



Department of Energy
Washington, DC 20585

WEATHERIZATION PROGRAM NOTICE 05-1
EFFECTIVE DATE: November 12, 2004

SUBJECT: PROGRAM YEAR 2005 WEATHERIZATION GRANT GUIDANCE

PURPOSE: To issue grant guidance and management information for the Low-Income Weatherization Assistance Program (Weatherization) for Program Year 2005.

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

BACKGROUND: 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.

In 2005, 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 production and the annual Monitoring, Training and Technical Assistance and Leveraging reports. It is imperative that States and local agencies submit these reports on time.

There is a government-wide initiative underway called E-Gov designed to simplify application and reporting requirements for States. This initiative is still in the developmental stage and will not be operational until Program Year 2006 at the earliest. As more details become available, DOE will keep the States informed on how this new process will be implemented for the Weatherization Assistance Program.

In 2005, DOE will undertake a new national evaluation of the Program and DOE will request the participation and cooperation of providers in the Weatherization network. The last evaluation, funded in 1989, with findings published in 1993, has served the entire Weatherization network

well. However, the program that was evaluated in the early 1990's is vastly different from the Weatherization Program of today. It is time for a new evaluation to provide a comprehensive review of program performance. This review will enable DOE to make any necessary improvements and guide the direction of the Program into the next decade.

DOE reminds State and local agencies that the primary purpose of this Program is energy efficiency. **The Program's flexibility to improve the health and safety of the low-income persons served was intended to mean "energy-related" health and safety.** For the past several years, a national average of about 6% of DOE funds was used for health and safety measures. Now, with the cost of performing lead-safe weatherization and the associated costs of pollution occurrence insurance, the average will increase. To help limit any further rise in health and safety costs, States must ensure the prudent use of the health and safety category by their local agencies. A new section 5.14 specifically addresses the concerns of mold and moisture impacts on the Program.

PROCEDURES: The Congress has passed a Continuing Resolution that will run from October 1 to November 20, 2004. The Congress is expected to address the budget upon their return on November 15. States will be notified as soon as an update on FY 2005 funding becomes available. For planning purposes, until a final budget is passed and signed by the President, States should proceed with their respective plans using the same funding level as last year.

To assist the Weatherization network in obtaining the most up to date information on programmatic/policy issues, technical issues, and evaluation studies, DOE has three websites which can be interlinked. All of this information and much more are available on the DOE website at <http://www.eere.energy.gov/weatherization/>, the WAPTAC website at www.waptac.org, and the Oak Ridge National Laboratory website at <http://weatherization.ornl.gov>. Please visit these websites often to keep abreast of the latest information and new techniques in Weatherization.

1.0 FUNDING

1.1 GENERAL FUNDING: In Program Year 2005, funding for the Weatherization Program, requiring DOE approval for expenditure, can come from six 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; and
6. Program income.

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 and #5 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 05-2 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 Program Year 2005 is \$2,744. 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 most recent data available was 2.7 percent. This amount is then multiplied by the present expenditure limit, thereby setting the new expenditure limit for the upcoming program year.

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 DOE funds**. States 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, under Miscellaneous, the first time it is implemented. The criteria must be kept on file at the state office and available for review by DOE during monitoring. States are encouraged to develop their own criteria; however, the procedures for deciding which of the eligible subgrantees should receive additional funds and what additional percentage they may use must be addressed as a part of the criteria. **The limit for maximum administrative expenditures by a State remains unchanged at 5 percent of the total funds reported in a state plan.**

Stripper Well funds used for all administrative purposes, i.e., for all programs, may not, in total, exceed 5 percent of 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. Funds in administrative category accounts may be carried over from the previous budget period.

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 that wish to use a substantial amount or their entire DOE grant to administer large sums of leveraged non-Federal resources should refer to section 1.7 of the grant guidance. A further discussion of DOE policy on administrative costs is discussed in section 5.19.

1.5 PETROLEUM VIOLATION ESCROW (PVE) FUNDS: EXXON and Warner monies 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 or 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. 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 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 applicable DOE Regional Office (RO).

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 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 contributions to the program are not considered program income.

Note: States requiring further clarification on program income as it applies to their specific program should contact their respective Regional Office.

