



WEATHERIZATION STIMULUS ALERT

Weatherization Assistance Program

The American Recovery and Reinvestment Act of 2009 (“ARRA Act”) signed by President Obama on February 17, 2009 provided an additional \$5 billion for the Weatherization Assistance Program (“WAP”) to be obligated by September 30, 2010. As a result of this increase in funding, many Community Action Agencies (“CAAs”) are working with their states on collaborative plans to deliver the increased services. Many states will undoubtedly choose to allocate all of the additional funds to existing providers. However, if the states are considering allocating some of the funds to additional providers, then they must follow the selection guidelines and procedures discussed below.

Subgrantee Selection Procedures

The distribution of funds to subgrantees is governed by the federal WAP statute and regulations.¹ Subgrantees must be CAAs or other public or nonprofit entities.² In selecting WAP subgrantees, a state must give preference to CAAs or other public or nonprofit entities that are currently operating or have previously operated effective WAP or Community Action programs.³ To determine the effectiveness of a potential subgrantee’s WAP or Community Action programs, the state must to look at factors including (but not limited to):

- The extent to which the past or current program achieved or is achieving weatherization goals in a timely fashion;
- The quality of work performed by the subgrantee;
- The number, qualifications, and experience of the staff members of the subgrantee; and
- The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other federal or state training programs.⁴

If, after giving preference to entities whose WAP or Community Action programs the state has determined to be effective, the state concludes that additional subgrantees are needed, it may consider other CAAs or public or nonprofit entities.⁵

If a state considers adding subgrantees to their existing network of WAP subgrantees, it should have a formal written selection process in place to ensure that existing CAAs or other public or nonprofit entities which have or are currently administering an effective WAP or Community Action program are given the preference guaranteed to them. For

example, the state could limit eligible applicants to those entities that are entitled to preference, as stated above.

The state must hold a public hearing to select subgrantees.⁶ The state must list its choice of subgrantees in its proposed WAP state plan, which it must provide to the public at least 10 days before the public hearing.⁷ The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them.⁸ The final selection of each subgrantee must be made on the basis of public comment received during the public hearing and findings regarding:

- The subgrantee’s experience and performance in weatherization or housing renovation activities;
- The subgrantee’s experience in assisting low-income persons in the area to be served; and
- The subgrantee’s capacity to undertake a timely and effective weatherization program.⁹

The final state plan is then submitted to the Department of Energy (“DOE”).¹⁰ Even though the DOE WAP regulations require that the “state must prepare a transcript of the hearings and accept written submission of views and data for the record,”¹¹ according to DOE’s WAP guidance:

DOE no longer requires an official transcript of the public hearing. However, DOE considers an official hearing transcript as a best practice, particularly if the hearing is of a contentious nature. [States] must submit the notes or minutes taken by a [state] staff person as part of the final State Plan. Where discrepancies exist in the minutes or notes, the [state] must allow participants to provide supplemental submissions. Whenever possible, DOE would like to be informed, in advance, of major proposed program changes or issues of a contentious nature that will be addressed at the hearing.¹²

It is DOE’s practice to review the reports of the public hearings to determine that all local agency issues are properly addressed by the state prior to approval of the final State plan.¹³ However, DOE will not necessarily review other forms of unsolicited communications regarding the content of the state plan. Therefore, it is essential that any concerns about the substance of the plan be presented in full at the public hearing. In addition, in a case where a state does not prepare a hearing transcript, CAAs and other interested parties could challenge the resulting state plan on the ground that it was not developed in accordance with DOE regulations.

