit or assessment, notification to the client, and crew training on how to alleviate mold and moisture conditions in homes.

The initial home assessment must include an item to identify if mold is present. If the energy auditor determines that mold is present and cannot be adequately addressed by the weatherization crew, the unit should be referred to the appropriate public or non-profit agency for remedial action.

Local agencies need some form of notification and/or disclaimer to inform the client of the discovery of a mold in the home. The notification will include specific work done on the home that should alleviate the mold problem. The notification needs to be discussed with and signed by the client and/or landlord. The notification can be part of an existing notification/disclaimer form being used for general weatherization work. Local agencies can also augment their client education practices to include mold prevention.

Grantees are required to provide crew training on identification and assessment of moisture and mold hazards, methods to alleviate conditions which promote mold growth, and protocols for client notification. DOE developed a recommended mold training curriculum and provided it to the Network as Weatherization Program Notice 06-4, which can be used for training purposes.

To assist Grantees and local agencies with the most current information about mold and moisture, please check the WAPTAC website or the resource documents listed below.

U.S. Environmental Protection Agency (EPA), Indoor Environments Division (IED), “A Brief Guide to Mold, Moisture and Your Home.”

<http://www.epa.gov/iaq/molds/moldguide.html>

5.15 REWEATHERIZATION: The final rule permits Grantees and local agencies to weatherize homes previously weatherized from September 30, 1993, and earlier. DOE gives Grantees the flexibility to revisit those homes weatherized prior to 1993 that may not have received the full complement of Weatherization services, including the use of an advanced energy audit or addressing health and safety concerns. DOE reminds Grantees and local agencies that in selecting previously weatherized homes to revisit, there still remain more than 28 million federally eligible households that have received no Weatherization services to date. Section 5.7 of this guidance addresses Disaster Planning and Relief and references DOE-issued Weatherization Program Notice 08-5, which allows additional work to be done on homes due to natural disasters. Please refer to these sections and follow appropriate procedures if the State wishes to serve homes located in disaster areas.

5.16 VEHICLE PURCHASES: In the final rule, DOE amended the regulations to allow agencies to spread the cost of purchasing vehicles and/or certain other equipment, having an acquisition cost of \$5,000 or more over the entire life of the vehicle and the number of homes served during that period. DOE currently retains the cost of purchasing such vehicles and equipment as a part of the amount of funds used to determine the average cost per home per 440.18(c)(6) of the program regulations.

For some local agencies, purchasing vehicles under the existing rule often forced them to seek low-cost Weatherization candidate homes in order to keep their average cost per home within the allowed maximum for the year, while ignoring potentially higher energy saving candidate homes. To address the concerns expressed by the State and local agencies that the cost of these vehicles and certain types of equipment included in the average cost per home calculation placed an undue burden on them, DOE amended 440.18(b) by adding paragraph (3) which allows Grantees and local agencies to determine the average cost per unit by including only that fraction of the cost of a new vehicle or equipment purchase which was actually “used” during the current year.

For example, if a local agency purchases a new vehicle for \$24,000 with an expected useful life for the vehicle of 8 years (96 months), then the cost of that vehicle would be amortized at the rate of \$3,000 per year or at \$250 per month. This approach also affects certain types of equipment purchases having a useful life of more than one year and a cost of \$5,000 or more as defined by 10 CFR 600. It permits local agencies to spread these costs out over the useful life of the vehicle or equipment purchase, for the purpose

of calculating the average cost per home, even though the full purchase price is reported in the year in which it occurs.

Grantees are encouraged to anticipate the need for vehicle purchases and include these in the annual application which, upon approval by DOE, satisfies the requirement for prior approval without the need for subsequent approvals.

5.17 POLICY ADVISOR COUNCIL: The final rule reflects DOE's intentions in offering Grantees some flexibility in the area of the Policy Advisory Council (PAC). In order to change the PAC to a council or commission, the Grantee must show cause to DOE that the current PAC is either non-existent or is not functioning as outlined in 440.17 of the Program regulations. DOE does not intend, nor does it mean to imply, that the Grantee has the discretionary authority to replace the PAC with due cause or process.

