Weatherization Program Notice 93-3

Effective Date - March 26, 1993

**SUBJECT**: SUPPLEMENT TO PROGRAM YEAR (PY) 1993 GRANT GUIDANCE TO IMPLEMENT PROVISIONS OF PUB L. 101-440

**PURPOSE**: This supplemental guidance is designed to explain, in some detail, the additional information States may need in order to incorporate the changes in the final rule implementing the provisions of Pub L. 101-440. States may take advantage of these changes by including them in the original submission of their PY 1993 plans or by amending their PY 1993 plan later. The rental provisions in the final rule must be incorporated in the PY 1993 plan, or amendment although the provisions may not be fully implemented until PY 1994.

This guidance addresses implementing details not covered in the preamble to the final rule, such as data requirements, documentation, verification, follow-up, and similar processing steps for obtaining DOE approvals.

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

**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 to CFR Part 440, and other procedures applicable to this regulation as DOE may from time to time prescribe for the administration of financial assistance.

**PROCEDURES**: The procedures contained in this document are designed to be used in conjunction with Weatherization Program Notice 93-1, Program Year 1993 Weatherization Grant Guidance, in developing or amending the annual grant application. The following sections offer States implementing details for incorporating the new provisions of the final rule.

**APPLICATION AND REPORTING REQUIREMENTS**

The final rule requires a number of new reports on different elements of the program. DOE is currently developing the appropriate application and reporting forms along with instructions to be used for this purpose. Those forms and instructions are not expected to be available until later in PY 1993. Consequently, this guidance identifies the general information that the States will need to keep in order to meet the minimum reporting requirements of the new rule. To help facilitate this process, in the interim, States will be allowed to develop reporting procedures in conjunction with their respective Support Office to collect this general information until DOE provides the approved forms.

Section 440.3 Cooling Modifications

States may wish to add certain cooling measures to their audits and/or priority lists. The audit procedures and results used to justify these measures must be reviewed and approved by the respective Support Office in the same manner as their original or alternative procedures were approved. These cooling measures include replacement air-conditioners, ventilation equipment, window or insect screens, window films, and shading devices. States must refer to Appendix A of the final rule for applicable standards associated with the purchase and use of any of these measures. These measures are designed to reduce the energy consumption for cooling requirements generally associated with warm-climate States.

Replacement air-conditioners are limited to replacing the existing unit, This includes window units, central units, and heat pumps which perform a dual heating/cooling function. States must ensure that subgrantees dispose of old air-conditioners in accordance with Federal, State, and local environmental laws.

The final rule defines ventilation equipment as fans, limited to ceiling fans, whole house fans, attic fans,, and evaporative coolers. Shading devices are limited to window awnings and louvers allowed under the current regulations. Appendix A now lists "insect screens" as an allowable cooling measure. If States believe other shading or cooling devices should be incorporated into the provision, they must submit a request to DOE for approval using the existing procedures. As with all weatherization measures, the energy audit will determine the cost-effectiveness of installing any approved cooling measure.

Sections 440.16 & 440.22 Rental Procedures

The final rule requires States to develop procedures to address the new rental provisions of Section 440.22(b) (3) of the program regulations. The final rule provides States with the flexibility to develop their own procedures to address the provisions. DOE will review, as a part of the application process, these rental plans for reasonableness. Since the final rule was published on March 4, 1993 after the start of the application process for PY 1993, States will be given until September 30, 1993, to submit plan amendments to address this requirement. States will not be required to fully implement the rental procedures until PY 1994, however, they may wish to phase-in the rental procedures during PY 1993. Since the rental procedures are a minimum program requirement, they are not subject to the public hearing requirement unless these procedures have a direct impact on factors in the State plan that does require a hearing.

DOE has made available to States several examples of landlord-tenant agreements currently in use in both urban and rural areas of the country, which may meet the requirements of the program regulation. These agreements work well in their respective areas but may require some modification to address the requirements of Section 440.22. These documents may assist those States which do not have adequate landlord-tenant agreements or those States which may wish to strengthen their existing agreements.

Section 440.18 Leverage Funds

DOE defines leveraging as any activity that brings non-Federal resources into the weatherization program. Program income means any net funds obtained for services rendered using Weatherization funds. Generally, leveraging is not considered program income, however, program income is a form of leveraging. Section 600.113 of the DOE Financial Assistance Rule provides guidance on program income.

The final rule allows 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 voluntarily 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.