1.7 LEVERAGED RESOURCES: DOE defines leveraging as any non-Federal resources (other than funds earned under program income) which are used to supplement the program or are used to run a parallel program (regardless of who initiates the action) and expands energy efficiency services and/or increases the number of dwelling units completed for Weatherization eligible clients. Leveraged resources are not considered to be program income for the purposes of the Weatherization Assistance Program.

Under leveraging, grantees/subgrantees work at developing partnerships with property owners, utility companies, and other entities that generate non-Federal resources for the program. As a result of this effort, there may be an associated grantee or subgrantee cost that can be paid for using a percentage of the DOE grant. That is the purpose of DOE allowing a leveraging budget category in the budget section of the grant award (SF424A) (7/97). If this category is utilized, the State must report its leveraging activities on the Annual Training, Technical Assistance, Monitoring, and Leveraging Report (see Section 6.1).

Note: States which consider using a substantial portion or their entire Weatherization grant to administer non-Federal leveraged resources must provide the Regional Office with a detailed implementation plan. Under the leveraging provisions of the program regulations, DOE provides States with flexibility to assist them in attracting non-Federal resources. In reviewing this type of request from a State, DOE will provide as much flexibility as possible to facilitate bringing these funds into the Program. This may greatly enhance the ability of the State to weatherize additional low-income homes and expand energy efficiency services.

States are reminded that DOE funds used in any leveraging effort must be primarily focused toward providing Weatherization assistance to eligible low-income persons for energy efficiency, health and safety. Local community action agencies will continue to be afforded a preferred status as the source of delivering Weatherization services. Further, a State's implementation plan must detail a reasonable facsimile of the DOE Weatherization Program. That is, the Weatherization work is performed consistent with the recommendations of an approved energy audit and that the measures are cost-tested. Adequate reporting of program expenditures and production of completed homes must be part of this type of program. The Regional Office, in consultation with headquarters, will review and approve any plan of this type on a case-by-case basis solely on its individual merit.

Landlord contributions are technically a form of leveraged funds but they are not a part of the grant. These funds are not voluntary (in most instances) and, therefore, are treated differently than traditional leveraged funds. The expenditure of these funds must be in accordance with the landlord contribution agreement made with the State or local agency. If there are no strings attached to certain landlord contributions, then the agency may use these funds according to the agency's established policies.

Generally, leveraging is not considered program income; however, program income is a form of leveraging. The DOE Financial Assistance Rules do not specifically address leveraged resources; however, the DOE definition and grant guidance provide States with greater flexibility in the use of these resources and fewer reporting requirements than there are for program income.

Note: States requiring further clarification or guidance on leveraged resources as it applies to their specific program should contact their respective Regional Office. For additional information on leveraging in general, please review section 5.8 of the grant guidance.

1.8 TRAINING & 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. Traditionally, DOE has allocated 2 percent or less for Headquarters T&TA activities and allocated within the formula grants approximately 6 percent for State T&TA. States indicated a need to adjust the allocation to allow use of the full percentage of funds for T&TA. To address this need, DOE adjusted the 1999 T&TA category in the allocation formula to maximize the amount of funds that could be used 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 Regional Office T&TA to address national program support needs. The percentage of funds for Program Year 2005 reflects the full percentage of T&TA (1.5% for national T&TA and 8.5% for States) and will be indicated in WPN 05-2, Tentative Allocations.

Note: Any T&TA funds not designated for specific approved activities should be returned to the program operations category and used to weatherize eligible low-income homes.

2.0 GRANT APPLICATION

2.1 GENERAL: Any requests for financial and programmatic information which go beyond the requirements of the program regulations, DOE Financial Assistance Rule, and the grant guidance will be made on a case-by-case basis. These requests should be supported by findings such as financial audit reports, deficiencies identified during field program oversight, or deficiencies noted in programmatic and financial reports. To increase public involvement and obtain timely suggestions in developing their plans, 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.

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: The President's Management Agenda states, "Agencies will allow applicants for Federal grants to apply for and ultimately manage grant funds online through a common website, simplifying grants management and eliminating redundancies in the same way as the single procurement portal will simplify purchasing". Grants.gov will produce a simple, unified "storefront" for all customers of Federal grants to electronically find opportunities, apply and manage grants. It will facilitate the quality, coordination, effectiveness and efficiency of operations for grant makers and grant recipients. It is expected that Grants.gov will not be available for Weatherization grantees to submit applications prior to the Program Year 2006 funding cycle. DOE will continue to keep the States informed of the status of the system, seek input from the network, as appropriate, and provide training as it becomes available.