Any Grantee who desires to substitute a Grantee council or commission for a PAC, must address this issue as a part of the public hearing held on the annual State Plan. The DOE PMC will make the final determination on this request as a part of the review of the application and Plan.

Also, the requirement remains that any person(s) employed in any Grantee Weatherization Program or local agency can be a member of an existing commission or council, but has to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

5.18 ELECTRIC BASE LOAD: Weatherization Program Notice 00-5 issued October 6, 2000, added the use of replacement refrigerators and replacement electric water heaters to the approved list of measures using DOE funds. Typically, addressing just the heating and/or cooling costs of a dwelling unit accounts for only about half of that unit's energy expenditures. The addition of cost-effective electric base-load measures gives Weatherization agencies greater flexibility to help low-income households reduce their energy costs and to partner with sources of leveraged funds.

5.19 DAVIS-BACON LABOR RATES: The Davis-Bacon Act, and related Acts in General, require that contractors and subcontractors pay certain wage rates to laborers and mechanics that are employed on construction projects which receive Federal assistance under those Acts. The Weatherization Assistance Program statute contains no Davis-Bacon wage rate requirements and is, therefore, exempt from any provision of the Davis-Bacon Act.

5.20 ADMINISTRATIVE COSTS: The impact of the 10 percent statutory limit on administrative costs has long been a difficult issue for local agencies, particularly small local agencies in the management of their Weatherization programs. As a result, both

Grantees and local agencies have appealed to Congress for many years to provide relief. In 1985, the Congress, while not increasing the ceiling on these costs, did direct DOE to offer guidance to the Grantees in this area. Beginning with the 1985 Annual Grant Guidance to the Grantees, DOE specifically identified instances where certain administrative functions could be charged to the program operations category and encouraged Grantees to permit their local agencies to incorporate these changes. This flexibility has not been uniformly adopted by the Grantees. The only statutory relief provided by Congress came in 1993 when DOE published regulations which included a provision to allow local agencies with grants of less than \$350,000 to be permitted to use up to an additional 5 percent for administrative costs. Even with this flexibility, the administrative costs category, in many ways, is still inadequate. It is clear that Congress is not likely to provide any additional relief on administrative costs for the Weatherization Assistance Program. Therefore, DOE will continue to rely on the program guidance documents still in effect since their issuance in their early 1980's.

The Weatherization authorizing legislation and the Weatherization Program regulations, 10 CFR Part 440, do not specifically define allowable administrative costs. As staff changes throughout the Program occurred, guidance on administrative costs may not have been implemented as it was originally intended or, in some cases, may not have been offered by the Grantee. It is not uncommon to see inconsistent implementation from one Grantee to another and even from one local agency to another within the same State. DOE expects to see consistency in the implementation of program costs, particularly in how the Grantee defines these costs and how they will be charged to either administration or to program operations.

While DOE chose not to change the Program regulations, certain flexibility was afforded Grantees and local agencies through Program guidance. The four separate memoranda provide the only flexibility on charging administrative costs as issued by DOE. Copies of these guidance documents can be found on the WAPTAC website. Included in these memoranda is House Report 98-886 which accompanied the 1985 Appropriations Bill and provided DOE with the original authority to provide relief for local agencies on the issue of administrative costs.

Program guidance in this area generally lacks specificity and it was not mandatory that every single State use the guidance uniformly. The fact that the flexibility offered in these memoranda would not be picked up by an A-133 audit does cause concern when an independent financial audit of the Program is conducted. An auditor would note discrepancies in program operations costs that would normally be charged as traditional administrative costs. DOE will attempt to address through future training venues how States can best assure that the flexibility offered by DOE is understood and applied uniformly.

6.0 REPORTING

6.1 REPORTING REQUIREMENTS: The reporting requirements are set forth in Attachment 2 of Funding Opportunity Announcement No. DE-PS26-09NT01243.

