Weatherization Program Notice 02-1

Effective Date - October 29, 2001

SUBJECT: PROGRAM YEAR 2002 WEATHERIZATION GRANT GUIDANCE

PURPOSE: To issue grant guidance and management information for the Low-Income Weatherization Assistance Program (Weatherization) for Program Year 2002.

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, and other procedures applicable to this regulation as DOE may from time to time prescribe for the administration of financial assistance.

DOE is in the process of issuing a final rule which will incorporate the statutory changes discussed in the preamble of the interim final rule (issued December 8, 2000.) Once published in the Federal Register, the regulations will be printed in booklet form that will include a revised Appendix A. Copies of this new document will be distributed to the States shortly.

PROCEDURES: This will be yet another transition year for the Program. The Congress has appropriated $230 million for Weatherization in FY 2002. This represents a $77 million increase over FY 2001. With this higher funding comes an expected national production goal of 105,000 homes to be weatherized. Because of the substantial increase in funding for 2002, DOE will permit States to access their 2002 funds early, if they desire. A further discussion of this issue can be found in section 7.1 of this grant guidance and in WPN 01-12A. In order to facilitate the award of 2002 funds early to those States that need to ramp up their programs, DOE has modified certain reporting and other requirements in this guidance.

Since the issuance of the PY 2001 grant guidance, a number of policy decisions on several areas affecting the Program were issued by DOE. Weatherization Program Notices were issued on lead paint, energy crisis relief, revised energy audit procedures, and program monitoring. A further discussion of these topics are contained and described in this guidance and in detail in the individual notices referenced. The following sections provide States with information concerning areas to be addressed in their annual application to DOE.

1.0 FUNDING

1.1 GENERAL FUNDING: In program year 2002, 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 02-2 issues 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 (March 31 for most States, or the end of the program year as approved by DOE) for which they have been allocated.

1.3 ADJUSTED AVERAGE: The new adjusted average expenditure limit for program year 2002 is $2,568. 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. Note: For compliance purposes only, States which request early 2002 funds may use the new average cost per home ($2568) for the entire new two-year budget period. This will eliminate duplication of reporting and tracking completed units by State and local agencies. This applies only to those States which request early 2002 funds.

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) 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 must provide, as a part of their annual plans to DOE, the criteria to be used for allowing the eligible subgrantees, those who receive less than $350,000 of DOE appropriated funds, authority to use up to an additional 5 percent of their subgrants for administrative purposes. 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. Note: For the purposes of compliance only, States which request advance funding for FY 2002 must indicate in their budget amendments which agencies will receive less than $350,000 for both the current year (2001) and what would have been the traditional 2002 year. These agencies will be permitted to use up to an additional 5 percent of their subgrants for administrative purposes. This applies only to those States which request early 2002 funds.

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. In order 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.

1.5 OTHER THAN FEDERALLY APPROPRIATED 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. That is: 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 (DOE F 4600.4) (4/94).

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 5.9 of the grant guidance.

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.

States which consider using a substantial portion or their entire weatherization grant to administer non-Federal leveraged resources must provide the RO 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 which will greatly enhance the ability of the State to weatherize additional low-income homes.

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 and health and safety, and that local community action agencies will continue to be afforded a ?preferred status? as the source of delivering weatherization services. Further, a States?s implementation plan must detail a reasonable facsimile of the DOE Weatherization Program. That is, the weatherization work is performed consistent with the recommendation of an approved energy audit and that the measures be cost-tested. Adequate reporting of program expenditures and production of completed homes must be part of this type of program. The RO, in consultation with headquarters, will review and approve any plan of this type on a case-by-case basis solely on its individual merit.

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 RO T&TA to address national program support needs. The percentage of funds for Program Year 2002 will reflect the full percentage of T&TA (1.5% for national T&TA and 8.5% for States) and will be indicated in WPN 02-2, Tentative Allocations.

States have indicated they would like to know what T&TA activities are being implemented across the nation. The design of the T&TA report will enable DOE to capture this information, develop a compendium of these activities, and share it with the States on a semi-annual basis. This information will be made available through an electronic medium (i.e., WAPTAC and/or WinSAGA.)

Note: Any T&TA funds not designated for specific approved activities should be returned to the standard program allocation 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. The grant application should include planned activities and expenditures using EXXON and/or Stripper Well funds proposed for use within the Weatherization Program. The same budget information should be included for these EXXON and Stripper Well activities, respectively, as is the case for DOE funding.