In preparing for Grants.gov, the application and reporting package was reviewed, during the fall of 2002, in an effort to recommend changes that would streamline the application package while ensuring that information critical to the administration of the Program would continue to be received. The revised application and reporting package was used for the PY 2004 applications (see WPN-04-4). Minor revisions have been made to the package since that time and were presented to the network at the Joint 2004 NASCSP Fall Training Conference/DOE State Weatherization Managers' Meeting. The application package revisions, which are listed below, will be incorporated into the application package to be used for the 2005 Program Year Application. The revised Application Package will be sent out under separate cover.

Program Year 2005 Application Revisions:

1. OMB form SF-424A, "Budget Information – Non-Construction Programs" has replaced DOE F 4600.4, U.S. Department of Energy, Federal Assistance Budget Information"
2. The Supplemental Schedule has been eliminated.
3. Provides States with information on the option of submitting a "Master Documents File" to the National Energy Technology Laboratory (NETL). This can include the States signed Assurances, approved fringe benefit rate agreement and/or indirect cost rate agreement. If participating, the State does not have to submit those documents annually unless there has been a change in signatory authority or approved rate.
4. Provides States with information relative to the June 2003 revision to OMB Circular A133, "Audits of States, Local Governments, and Non-Profit Organizations" which prevents States from budgeting, under the "Financial Audit" category, for subgrantees expending less than \$500,000 in federal funds.

2.4 PUBLIC HEARING: The RO=s will carefully review the reports of the public hearings on the 2005 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 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. Many subgrantees complain that they are not adequately informed of the contents of the plan until the hearing has begun. Consequently, they are not always prepared to offer comments on the plan or its impact on their local program. 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 and make this information available upon request. 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 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.

When States prepare their budgets for 2005, **it is essential they should 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 placed 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 Regional Office the necessity to carryover these funds into the new Program Year and 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 must be covered by liability insurance. States should inform local agencies and their contractors that sufficient liability coverage for DOE funded activities should be obtained. Liability insurance should be charged to the liability line item in the budget. It should be noted that the liability insurance line item 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). Pollution occurrence insurance is a part of, or an addendum to, general liability insurance and is therefore charged as inclusive of this separate line item. 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. Local agencies should review their existing policies to ensure that measures are covered and, if not, secure adequate coverage. Pollution occurrence insurance (POI) is discussed further in WPN 02-6. Also, local agencies that employ private contractor labor to perform Weatherization services

must ensure that each private contractor is to be adequately insured as well, including pollution insurance coverage. This insurance can be purchased by either the State, local agency or private contractor. In 2003, NASCSP 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.

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.

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 Package and/or contact their respective RO 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 in the States' T&TA plans.

Section II.6 of the Annual File, which describes specific activities, and section III.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 to any effective 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 in its efforts to identify and network successful State initiatives, and provide training and materials as needed.

3.3 PROGRAM EVALUATION: The national evaluation of the Weatherization Assistance Program published in 1993, concluded that this Program is cost effective. DOE made available to the States a summary of the results of this study which provide the framework for States making changes to their respective programs to improve performance, efficiency, and effectiveness. Likewise, this study assists States and local agencies in obtaining leveraged funds from utilities and other sources by demonstrating documented energy savings and illustrating a professionally operated program. 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 *Metaevaluation of National Weatherization Assistance Program Based on State Studies 1993-2002*. 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. As mentioned earlier, DOE will soon begin a new national evaluation of the Program.

4.0 GRANTEE PROGRAM OVERSIGHT (Program Monitoring)

DOE issued WPN 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 an assessment of each subgrantee at least once a year. The State 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 Aexemplary@ agencies by the State. This designation and a justification for each must be included in the State monitoring plan and approved by the Regional Office. The designated Aexemplary@ agencies= assessment visit would 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 Aexemplary@ 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 applicable Regional Office. Sensitive or significant noncompliance findings should be reported to the Regional Office immediately.