Advance Payments

Given the large initial outlays and timing involved, the payment process is crucial. DOE regulations require that a state must pay each WAP subgrantee in advance unless the subgrantee fails to meet certain criteria.¹⁴

In order to be paid in advance, nonprofit subgrantees must maintain or demonstrate the willingness to maintain: (i) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the subgrantee and (ii) financial management systems that meet the standards for fund control and accountability as established by the regulations.¹⁵ The state may convert a nonprofit subgrantee from advance payment to reimbursement whenever the subgrantee no longer meets the criteria for advance payment.¹⁶ However, any such conversion may be accomplished only after the state has advised the subgrantee in writing of the reasons for the proposed action and has provided a period of at least 30 days within which the subgrantee may take corrective action or provide satisfactory assurances of its intention to take such action.¹⁷ These requirements are similar to those states must follow when imposing special award conditions.¹⁸

States are also required to pay local government subgrantees in advance as long as: (i) the subgrantees maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and disbursement by the subgrantees and (ii) the state has not determined them to be “high risk” and therefore subject to payment on a reimbursement basis.¹⁹ However, a state may only place a local government subgrantee on “high risk” status for certain reasons.²⁰ When the state places the subgrantee on “high risk” status, the state must notify the subgrantee as early as possible, in writing, of the (i) conditions related to the subgrantee’s “high risk” status, (ii) the corrective actions which must be taken before the subgrantee will be removed from “high risk” status, (iii) the time allowed for the subgrantee to complete the corrective actions, and (iv) the method the subgrantee should follow for requesting reconsideration of status.²¹

Program Changes

Lastly, the ARRA revises the statute governing WAP in the following ways:

- The household income eligibility is raised by requiring states to set the eligibility level at the higher of 200% (increased from 150%) of federal poverty guidelines (“FPG”) or 60% of state median income. The minimum or floor is also set at 200% FPG. This means a state may not deny an applicant solely on the basis of income if they have income at or below the 200% FPG level.
- The statewide per unit average cap on WAP expenditures for labor, weatherization materials and related matters is increased from \$2,500 to \$6,500.

- The number of dwelling units that may receive additional weatherization services after having received partial weatherization assistance has been expanded by adjusting the time period covering the partially weatherized homes from September 30, 1975 through September 30, 1979 to September 30, 1975 through September 30, 1994. However, the regulations were amended in 2000 to allow re-weatherization of pre September 1993 units, so this change has the effect of adding just one more year's 'cohort' of homes to list of potential re-weatherization sites.
- The cap on the amount of appropriated WAP funds the states may spend on training and technical assistance, including developing and implementing weatherization-related technology is increased from 10% to 20%.²²

All of the regulations and statutes referenced in this document may be obtained through CAPLAW's website at <http://www.caplaw.org/resources.html#Weather>.

¹ See 42 U.S.C. §§ 6861 *et seq.*; 10 C.F.R. § 440 *et seq.*; 10 C.F.R. § 600 *et seq.*

² See 10 C.F.R. § 440.15(a)(1).

³ See 42 U.S.C. §§ 6861, 6864(b)(4), 6865(b); 10 C.F.R. § 440.15(a)(3).

⁴ See 10 C.F.R. § 440.15(a)(3).

⁵ See 10 C.F.R. § 440.15(a)(2), (3).

⁶ See 10 C.F.R. §§ 440.15(a)(2); 440.14(a).

⁷ See 10 C.F.R. § 440.14(a), (b)(1).

⁸ See 10 C.F.R. § 440.14(a).

⁹ See 10 C.F.R. §§ 440.15(a)(2); 440.14(a).

¹⁰ See 10 C.F.R. § 440.14(a).

¹¹ 10 C.F.R. § 440.14(a).

¹² Department of Energy Weatherization Program Notice 09-1, *Program Year 2009 Weatherization Grant Guidance* at 11, November 17, 2008

¹³ Department of Energy Weatherization Program Notice 09-1, *Program Year 2009 Weatherization Grant Guidance* at 10, November 17, 2008

¹⁴ See 10 C.F.R. §§ 600.104, 600.122, 600.221.

¹⁵ See 10 C.F.R. § 600.122(c).

¹⁶ See 10 C.F.R. § 600.122(n).

¹⁷ See 10 C.F.R. § 600.122(n).

¹⁸ See 10 C.F.R. § 600.114.

¹⁹ See 10 C.F.R. § 600.221.

²⁰ See 10 C.F.R. § 600.221.

²¹ See 10 C.F.R. § 600.212.

²² See The American Recovery and Reinvestment Act of 2009, Title IV, § 407.