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: DOE issued WPN 01-5 on January 3, 2001 updating the standard application package for use by the States. Currently the application consists of 1) an annual file, which is to be submitted each program year for approval by the RO and 2) a master file, which is submitted the first year of the new application and updated as appropriate. The updated application package reflects the new regulatory changes. Likewise, WinSAGA has been updated to reflect the new program changes.

All states will be required to use the new application package in Program Year 2002. For the first program year of the new application package, all grant application components must be submitted so that the U.S. Department of Energy has all information on file for later inclusion in the state?s Master File.

Note: States must hold a public hearing on the entire Annual File and the Master File the first year the new application package is used, and then only on the Annual File thereafter. Any proposed change to the Master File must also be addressed in the hearing.

2.4 PUBLIC HEARING: The RO's will carefully review the transcripts of the public hearings on the 2002 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) 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 years 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 will accept only an official transcript of the public hearing. A State staff person taking notes at the hearing and then transcribing them later for submission to DOE is not acceptable. Also, most States have laws governing the conduct of public hearings, including making a copy of the plan available upon request. States are reminded that any request for advance 2002 funds must be accompanied by revised plan and hold a public hearing.

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 2002, <u>they should include adequate travel expenses for staff to effectively implement the program</u> . DOE considers attendance by State staff at National and regional conferences, and other scheduled and related meetings, as high priorities since these meetings are essential to effective program implementation.

Note: States planning to carryover unused training and technical assistance funds from one program year to another must return these monies to the program budget category and use to weatherize additional homes, unless they can justify to their respective Regional Office adding these carryover amounts to their new training and technical assistance amounts.

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 category. 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 ENERGY AUDIT IMPLEMENTATION: In Program Year 1992, DOE provided each State with ?separate funds? ($25,000 plus 2.5 percent of its base grant) for energy audit compliance. The Mobile Home Energy Audit (MHEA) is currently being revised to address user concerns and the new regulations may impact some States energy audits, therefore, States will be allowed to carry over these funds to incorporate these changes. All energy audit compliance funds that were carried over into 2001 should be designated for expenditure in 2002 as part of a submitted audit compliance plan and approved by the applicable Regional Office.

2.7 LIABILITY INSURANCE: States are reminded that all work must be covered by liability insurance. States should inform local agencies 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).

2.8 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, 1997, should be consulted for new thresholds, etc. States should refer to Section IV.3 of the 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.7 of the Annual File and section III.6.4 of the Master File in the 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 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 weatherization program. The information sharing among the States in this area has brought about a heightened awareness of the importance of client education. DOE will continue 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 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 their plans with DOE so that we may each share the other's knowledge to gain the maximum results from our final products. Technical assistance is available to States through DOE, to help with the design and analysis plans for State evaluation studies.

4.0 GRANTEE PROGRAM OVERSIGHT (Program Monitoring)

Note: DOE issued WPN 01-6, January 3, 2001 to updated the monitoring policy for the Program. They key components to the policy remain unchanged.

4.1 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 ?exemplary? agencies by the State. This designation(s) and a justification for each must be included in the State monitoring plan and approved by the RO. The designated ?exemplary? 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 ?exemplary? are satisfying all existing program requirements, including a final inspection of all homes weatherized each program year.

4.2 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.

4.3 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.

4.4 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 U.S., 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 (= 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 MULTIFAMILY ELIGIBILITY: In the interim 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 are to 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. 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(s).

Note: S tate 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: The interim final rule published on December 8, 2000, increased the minimum standard for energy audit procedures used in conjunction with the Program. Together with eliminating the 40-percent material cost requirement and the associated waiver for States adopting advanced energy audits, DOE made the old waiver audit criteria the new minimum Program standard. 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. Since it has been at least five years since most waiver audits were initially approved, the majority of States will need to submit their energy audit procedures to DOE for approval. By the beginning of Program Year 2002, all states whose audit procedures were last approved prior to Program Year 1997 must submit 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 interim final rule requires energy audit procedures to be specifically approved by DOE 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 State's weatherization program? as 20 percent or more of the total units weatherized in the State each year.

The Manufactured Home Energy Audit (MHEA) is currently being revised to address user comments. MHEA revisions are anticipated to be complete in the Fall of 2001 and released to the network in the winter of 2001-2002. As described in WPN 01-4, program guidance will be issued when the changes to MHEA have been fully implemented and tested. States that weatherize a significant portion of mobile homes will have a year after the guidance is issued to transition to MHEA or other mobile home energy audit software and submit an audit approval request to DOE.