DOE will require States to report on the leveraging activities associated with these funds. Until DOE has finalized the reporting format, States must keep information on the amounts used to leverage, the amounts leveraged, and how the leveraged monies were spent. These reports should reflect the amounts and activities approved in their grant application and in the interim, States may develop the reporting format, including any narrative which describes the leveraging effort, in conjunction with their respective Support Office.

Section 440.18 Increase to Average Per Home Expenditure Limit

States that wish to increase the annual-adjusted average per dwelling unit limit for capital-intensive heating and cooling modifications must apply to DOE for approval. This request for an increase to the average per dwelling unit expenditure limit is restricted to those homes which require major heating or cooling modifications as determined by the approved energy audit.

The States must, as a minimum, include in their request the average cost for doing heating and cooling modifications in their respective State and how the data for that average was collected and documented. This information should be supported by documentation on items such as, material and labor costs associated with the purchase and installation of these materials, as well as any other costs related to these materials. For example, data obtained from a Request for Proposal or utility program replacement costs could be used. However, justifications based on retail costs would not normally be permissible. States which apply for this increase may include the cost of performing relatively low-cost items such as filters and tune-ups in determining the total amount of increased costs for those units.

States currently using the Project Retro-Tech audit or a priority list that has not been revised to include mechanical measures must modify their audit procedures and receive DOE approval before any consideration to increasing the annual-adjusted per dwelling unit average will be entertained. This average increase is "separate" from the base program average determined annually by DOE. States that are granted this "separate" average must maintain and report to DOE on dwelling units weatherized under both averages. However, calculation for the 40 percent compliance continues to be a statewide process if a State is not using a waiver audit. In the interim, States must work with their respective Support Office to develop an adequate reporting system of weatherized units.

All approved health and safety abatement procedures (including replacement heating and cooling units) must be done within the annual-adjusted per dwelling unit average ($1748 for PY 1993).

No health and safety procedure may by included as a capital-intensive measure. For example, even if a utility company has red-tagged a furnace, the cost of its' replacement for the purposes of an increase to the average cost per unit must be as a result of the energy audit performed on the home and not strictly as a health and safety abatement procedure.

Section 440.22 Re-Weatherization

The final rule allows States to re-weatherize homes which received limited weatherization prior to September 30, 1985. The total number of re-weatherized units to be completed will be determined by the State. States are reminded that subgrantees electing to perform re-weatherization on eligible dwelling units must conduct a new energy audit that takes into account any previous weatherization work done to that dwelling. As in the past, these units will be reported to DOE separately. However, for the purposes of compliance with section 440.18, relative to the 40 percent average materials and the average per-home expenditure limit requirements, States will be allowed to count re-weatherized units as completions.

Section 440.21 Energy Audits

Substantial changes were made to the proposed rule relative to energy audits. Project Retro-Tech remains unchanged as the program's base audit. The final rule allows States still using a base audit to include health and safety abatement provided the State has received approval from DOE. The final rule also permits States to continue to use their existing alternative audits. They are not required to be reviewed again by DOE unless the State wants them considered as a waiver audit.

The final rule permits States to submit to DOE an energy audit for consideration as a waiver audit. A DOE-approved waiver audit will exempt the State from the 40 percent average materials requirement. A waiver audit may be an existing State audit, the National Energy Audit (NEAT), or a newly developed audit. All energy audits submitted for review as a waiver audit must meet the requirements of Section 440.21. States which choose to submit a list of cost-effective general heat waste materials must submit them as a part of their waiver audit request. DOE will issue a separate Weatherization Program Notice to notify the States of the procedures it will use to review audit submissions.

States which choose to adopt the new Weatherization National Energy Audit (NEAT) will need to plan for its orderly implementation among their subgrantees and receive approval from DOE prior to its use since all States must customize the NEAT audit to local weather, costs, and measures. The final NEAT audit will likely be approved as a 40 percent waiver audit in June 1993. In the interim, States may wish to implement any preliminary version of NEAT as an alternative audit.

DOE is aware of the costs that will be incurred by States which elect to make energy audit changes to their programs. Therefore, DOE modified the 1992 allocation process by adding a fourth column to allow States to fund energy audit compliance as defined in the final rule when issued. This column was derived by using a formula of $25,000 plus 2.5 percent of the base grant for each State. These funds were designed to be used in conjunction with T&TA funds to pay for energy audit improvement costs. The funds provided by this special provision may be carried over to program year 1993. This special provision will not be factored into the 1993 allocation process. Any additional funds required by States to implement audit improvements must be paid from existing T&TA funds. However, any funds in this special category not designated and used for energy audit compliance must be returned to the base program fund category and be used to weatherize homes. Additionally, States will be permitted to use an amount up to 5 percent of their grant from Exxon, Stripper-Well or other PVE funds that are budgeted for use in the DOE Weatherization Program for implementing new energy audit requirements.