C. TRACKING. Major findings from subgrantee assessment 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 assessment reports and findings for internal assessment of State and subgrantee needs, strengths, and weaknesses. The results of this annual assessment should be considered during annual planning and should be available in the State Office for Regional Offices to review during their State program assessment 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 would be exempt which comprise about three-quarters of the local agency network. 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. 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 use caution 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 RO 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 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 (WPN 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. While DOE has reviewed the energy audit procedures of the majority of States, there are still several States who need to submit their energy audit procedures to DOE for approval now. All states whose audit procedures were last approved prior to Program Year 1999 should have submitted an initial energy audit approval request for at least a single-family audit. Priority lists approved over five years ago must also be revalidated by DOE.

The Manufactured Home Energy Audit (MHEA) is now available to the network as part of the Weatherization Assistant. WPN 03-6 dated September 26, 2003, marks the network release of the new and improved MHEA and outlines its availability and use. The package is available at

no cost to regional, state, and local Weatherization Agencies. The Weatherization Assistant is posted to the WAPTAC and ORNL websites, as given in Attachment A to the program notice. Final validation of the MHEA audit will not be complete until later in Program Year 2005. DOE is anxious to get input from those States which have begun field testing MHEA. Future changes to MHEA will be implemented periodically according to a planned maintenance/update schedule similar to that followed with NEAT over the past few years.

DOE requires energy audit procedures to be specifically approved for use on each major dwelling type that represents a significant portion of the State's Weatherization Program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes. WPN 01-4 defines a significant portion of the States' Weatherization program as 20 percent or more of the total units weatherized in the State each year. During this transition test period, the 20-percent requirement will remain suppressed for mobile homes.

Note: Once final validation is completed on MHEA and a decision by DOE to require that a mobile home audit be part of a State's energy auditing portfolio, DOE is contemplating changing the 20 percent requirement in WPN 01-4 to include all States, regardless of the percentage of their mobile home completions. The original intent of this policy was to give relief to States with less than 20 percent of mobile home completions and not to overburden training needs as many States transitioned to advanced audits, particularly for single-family units. DOE feels that States' Weatherization programs have progressed to the point where a complete energy audit portfolio should include MHEA or other similar approved mobile home audits. During Program Year 2005, States will be expected to submit their mobile home energy audit procedures to DOE for review and in their plans, describe a training component to implement this audit. Full implementation of a mobile home component will not be required until Program Year 2006.

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 an existing audit tool, EA-QUIP, as well as a recently approved energy audit package called TREAT. The Windows version of EA-QUIP is now approved for use by DOE.

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 Mark Lorentzen at 120 Brindley Street, Suite 5, Ithaca, NY 14850, 607-277-6240 x260, lorentzen@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. AEA has developed a full Windows version of EA-QUIP that is currently being field tested by several States. AEA is located at 505 Eighth Avenue, Suite 1801, New York, New York 10018. For more information on AEA's EA-QUIP call (212) 279-3903.

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 that address these smaller multi-family buildings are being developed. DOE will inform the network when these new audit tools receive DOE approval for use in the Weatherization Assistance Program.

DOE will work with States that weatherize a significant portion of multi-family dwellings in making the transition to EA-QUIP or other multi-family energy audit software. Enforcement of the requirement for multi-family-specific energy audit procedures will likely occur after the transition. The timing for multi-family audit enforcement will depend on the general availability of appropriate multi-family audit tools and an adequate transition period. DOE is currently developing a small multi-family audit for use in the Program. States will be notified when the audit is ready for field-testing.

5.6 DISASTER RELIEF: DOE issued Weatherization Program Notice 93-12 on July 28, 1993 addressing disaster relief. Upon request and approval by the Regional Office, 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 must be submitted as a part of any disaster relief plan for approval by DOE.

5.7 ENERGY CRISIS RELIEF: DOE issued WPN 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.

5.8 LEVERAGING: DOE program regulations permit States to take a percentage of their grant (including PVE funds used under the Weatherization program) or a percentage of their training and technical assistance funds to undertake leveraging activities. States must identify in their annual file the specific amount of funds, the details of how those funds will be used for obtaining non-Federal resources, how the funds leveraged will be used to support the DOE Weatherization Program, and the expected leveraging effect of those Federal funds, including PVE.

