



**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](http://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.

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## **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](http://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 of 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