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. In the wake of significant funding cuts in 1996, DOE decided to conserve resources by not sponsoring the development of a multi-family energy audit as it had for single-family dwellings (NEAT) and mobile homes (MHEA). Instead, DOE chose to rely on an existing audit tool, EA-QUIP, which was the only DOE-approved multi-family energy audit at that time.

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. EA-QUIP is currently DOS-based, but AEA is working with the New York State Weatherization Program to develop a full Windows version of EA-QUIP. AEA is located at 505 Eighth Avenue, Suite 1801, New York, New York 10018. AEA?s EA-QUIP contact is Dominique Lempereur and can be contacted at (212) 279-3902. Similar to MHEA, program guidance will be issued when the Windows version of EA-QUIP has been fully implemented and tested.

While it has been modified over the years to handle a variety 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. Several 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 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 to MHEA. The timing for multi-family audit enforcement will depend on the general availability of appropriate multi-family audit tools and an adequate transition period.

5.6 CAPITAL INTENSIVE HOMES: Beginning in 2001, DOE regulations eliminated the separate average for capital intensive homes. All costs previously associated with these types of units must be included in the new average cost per home.

5.7 DISASTER RELIEF: DOE issued Weatherization Program Notice 93-12 on July 28, 1993 addressing disaster relief. Upon request and DOE approval, 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.

5.8 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.

5.9 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 plan, 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 plans 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.

5.10 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 ?low income? as income in relation to family size. DOE issues annually 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.

5.11 DETERMINING PRIORITY SERVICE: The interim final rule provides State and local agencies with additional flexibility to target their services to maximize program effectiveness. In adding the terms ?high residential energy user? and ?household with a high energy burden? intended to provide States and local agencies with two additional categories of priorities for their discretional 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.

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

Note: As electric base-load measures are approved for use in the Weatherization Assistance Program by DOE, the same restriction above will apply to switching these measures from one source of energy to another.

5.13 HEALTH AND SAFETY: States are reminded that the primary goal of the Weatherization program is energy efficiency. We are concerned that achievement of this goal continue 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. 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. Specific health and safety mitigation issues are discussed in Weatherization Program Notice 93-13(A). Also, issues relating to lead paint safe work practices are discussed in section 5.14 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, under '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 category must be cost-justified. The health and safety plan should be included in Section III.4 of the Master File of the Application Package.

DOE has recently reconstituted the WAP Health and Safety Committee, which is composed of members from all six regions and representing the Regional Offices, State offices and local agencies. The intent is to have a forum to address nation environmental and safety issues. States are encouraged, if there is a concern with a health and safety issue, to contact one of the members from their region and work through them to bring the issue to the committee attention. Members of the Weatherization Health and Safety Committee can be obtained by contacting your respective Regional Office.

Note: WPN 93-13(A) is currently under revision. The Health and Safety Committee is coordinating their comments and recommendations to DOE and a new issuance of this notice is expected shortly. Health and Safety plans, which are part of the Master File, will be required to be updated beginning with PY 2003.

5.14 LEAD PAINT HAZARD CONTROL: In May 2001 the Weatherization Assistance Program issued Program Notice 01-10, Weatherization Activities and Federal Lead-based Paint Regulations. 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 four million homes have significant lead-based paint hazards. 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.

Weatherization Assistance Program Notice 01-10 discusses the various considerations for a Lead Safe Weatherization Program including the requirements for State Applications, applicability of Lead Safe Weatherization, testing, deferral policy, funding, liability and training. The appendices contain summary discussion 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.

The WAP has contracted for the development of a Lead Safe Weatherization curriculum for states to use for their LSW training. This course has been 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.

Please remember - under the EPA regulation for 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: The lead paint liability insurance cost issue is currently under discussion with insurance industry representatives. A resolution is expected shortly and will be made available to the network at that time.

The cost of LSW is a health and safety cost. Therefore, all labor, material, and related costs are not subject to the average cost per home limitation for those States which choose to report 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.

5.15 REWEATHERIZATION: The interim final rule permits State and local agencies to weatherize homes previously weatherized from 1993 and earlier. In moving the date from 1985 to 1993, 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 20 million low-income homes that have received no weatherization services to date.

5.16 VEHICLE PURCHASES: In the Interim Final Rule issued December 8, 2000, 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 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 $5000 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.