States must explain in their annual file the rationale for diverting program funds, which are designated for distribution to subgrantees based on relative need for Weatherization assistance,

to a leveraging activity. The larger the percentage of the grant used for this activity, the more extensive DOE will expect the rationale to be. In developing plans, States will be allowed flexibility when using T&TA funds for leveraging activities such as: paying for agency or consulting staff to explore general or specific possibilities; holding leveraging meetings; preparing technical materials/briefs; or allowing voluntary match funds from a non-Federal source which will be used to weatherize low-income homes.

However, States that choose to utilize general program funds for leveraging activities must ensure that these funds are used to obtain non-Federal resources that will be used to weatherize the homes of low-income persons by either increasing the number of homes weatherized or increasing the scope or type of services to homes that are weatherized. We realize leveraging efforts will not always be successful, but States should aim to produce at least one dollar leveraged for each dollar expended on the leveraging effort.

Note: As stated in earlier sections, States that choose to use DOE funds for leveraging activities must detail progress as part of the annual Training and Technical Assistance, Monitoring, and Leveraging report.

5.9 DETERMINING ELIGIBILITY LEVELS AND DEFINING INCOME: In determining the level of eligibility, the State may use either the DOE criteria of 125 percent of poverty or the LIHEAP criteria. This determination, made by the State, must be applied statewide.

The program regulations define Allow income⁶ 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 125 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 WPN 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 Ahigh residential energy user⁷ and Ahousehold with a high energy burden⁸ 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 additional categories, State and local agencies are better able to partner with utilities and other programs to leverage additional resources into their programs.

5.11 FUEL SWITCHING: The DOE Weatherization Assistance Program does not permit the general practice of 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: 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 State 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. DOE revised WPN 93-12A. These revised health and safety mitigation issues are discussed in WPN 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 are discussed in section 5.13 of this grant guidance notice.

Health and safety appears in three sections of the final rule (' 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 ' 440.16(h), States are required to submit to DOE for approval at the same time as the annual application, their list of health and safety remedies and procedures. Although not required as a part of the hearing on the State plan, DOE strongly encourages States to address their health and safety procedures in a public hearing forum. 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 allows 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 continue to be 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 Lead-Safe Weatherization (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 is NOT an allowable expense for the DOE Weatherization Assistance Program.

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.

Note: Health and Safety plans are required to be updated in PY 2005 to include mold protocols outlined in Section 5.14.

5.13 LEAD PAINT HAZARD: DOE replaced WPN 01-10, Weatherization Activities and Federal Lead-based Paint Regulations with WPN 02-6 (same title) issued on July 12, 2002. This document lays out 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 programs to ensure that proper protection is afforded our Weatherization clients and workers.

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 (WAP) 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.

WPN 02-6 discusses the various considerations for a Lead Safe Weatherization Program including the requirements for State Applications (now included in the "On-File" Information), to address the applicability of Lead Safe Weatherization, 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 (if mailed, at least seven days) to the start of work.

DOE contracted for the development of a Lead Safe Weatherization curriculum for States to use for their LSW training. This course was reviewed by EPA to ensure that it is modeled after the EPA developed Lead Safe Work training course. The use of this course material is optional, and States may use other material for training their workers and supervisors in Lead Safe Weatherization practices. For information on the availability of this LSW curriculum, please see the waptac.org website.

Note: All States should have already modified their annual file to include a LSW Training Plan that will set a schedule for the completion of LSW training/re-training for both direct hire and contractor Weatherization crew workers.

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 lead-safe weatherization 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 and when the work is performed properly, can alleviate many mold conditions.

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 assure the immediate or future health of workers and clients.

Mold-Related Weatherization Procedures

In Program Year 2005, all States will be required to amend their health and safety plans to include a protocol for dealing with mold which will include a specific policy when encountering homes with mold growth. This amendment to the Health and Safety Plan should be 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 immediately, 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, in Program Year 2005, States will be required to have a description of 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. It is important that weatherization crews 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. At the same time, crews need training in how to treat less extensive mold conditions they may encounter in certain homes. To assist in this effort, DOE will develop a recommended mold training curriculum and provide it to the network, particularly for States that do not already have a mold training component approved by DOE. Regardless, all initial home inspections must include a mold procedure/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 Regional Office 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>

New York City Department of Health, Bureau of Environmental & Occupational Disease Epidemiology, "Guidelines on Assessment and Remediation of Fungi in Indoor Environments." www.ci.nyc.ny.us/html/doh/html/epi/moldrpt1.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 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 15 million low-income homes that have received no weatherization services to date.

