WEATHERIZATION OF RENTAL UNITS
FREQUENTLY ASKED QUESTIONS

Administration

1. What are the rental weatherization planning requirements for the Grantee?

These requirements are detailed in the Annual Application Instructions, Section V, Master File, V.1.2. Approach to Determining Building Eligibility.

Before weatherization of rental units, Grantees are required by DOE regulation (10 CFR 440.22(b)(3)) to establish procedures for dwellings which consist of a rental unit or rental units, and at the least ensure:

- The benefits of WAP work accrue primarily to the low-income tenants.
- The rent will not be raised within a reasonable time period (as defined and justified by Grantee or Subgrantee) after weatherization work has been completed unless it is clearly shown that any rent increase is not related to the weatherization work in any way.
- The Grantee has procedures in place to enforce the time period limits before there can be a rent increase.
- The weatherization work will not increase the value of the rental units to an undue or excessive amount.

Note: Use of an agreement may be deemed optional for rent-controlled units.

2. Are landlord contributions required before commencing with Weatherization?

The WAP regulation (10 CFR 440.22(d)) states, "with respect to multifamily buildings, a State may require financial participation, when feasible, from the owners of such buildings."

A discussion in the preamble to the Final Rule amending the DOE WAP regulations dated March 4, 1993, (58 FR 12514), indicates the new (at that time) allowance for this Grantee requirement only applies to multifamily landlords, not single family. By DOE's definitions, this includes 2-4 unit buildings.

DOE does support Grantee and local agency efforts to *require* landlord participation in multifamily buildings, when feasible. However, the March 4, 1993 Final Rule does not allow Grantees to require contributions for single family rentals. In fact, the preamble indicates "DOE feels that placing a requirement on this group [single family rentals] of dwelling units may have an adverse effect on their participation in the program". *Id.* at 12523

Landlord contribution requirements do not justify skipping ECM (energy conservation measures) within a building. If Grantee policy requires a contribution for certain measures and the landlord refuses, options include:

- Accomplishing the scope of work only to the point of the ECM that requires landlord participation (consistent with other guidance);
- Deferring the building until contribution requirements are met or modified; or
- Waiving the landlord contribution and WAP proceeds with installation of the eligible ECMs.

Note: Grantees may want to include provisions in landlord contribution policies/requirements to include the process or waiver should the landlord be income-eligible for the Program.

Tenant and Landlord Agreements

1. What methods have been successful in getting landlords to permit weatherization of their buildings?

Landlords may have a number of concerns about the WAP. Many landlords do not want to have "outsiders" work on their buildings. Others fear that WAP is a tenant advocacy program or they are not interested in waiving any of their rights through a landlord and tenant agreement. Publicity that is generated specifically for the landlord has been a successful method of obtaining landlord participation.

a) What outreach methods have been successful with tenants and landlords?

There is a general perception among the low income population that WAP clients must be homeowners. The first step in increasing service to renters is outreach efforts to both renters and landlords. A few of the outreach methods that successfully reached tenants are described below along with some of the programs directed toward landlords.

- Many agencies give the first WAP applicant from a multifamily building additional applications to distribute to the other tenants in the building.
- Many agencies coordinate with tenant advocacy groups to promote WAP at meetings and in brochures and newsletters for tenants.
- Advertisement in local newspapers with radio announcements has proven successful. One project was also publicized in the sponsoring agency's newsletter for landlords. This type of publicity has often produced more interested landlords than the program could serve.
- One WAP Subgrantee obtained the names and addresses of local landlords from the Community Development Block Grant (CDBG) agency in the city. The Subgrantee then sent announcements of a special landlord contribution program to all the landlords on the CDBG list.
- A WAP Subgrantee worked with the state housing board to publicize a special landlord contribution program for Section 8 property. The housing board sent a letter announcing the WAP program to all Section 8 landlords in the city. The letter produced a large list of interested landlords.

- WAP Subgrantee staff from one agency gave presentations on WAP at meetings of local landlord associations. Some landlords then notified their tenants about the program.
- One WAP Subgrantee obtained a list of multifamily property owners from the local property tax office for outreach.

2. What can an agency do if a landlord refuses to cooperate?

There will always be some landlords who refuse to cooperate with the WAP. Agencies can explore other social service programs that may be available in their area and refer tenants to these programs. Otherwise, if a landlord will not cooperate with the WAP then that building must be deferred.

3. What are landlord and landlord/tenant agreements?

Landlord and landlord/tenant agreements with the WAP Subgrantee) are common, written contracts that describe the terms under which weatherization work will be done. These two aspects may, or may not, be included in a single document:

Landlord agreements often include language from the WAP regulations that allow the Grantee to place a lien or other contractual restriction on the property, as found in 10 CFR 440.22(c). Regulations do not require the use of a landlord agreement, but DOE highly recommends this practice. To allow for conformance to State and local law, DOE does not prescribe the form of the agreement. The use of a landlord agreement provides valuable documentation to DOE of Grantee compliance with requirements of 10 CFR 440.22(b)(3).