Until the reporting requirements are finalized, States which have been granted approval for a waiver audit must report separately on units not covered by their audit. For example, the NEAT audit does not cover multifamily units (and until modified by DOE it does not cover mobile homes). If a State has approved audits which cover all dwelling unit types, no special reporting requirements will apply. (Separate records must be still be kept, however, on capital-intensive homes and base homes even though they are both done under the waiver)

Sections 440.18 & 440.21 40 Percent Waiver

States that wish to apply to DOE for a waiver to the 40 percent materials requirement must use an energy audit procedure that meets the criteria outlined in Section 440.21 of the final rule. Once in final approved form, the new NEAT will meet the requirements of the final rule (NEAT must still be reviewed by DOE on a State-by-State basis). Those States with previously approved alternative energy audits that wish to have them considered for a 40 percent waiver, must have them reviewed by DOE. These audits may need to be modified to meet the criteria prior to being approved by DOE. Project Retro-Tech does not meet the waiver requirement. Any State desiring a waiver from the 40 percent requirement must submit their energy audit as a part of their request for plan review and approval by DOE, or as an amendment to their plan.

In order to be exempt, statewide, from the 40 percent requirement, the approved waiver audit must be utilized statewide. Should a State decide to utilize a different audit not approved for a waiver for any reason at certain agencies or on certain types of structures, then the State would be required to comply with the 40 percent average on those types of units not covered by the audit.

Once a waiver is granted, there is no new numerical pre-set average for materials on dwelling units in the State weatherized under the waiver audit, The energy audit will determine the amount of materials to be used and no new minimum average will apply. In the case of multifamily units, the State may submit an audit to DOE for review and consideration which addresses the criteria in 440.21 for a waiver on those units.

DOE issued a 40 percent compliance memorandum dated April 29, 1985 outlining specific methods by which States could comply with the 40 percent requirement. Since this memorandum would remove, in some instances, the incentive given by the Congress to States for moving aggressively toward adopting improved audit techniques, DOE has decided to phase-out this memorandum effective with the end of program year 1993. This will provide those States which opt not to switch to a waiver audit immediately, yet, still experience difficulties with the 40 percent requirement, a transition period for phasing in a waiver audit. However, States which have not adopted a DOE approved waiver audit and continue to experience compliance problems with the 40 percent requirement at the end of program year 1993 must request DOE to review any extension to this guidance into program year 1994, This request must address the States' reasons for not adopting or a timetable implementing a waiver audit.

**HEALTH AND SAFETY**

DOE will issue separate guidance on specific health and safety issues. However, in the interim, States will be afforded a certain amount of flexibility in developing a list of health and safety abatements they wish to undertake using DOE funds. This list of abatements is subject to review and approval by DOE. While DOE will monitor States' health and safety procedures for the overall percentage of expenditures statewide, States will be required to set individual average expenditure limits on their respective subgrantees as a condition of their subgrants. The primary goal of this program remains energy conservation. Until reporting requirements are finalized, States must track all health and safety costs separately including materials and labor. Please note that homes that have been completed previously cannot be revisited for health and safety abatement unless approved by the Support Office on a case-by-case basis. Once labor funds are expended in a dwelling unit and that unit is reported to DOE as complete, no further weatherization work can be done unless the unit qualifies as a re-weatherized unit completed prior to September 30, 1985.

**SHELTERS**

Several States have asked how to qualify shelters for weatherization, particularly those of a transient nature. DOE does not require any specific documentation to certify that a unit is a shelter. DOE's intent in the final rule was that State and local agencies need only to identify those units which qualify under the definition of shelter in Section 440.3. Since it would be virtually impossible to document the persons who come and go into these shelters, the final rule does not require the normal eligibility documentation associated with other types of dwellings weatherized in the program. In some instances, State and local agencies will have to use their judgement in determining if a certain shelter qualifies. State or local agencies should be able to determine if a particular shelter in question does in fact service predominately low-income persons. This could be done by checking to see if other assistance programs provide any services to these units or perhaps there may be some type of State or local certification process associated with shelters.

**OTHER ISSUES**

As a result of the many conferences and meetings held over the past few months, several other areas of concern relating to implementation of the final rule have surfaced. DOE is working to classify and respond as necessary to those issues.

Jeanne Van Vlandren, Director
Weatherization Assistance Programs Division
Conservation and Renewable Energy