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).

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.

Note: As has been discussed at several meetings and conferences, DOE had hoped to be able to completely eliminate the requirement for prior approval for the purchase of vehicles. However, we have found that the OMB Cost Principles (A-87 and A-122) prohibit

us from completely eliminating the requirement. We are committed to working with the Regional Office Contracting Officers to streamline the request and approval process. 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 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. 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 Regional Office 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: By adding the term electric base-load (or electric plug-load) measures (EBL) 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. DOE does not have to make regulatory changes to add new measures to the Program. The addition of cost-effective EBL measures will give Weatherization agencies greater flexibility to help low-income households reduce their energy costs, and to partner with sources of leveraged funds.

WPN 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. This program notice also 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 1980's.

The Weatherization authorizing legislation and the Weatherization program regulations, 10 CFR Part 440, does 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 memorandum, provide the only flexibility on charging administrative costs as issued by DOE. Copies of these guidance documents can be found on the waptac.org website. Included in these memorandums 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 memorandums 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 uniformly.

6.0 REPORTING

6.1 REPORTING REQUIREMENTS: A result of the changes to the Application package that were made last year, there are minor revisions to quarterly reporting that are under consideration. These revisions require OMB review and approval and will likely not be available this program year.

The following reports are required on a quarterly basis, due 30 days after the end of the quarter:

- A. SF 269 (*Financial Status Report- Long Form*). Separate 269's are not required for each funding source; however, a detail sheet should be provided showing the funding source by category, where funds were expended.
- B. *Quarterly Program Report* captures the production and expenditures for the quarter.

C. SF-272 *Federal Cash Transaction Report*.

The following report is due annually, 30 days after the end of the program year:

The annual Training, Technical Assistance, Monitoring and Leveraging Report is designed to capture training and technical assistance, monitoring and leveraging activities that have occurred during the program year. States may also indicate (and provide copies of) any publications, such as brochures or articles that highlight the state's weatherization activities.

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 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 will also assist 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 performed. As funds allow, the appropriate measures installed on this unit have an 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, use of DOE equipment, vehicles, or DOE provides the training and/or administration. 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.***

Note: The above definition is not intended to impede or otherwise cause difficulties to States and local agencies that have entered into a leveraging partnership where other sources of funds are involved. If there is uncertainty in determining how best to account for the completed weatherized units under such an arrangement, contact your respective Regional Office for guidance.

7.0 CONSOLIDATION/DOWNSIZING ISSUES: The recent higher appropriation levels may not necessarily minimize the need to consolidate or downsize local agencies. As indicated in previous grant guidance issuances, States must ensure that all relevant DOE regulations are followed, particularly when dealing with the elimination and/or the

selection of new local agencies. Section 440.15 places specific criteria on the selection of new agencies. States should include, as a part of the criteria, the ability of the agency to serve an expanded area. Before making a final determination on closing an agency and selecting another, States are reminded that CAA's are given preference. Preference does not mean a guarantee; however, in evaluating a subgrantee's program effectiveness, weight must be given pursuant to ' 440.15(a)(2)(iii)(3) prior to a final determination on which agencies will operate Weatherization programs. States are reminded that no area of a State should go more than one year without Weatherization service.

7.1 RAMP-UP ISSUES: The possibility of increased appropriation funding levels for Weatherization presents a tremendous opportunity for the network. We can restore our technical base and expand production to effectively serve more low-income households. DOE remains committed to providing quality Weatherization services to its eligible clients. The States have made great strides over the past several years by committing to the principle of improving the quality of their programs through adopting advanced energy audits and using new techniques to maximize their performance. This principle should not be compromised as the Program expands. This commitment to quality translates into documented energy savings, one of the cornerstones of this Program.

CONCLUSION: The Weatherization Assistance Program in PY 2005 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 the past two 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 Program Year 2005 to again meet our expectations while delivering quality Weatherization services to our low-income clients.

 for

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