Landlord/Tenants agreements have the basic purpose of ensuring both the tenants and the landlord have clear and realistic expectations. The agreement includes the benefits of WAP that are to accrue to the tenants and articulates any conditions/restrictions on rent increases, eviction, sale of property, etc. The agreement is not a requirement but provides an effective tool to assist in responding to complaints in the event expectations are not realized.

The regulations do not specify who should draft landlord and landlord/tenant agreements. They may be written by the Grantee or by the Subgrantee. Some Grantees provide basic agreements that the Subgrantee can change to fit their needs, while other Grantees have the agreements drafted by the Subgrantee subject to Grantee approval. When Subgrantees draft landlord and tenant agreements they can make use of input from local landlord associations.

a) What is generally included in landlord agreements?

A landlord agreement with the WAP Subgrantee generally includes all necessary information to allow the weatherization improvements to proceed in an expeditious and cost effective manner in accordance with DOE regulations and guidelines, as well as State and local contract law. In addition to addressing basic guidelines in DOE regulations (e.g. 10 CFR 440 (b)(3), (c), (d), and (e)), the landlord agreement typically includes:

1) The approval signatures of the building owner(s) or legal representative(s);
2) A description of the owner's obligations including any financial contributions;
3) A description of the Subgrantee's obligations including the scope of work and;
4) Rental clauses that allow rent increases only for specific causes or set limits on the increases such as the pro-rated share of increased property taxes, increased operating expenses, or the pro-rated and amortized cost of property improvement outside the scope of WAP;
5) Protection against sale of property clause; and
6) A definition of a breach in the agreement and the remedies to be taken if such a breach occurs, including liquidated damages.

As a reminder, DOE does not require nor prescribe the form of an agreement; therefore, the WAP provider and the landlord should conform to all requirements set forth in State and local law.

b) What is generally in a landlord/tenant agreement?

The landlord/tenant agreement, if drafted separate from the landlord agreement with the Subgrantee, generally focuses on the following elements:

1) Rental clauses that allow rent increases only for specific causes or set limits on the increases.
    a. The WAP regulations at 10 CFR 440.22(b)(3) are very specific that the benefits of weatherization must accrue to the tenant(s). In buildings where the utilities are included in the rent, the landlord must demonstrate how those savings from lower utility bills will directly benefit the tenants.
2) Protection against sale of property and/or eviction.
    a. WAP's work results in property improvement. The aim is to give the tenant(s) (the reason the work was done in the first place) an assurance that once the work is done, there will be a specific period of time wherein the landlord cannot sell the property (unless there is repayment of the DOE investment and/or the new owner assumes and agrees to abide by the terms of the WAP restrictions/requirements) nor can they determine an alternate purpose for the property (e.g., no longer participate in affordable housing programs).
3) Description of the process the tenant should follow if they believe the landlord has violated the agreement.
    a. Per 440.22(b)(3)(iii), the Grantee is to have established procedures wherein the tenant may file complaints, and owners, can respond to such complaints.

As a reminder, DOE does not require nor prescribe the form of an agreement; the WAP provider and the landlord should conform to all requirements set forth in State and local law.

c) Who should sign the agreements?

The landlord (or authorized agent) and a representative from the WAP Subgrantee must both sign the landlord agreement, because they each have responsibilities under the agreement.

- The landlord is responsible for complying with all the conditions of the contract that concern ownership of the unit.
- The WAP agency is responsible for providing weatherization assistance under the conditions of the agreement.

If the landlord/tenant agreement is a separate document, some Grantees have the tenant(s) sign to show that he/she understands the terms of the agreement and will abide by clauses that may concern the tenant responsibilities. Other Grantees have a separate form for tenants to sign that inform them of their responsibilities and their rights to no rent increases/eviction due to the weatherization work. In all scenarios the tenant must be provided with a copy and explanation of all relevant agreements upon completion.

d) Where can one find examples of forms used for landlord and tenant agreements?

A thorough discussion of WAP landlord/tenant agreements by the National Consumer Law Center, Inc. (NCLC) can be downloaded at:

http://www.nclc.org/images/pdf/energy_utility_telecom/weatherization/state_landlord_weatherization_agreements.pdf. The NCLC studied agreements used by 20 different Grantees.

Many Grantees post their forms on the internet as public information, for example:

Page 1-25 of https://www.ahfc.us/files/5414/2842/3326/wom2015.pdf (Alaska);

http://www.commerce.wa.gov/Programs/services/weatherization/Pages/WeatherizationTechnicalDocuments.aspx (Washington, part of Weatherization Manual).