6.2 REPORTING DOE COMPLETED UNITS: It is important both to DOE and the Weatherization Network that the most accurate information on how many units were completed with DOE funds are reported. This information will not only help DOE to meet its performance goals, but also help portray the Program in the best light to the Congress and other interested parties. Meeting performance goals is paramount to the Program, attracting higher appropriations in the future and also assisting Grantees and local agencies with their leveraging efforts. Grantees should ensure that their local agencies report all units in which DOE funds are used as DOE completions.

DOE is aware that this may be difficult where multiple sources of funds are used to weatherize a unit or a complicated leveraging agreement has been reached with non-Federal partners. To assist Grantees and local agencies in determining what a DOE weatherized unit is, DOE offers the following definition. **A DOE Weatherized unit is: A dwelling on which a DOE-approved energy audit or priority list has been applied and weatherization work has been completed. As funds allow, the DOE measures installed on this unit have a Savings-to-Investment Ratio (SIR) of 1.0 or greater, but also may include any necessary energy-related health and safety measures. The use of DOE funds on this unit may include, but are not limited to auditing, testing, measure installation, inspection, or use of DOE equipment and/or vehicles, or if DOE provides the training and/or administrative funds. Therefore, a dwelling unit that meets both the definition of a DOE weatherized unit and has DOE funds used directly on it must be counted as a DOE completed unit.**

CONCLUSION: The Weatherization Assistance Program in PY 2009 will continue to address the challenge of achieving increases in production and expenditures, while continuing to maintain and enhance program quality and effectiveness. We remain committed to working together with all the members of the Network to continue laying the groundwork for implementation of Weatherization *Plus* strategies, with the goal of providing more energy savings to more low-income households in the communities we serve throughout the country.

Once again, both the Administration and Congress have expressed a keen interest in seeing that the Program meets its performance while at the same time minimizing the amount of carryover funds.

The effort put forth in recent years by the Weatherization Network was instrumental in exceeding the Weatherization Assistance Program performance goal. I am confident that we can, and will, continue this level of effort in PY 2009 to again meet our expectations while delivering quality Weatherization services to our low-income clients.



Gilbert P. Sperling
Program Manager
Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 09-1-A
EFFECTIVE DATE: October 27, 2008

SUBJECT: GRANT GUIDANCE FOR PROGRAM YEARS 2008 AND 2009 TO ACCESS THE \$250 MILLION 2009 SUPPLEMENTAL FUNDING

PURPOSE: To issue guidance that defines the approach for grantees to access all or a portion of their share of the \$250 million 2009 supplemental funding. The Tentative State Allocations for the \$250 million are attached to this guidance.

SCOPE: The provisions of this guidance apply to all grantees of financial assistance under the Department of Energy (DOE) Weatherization Assistance Program. The Territories are not eligible for a share of the \$250 million because the rulemaking to add them has not yet been published.

The 1995 revised allocation formula is triggered when funding exceeds the \$233,027,512 threshold. Thus, hot climate states need to plan for a greater percentage of funds in excess of this amount that will be allocated in 2009. For more information on the formula, please reference Section II-12 of the August 2008 *U.S. Department of Energy Weatherization Assistance Program Briefing Book* distributed to State Program Managers and available online at www.waptac.org.

LEGAL AUTHORITY: Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer the Weatherization Assistance Program. All grant awards made under this program shall comply with applicable law including regulations contained in 10 CFR Part 440 (issued February 1, 2002), 10 CFR Part 600, the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and other procedures applicable to this regulation as DOE may, from time-to-time, prescribe for the administration of financial assistance.

BACKGROUND: On September 30, 2008, the President signed into law H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110-329. With respect to Weatherization, the Act provides for the following:

“Sec.130. (a) In addition to the amounts otherwise provided by section 101 for ‘Department of Energy - - Energy Programs - - Energy Efficiency and Renewable Energy’ for weatherization assistance under part A of title IV of the Energy Conservation

and Production Act (42 U.S.C. 6861 et seq.), there is appropriated \$250 million for an additional amount for Fiscal Year 2009, to remain available until expended.

(b) The amount provided by this section is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for Fiscal Years 2008 and 2009.”