5.17 POLICY ADVISORY COUNCIL: The Policy Advisory Council (PAC) changes proposed by DOE created the largest concern for the local agencies. Consequently, the revised language in the interim final rule reflected both the feelings generated through the comments as well as a commitment from DOE to make clear what our intentions were in offering States some flexibility in this area. Many argued that the PAC performs very well in their State and provides a unique insight on many poverty issues, including weatherization. They felt that a State body would not offer the same independent oversight and that they would lose an important voice for the local agency in managing poverty programs. In order to change the PAC to a State council or commission, the State must show cause to DOE that the existing PAC is either non-existent or are not functioning as outlined in '440.17. DOE did not intend, nor did it mean to imply, that the State had the discretionary authority to replace the PAC without due cause or process.

As stated in the preamble, 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 agrees with the comments that the traditional role played by the PAC should be protected by the regulations. However, DOE and the States are also concerned that in certain States, the PAC does not function as intended and is, in some instances, 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 also be a member of an existing commission or council, but would have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program. One benefit of this change would be that the importance of the role the PAC plays with respect to providing oversight and insight to poverty programs is that this role would be strengthened in those States where it has become as issue and prompted this change.

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 accounts 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.

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 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.

6.0 REPORTING

6.1 REPORTING REQUIREMENTS: 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 reports are due semi-annually, 30 days after the end of the six month period:

A. The *Training and Technical Assistance* (T&TA) Report is designed to elicit a summary of the T&TA activities that States provide. Routine day-to-day activities are not being requested on this report. Rather, only those T&TA activities that States would normally report to DOE are requested.

B. *The Monitoring Report* is used to collect summary information that identifies successes as well as significant problems identified and resolved, as opposed to each and every problem that is found during the reporting period. Only those official visits that would normally be reported to DOE, not routine day-to-day activities, are requested.

C. The *Leveraging Report* is designed to collect information on the use of leveraged funds. States should report on activities which took place using DOE funds as well as activities undertaken with outside resources that are managed at the State level or that flow through the local agencies.

D. The *Success Story Report* is requested on a semi-annual basis, but States are encouraged to send success stories as often as they occur. Each success story should be captured on a separate page.

7.0 CONSOLIDATION/DOWNSIZING ISSUES

The higher appropriation levels appropriated for Program Year 2002 and proposed for the next ten years should 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 proposed FY 2002 appropriation level 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.

To assist States in meeting their goals for Program Year 2002, DOE issued WPN 01-12A, August 24, 2001, which provided the flexibility for States to request their entire 2002 funds early. States may submit plan amendments to the current 2001 program plans and receive their entire 2002 grant funds early. The revised, simplified procedures discussed give the States the option to either (1) continue their current program year as currently approved and apply for the 2002 funds as in previous years; or (2) request their 2002 funds early to be awarded as described in the WPN 01-12A. In this case, DOE is proposing to extend the current PY 2001 grant through the end of what would normally be the 2002 program year. The 2002 allocations would be awarded as new funds and budgeted as part of the amended PY 2001 plan. States that wish to exercise this option for 2002 should refer to WPN 01-12A for implementation procedures or check with their respective Regional Office.

CONCLUSION

The Weatherization Assistance Program in PY 2002 faces a new and different challenge: to accomplish commensurate increases in production and expenditures, while continuing to maintain and enhance program quality and effectiveness. As we celebrate the program?s 25th anniversary, we are 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.

To prepare for the projected funding increase, DOE has been working with representatives from the Weatherization program's stakeholder associations, national laboratories, and others to provide projection scenarios and identify areas that need shoring up in order to accommodate the increases. We have been developing tools and resources and putting processes in place to assist the States in ramping up their programs. The Regional Offices will continue to work with the States to develop consistent and cohesive State Plans for 2002, which account for an appropriate level of production and an effective rate of expenditure.

It will be equally important to fulfill the expectation that all funds be effectively spent and not carried over into the following program year. Each year in the grant guidance, States are reminded that they are expected to achieve a rate of expenditure of DOE funds that will result in funds being expended in the year for which they were appropriated. In order to position the Program for continued higher funding levels in the future, we must effectively spend the money allocated to the Weatherization Program in FY 2002.

I am confident that, working together, we can meet the challenge of fulfilling these expectations and achieving our strategic goals.

Gail McKinley, Director
Office of Building Technology Assistance
Energy Efficiency and Renewable Energy