The use of the above examples are illustrative only and do not imply endorsement by the Department of Energy or the Federal Government of the NCLC or the States of Alaska and Washington WAP.

4. Who is responsible for monitoring landlord compliance with the tenant and landlord agreement, and what actions can be taken when an agreement is violated?

A copy of the landlord/tenant agreement must be provided to and explained to the tenant. If the tenant believes the agreement is being violated, the tenant should follow the procedures established by the Grantee wherein the tenants may file complaints.

Again, these agreements are not required, but where agreements have not been put into place and procedures for complaints have not been established, Subgrantees may end up spending an inordinate amount of time providing support in reaching a resolution. Ensuring the

expectations are in writing and provided to all parties up front minimizes the opportunities for misunderstandings.

5. **Are condos with multiple owners different than rental apartments owned by a third party?**

   By DOE's definition, no. The requirements under 10 CFR 440.22(b) still apply. However, State laws regarding condominiums and the rights of occupants may differ from traditional landlord/tenant protections. Grantees (or Subgrantees) should review carefully as the federal rental requirements do not negate the state/local/homeowner association requirements. Each of those must be addressed in order to weatherize the dwelling.

Eligibility, Intake and Certification

1. **Are tenants of public and subsidized housing eligible for WAP?**

   Tenants of public and subsidized housing are eligible for weatherization. According to the WAP regulations, eligibility for weatherization assistance is based on the income or categorical eligibility of a household, not on the type of dwelling unit occupied by the household. An eligible unit may be owned or rented from a public agency or a private landlord. The regulations do not prohibit weatherization of subsidized housing.

2. **If heat is included in rent, is the tenant ineligible for the weatherization assistance program (WAP)?**

   Tenants that pay their own heat bills and those with heating payments included in their rent are equally eligible for WAP. The Multifamily Weatherization guidance (WPN 16-5) found at http://energy.gov/eere/wipo/weatherization-program-guidance discusses details for Grantees on establishing procedures to ensure that the benefits of weatherization assistance accrue to tenants when energy costs are included in their rent or otherwise not billed directly to the tenants.

3. **If buildings contain residential and commercial units, does commercial space get weatherized?**

   Commercial space in an otherwise residential building is not eligible except for the common areas and common mechanical equipment shared by the commercial tenants and qualified residential occupants (e.g., a central HVAC system, a common lobby or common hallway). Owner contributions must be required by the Grantee in order for these areas to be weatherized. Owner contribution, as a percentage of the cost of weatherizing the common areas, must be equal to or greater than the commercial use percentage of the total floor area. These Grantee policies and procedures must be stated in the WAP State Plan.

   a) **If a 2-story building with commercial space on the first floor includes residential space on the second floor, and those residential units meet the % requirements to be deemed eligible (50% or 66%), is that building eligible for weatherization?**

      Yes. Because the residential area of the building meets the eligibility requirements, the building is eligible for WAP. The landlord would be required to pay the entire cost of

weatherization in the commercial area or a percentage of the total cost of weatherization based on square feet of occupancy.

b) If the audit of a 2-story building with commercial space on the first floor and residential space on the second floor recommends the central HVAC system serving the building be replaced, what owner contribution should be required by the Grantee?

The owner would contribute a portion equal to at least the percentage of energy consumption attributable to the commercial space. This percentage would be determined by an energy analysis of the building by a Professional Engineer or a licensed commercial HVAC contractor.

4. How do the intake procedures for tenants differ from the procedures for homeowners?

The intake and certification procedures for tenants add two steps to the procedures required for homeowners. The WAP regulations Section 440.22(b)(1) require the Subgrantee to obtain written permission from the property owner or agent before any work is done on a building containing rental units. The regulations further require (10 CFR 440.22(b)(3)) the Grantee to establish procedures for rental units to ensure:

- The benefits of WAP improvements will accrue primarily to the low-income tenants.
- For a reasonable period of time (as determined/approved by Grantee) after WAP work has been completed the tenants will not be subjected to rent increases unless such increases are demonstrated to be unrelated to the weatherization work. In devising enforcement procedures, it is recommended that Grantees consider requiring the use of alternative dispute resolution procedures including arbitration.
- No undue or excessive enhancement shall occur to the value of the building.

Agencies have taken two different approaches to obtain the required forms from landlords. Some agencies have tenants contact their landlords. The agency provides the forms, but the tenant must approach the landlord. The second approach is for the agency to contact the landlord directly.

Determining building eligibility can be done by 1) the traditional method of collecting income and demographic information from each tenant or 2) identifying properties on the DOE/HUD/USDA lists that have already been determined to meet certain eligibility criteria; in this case the demographic information may be taken directly from the building owner's tenant roles. Guidance for using and documenting use of the DOE/HUD/USDA lists is provided in the Multifamily Weatherization guidance (WPN 16-5) found at http://energy.gov/eere/wipo/weatherization-program-guidance.