On December 26, 2007, the President signed Public Law No. 110-161, Consolidated Appropriations Act, 2008, which directed the Secretary to make fiscal year 2008 weatherization funding available from October 1, 2007, through March 31, 2009, for States that submit plans requesting allocations for all or part of this period.

NOTE: Section 106 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, at Sec. 106 states “Unless otherwise provided for in this joint resolution or in the applicable appropriations Act for fiscal year 2009, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until whichever of the following first occurs: (1) the enactment into law of an appropriation for any project or activity provided for in this joint resolution; (2) the enactment into law of the applicable appropriations Act for fiscal year 2009 without any provision for such project or activity; or (3) March 6, 2009.”

ALSO NOTE: There is a provision in the Energy Policy Act of 2005 that whenever Weatherization Appropriation exceeds \$275 million the Secretary may use up to 2% of the appropriation for sustainable energy resources for consumer’s grants. DOE will provide a separate program notice to address this provision, as applicable. The supplemental appropriation has not been reduced for this amount.

POLICY: Under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, currently in effect, the WAP has \$250 million in FY 2009 supplemental funding. The DOE annual allocation for the Weatherization Assistance Program for FY 2009 has not been finally determined. Therefore, this guidance applies only to the \$250 million supplemental funding and not the FY 2009 annual allocation.

The Congressional intent is to make the \$250 million in supplemental funding available immediately. This supplemental guidance is being issued in advance of the regular Program Year 2009 Grant Guidance (which will be issued as Weatherization Program Notice 09-1) and may be used in conjunction with Weatherization Program Notice 08-1, Program Year 2008 Weatherization Grant Guidance.

OPTIONS TO ACCESS THE \$250 MILLION 09 SUPPLEMENTAL FUNDING:

This guidance is intended to advise grantees that they have the option to: 1) amend their 2008 State Plan through a budget revision application to access any portion of their 2009

supplemental funding early, or 2) include their 2009 supplemental funding with their 2009 annual allocation request.

Option 1: Grantees choosing to amend their 2008 Program Year State Plan will need to hold another public hearing and submit a budget revision application for Program Year 2008. The budget revision application shall include at a minimum, a SF 424, SF 424A (budget form), budget narrative and a revised annual file. Budget revision applications will need to be submitted through WinSAGA.

Option 2: Grantees choosing not to access any portion of their share of the \$250 million supplemental funding prior to the start of their 2009 program year will need to apply for their 09 supplemental funding in conjunction with their 2009 annual allocation. This will be done by submitting a complete application through Grants.gov, via WinSAGA or directly, in response to the Program Year 2009 Formula Grant Funding Opportunity Announcement. Under this option, the full 2009 funding (supplemental and annual allocation) will be issued consistent with the grantees' Program Year start date in accordance with the 2009 Grant Guidance.

Grantees should work closely with the PMC Project Officers and Contract Specialists to determine which option will work best for the individual grantees, considering the following at a minimum:

- Grantee's ability to expend allocated funds within their current 5-year grant cycle.
- Possibility of a 2-year budget period, as long as the grant project period does not exceed 5 years.

Grantees will use the PY 2009 statewide average expenditure limit of \$3,055 (\$3,243 for renewable energy systems) for those using the two-year budget option or those that are beginning PY 2009.

CONCLUSION: DOE wants to ensure that grantees wishing to receive any portion of their \$250 million supplemental PY 2009 funding early, are able to do so. DOE continues to encourage grantees to expend funding as soon as possible in order to meet the intent of the Program.



Gilbert P. Sperling
Program Manager
Office of Weatherization and Intergovernmental Program
Energy Efficiency and Renewable Energy

Attachment

State	FY 2009 Program Supplemental Allocation	FY 2009 T&TA Supplemental Allocation	FY 2009 Total Supplemental Allocation
Alabama	\$2,362,672	\$362,562	\$2,725,234
Alaska	\$1,584,479	\$259,614	\$1,844,093
Arizona	\$1,330,929	\$226,071	\$1,557,000
Arkansas	\$1,901,834	\$301,597	\$2,203,431
California	\$6,356,040	\$890,852	\$7,246,892
Colorado	\$5,248,246	\$744,300	\$5,992,546
Connecticut	\$2,496,965	\$380,328	\$2,877,293
Delaware	\$523,321	\$119,231	\$642,552
District of Columbia	\$601,452	\$129,567	\$731,019
Florida	\$2,358,930	\$362,067	\$2,720,997
Georgia	\$2,991,539	\$445,756	\$3,437,295
Hawaii	\$170,655	\$72,576	\$243,231
Idaho	\$1,855,681	\$295,491	\$2,151,172
Illinois	\$12,967,142	\$1,765,446	\$14,732,588
Indiana	\$6,220,077	\$872,865	\$7,092,942
Iowa	\$4,722,145	\$674,701	\$5,396,846
Kansas	\$2,421,055	\$370,286	\$2,791,341
Kentucky	\$4,366,137	\$627,604	\$4,993,741
Louisiana	\$1,601,742	\$261,897	\$1,863,639
Maine	\$2,965,837	\$442,356	\$3,408,193
Maryland	\$2,594,080	\$393,175	\$2,987,255
Massachusetts	\$6,303,859	\$883,949	\$7,187,808
Michigan	\$14,367,284	\$1,950,673	\$16,317,957
Minnesota	\$9,420,965	\$1,296,316	\$10,717,281
Mississippi	\$1,606,502	\$262,527	\$1,869,029
Missouri	\$5,765,878	\$812,778	\$6,578,656
Montana	\$2,396,777	\$367,074	\$2,763,851
Nebraska	\$2,355,324	\$361,590	\$2,716,914
Nevada	\$871,199	\$165,252	\$1,036,451
New Hampshire	\$1,415,159	\$237,214	\$1,652,373
New Jersey	\$4,797,523	\$684,673	\$5,482,196
New Mexico	\$1,830,281	\$292,131	\$2,122,412
New York	\$19,763,080	\$2,664,492	\$22,427,572
North Carolina	\$4,044,491	\$585,053	\$4,629,544
North Dakota	\$2,359,930	\$362,199	\$2,722,129
Ohio	\$12,930,271	\$1,760,568	\$14,690,839
Oklahoma	\$2,480,567	\$378,159	\$2,858,726
Oregon	\$2,659,440	\$401,822	\$3,061,262
Pennsylvania	\$13,812,494	\$1,877,279	\$15,689,773
Rhode Island	\$1,101,669	\$195,742	\$1,297,411
South Carolina	\$1,720,178	\$277,565	\$1,997,743

South Dakota	\$1,782,231	\$285,774	\$2,068,005
Tennessee	\$4,112,382	\$594,034	\$4,706,416
Texas	\$6,079,192	\$854,227	\$6,933,419
Utah	\$1,960,474	\$309,355	\$2,269,829
Vermont	\$1,184,363	\$206,681	\$1,391,044
Virginia	\$3,941,821	\$571,470	\$4,513,291
Washington	\$4,306,347	\$619,694	\$4,926,041
West Virginia	\$2,966,342	\$442,423	\$3,408,765
Wisconsin	\$8,163,353	\$1,129,944	\$9,293,297
Wyoming	\$1,086,881	\$193,785	\$1,280,666
Headquarters T&TA			\$3,750,000
Total	\$215,227,215	\$31,022,785	\$250,000,000
Navajo Grant:	\$325,088	\$32,429	\$357,517
Inter-Tribal Council of America Grant:	\$87,308	\$14,830	\$102,138
Northern Arapahoe Grant:	\$92,831	\$16,551	\$109,382
Arizona (adjusted)	\$1,110,529	\$188,634	\$1,299,163
New Mexico (adjusted)	\$1,638,285	\$282,310	\$1,920,594
Wyoming (adjusted)	\$994,050	\$177,234	\$1,171,284

Note: The proposed FY2009 appropriation is above the threshold that triggers changes to the allocation formula mandated by the interim final rule published on June 5, 1995 in the Federal Register, Volume 60, No. 107, Pages 29469-29481.