

## NASCSP WAP COVID-19 FAQ

*This resource will be updated as more information becomes available. Last updated 4-2-2020.*

[Contact NASCSP](#) with any additional questions.

**Q1:** We have our public hearing on the PY 2020 State WAP Plan scheduled in the next few weeks. Due to state declarations of emergency and associated bans on public gatherings, can we substitute a virtual hearing for the traditional in-person format?

**A:** DOE has communicated that virtual hearings conducted via webinar or video conferencing are acceptable, as long as the proper 10-day public notice (as required in 10 CFR 440) was observed, and there is a transcript of the hearing (as required in the grant guidance WPN 20-1). Include clear instructions to access the virtual hearing in the public notice and consider including additional opportunities/methods for the public to comment on the state plan.

**Q2:** Due to state declarations of emergency, we are concerned that state and local workers will soon be unable to enter into homes to perform monitoring or even weatherization work. Has DOE weighed in on WAP workers in homes at this time?

**A:** The determination on whether Grantee and Subgrantee staff should be working in client homes is not a DOE decision. Those are state authority and local agency employment matters.

**Q3:** Can T&TA funds be used to pay labor hours for staff if they complete online training while working from home?

**A:** Yes. We recommend obtaining certificates or proof of satisfactory completion of all completed online training. Here are a few suggestions for virtual T&TA:

- Online courses providing CEUs that will satisfy a BPI certification requirement or address a training need as outlined in your T&TA Plan.
- DOE EERE [Program Updates and Training Resources](#) – webinars are available under each program heading.
- DOE [Training for WAP Administrative Professionals](#). Developed in response to WAP network feedback, these self-paced online trainings are designed for WAP Subgrantee staff, yet are applicable to Grantees, subcontractors, and WAP stakeholders. To create an account, please click on the link associated with "first time logging in" and use "waptraining" for the code. Follow the instructions sent to your email to complete registration.
- NASCSP [online resources](#) and the [multimedia library](#).
- Coming soon: 2020 [National Home Performance Conference](#)

**Q4:** Can program operations be used to continue to pay the salaries of field crew, auditors and assessors while program operations are suspended?

**A:** Yes, federal regulations allow for paying agency employees out of federal funds during a shutdown or disaster if there are written leave policies approved by the governing board ([See 2 CFR 200.431b](#)). However, direct costs for labor accrue to the ACPU and DOE has no authority, at this time, to waive those federal requirements. We are confident DOE will provide flexibility on the ACPU issue if closures continue long-term.

**Further Guidance from CAPLAW on Emergency Closure Paid Leave:**

*With respect to paying staff who are not able to come in to work and cannot work remotely, or staff who contract the virus or need time to care for a family member who falls ill—under the Uniform Guidance, federal grant funds may be used to pay for different types of leave (e.g., sick, emergency closures, etc.) so long as the grant recipient follows the criteria for a leave policy as set forth in the Uniform Guidance. Emergency closures could include a temporary reduction in staffing due to the coronavirus.*

*The Uniform Guidance specifically states that the cost of leave may be charged to federal grants if: (i) the leave is provided under established written leave policies; (ii) the costs are equitably allocated to all related activities; and (iii) the organization uses a consistent accounting basis for costing each type of leave. The costs must also meet the basic considerations for cost allowability in (requiring that costs be necessary, reasonable, and allocable).*

*Thus, CAPLAW's understanding is that a CAA would just need to revise or put in place a policy that provides for paying staff in light of sick leave, emergency closure, or other reduction in staffing. Again, note that the Uniform Guidance is flexible with respect to designating different types of leave, as long as the criteria above are met.*

**Q5:** Many of our local agencies also implement LIHEAP. Can they continue to pay workers during this time?

See the [LIHEAP Dear Colleague Letter](#) published April 1 for the following guidance and additional detail from OCS: In recognition of the unique circumstances associated with COVID-19, OCS is recommending States allow subrecipients such as Community Action Agencies (CAAs), other non-profits, and local agencies to continue to pay wages and provide benefits for LIHEAP staff unable to report to work during closures necessary to address COVID-19. During subrecipient closures, employees should continue to engage households and to deliver services to the extent possible, remotely.

**Q6:** Will DOE provide flexibility for production goals for states and subgrantees that are suspending production?

**A:** DOE does not set production goals for Grantees. Grantee's state plans are estimates on production, with actual production being reported to DOE in PAGE. DOE understands that production and expenditures may be considerably impacted due to COVID-19. Adjustments to production is a Grantee determination, not a federal rule. We recommend communicating any anticipated changes in your production plan to your DOE Project Officer. There is no federal rule prohibiting the draw down of funds without units being reported.

**Q7:** Can we pay contractors if their work is finished even though a QCI is not complete?

**A:** There is no federal rule prohibiting the invoicing and payment of direct labor and operations prior to an inspection being completed. There may be state-specific policies in place preventing this. We recommend states review and consider revising these policies if stopping production due to COVID-19. Consider the risk associated with this decision and the potential for callbacks; for example, you may want to consider making a partial payment immediately and pay the remainder owed to the contractor after the inspection is completed. When production resumes inspections can be completed and units reported as complete in PAGE.

**Q8:** Is there a way to report units from substantially completed buildings without a QCI?

**A:** You can report these allowable costs, however, the unit cannot be counted as complete to DOE without a completed QCI. This ultimately impacts the ACPU which we are awaiting additional guidance. NASCSP and our national partners published a joint statement strongly encouraging states and local agencies to pause production.

**Q9:** What can agencies do to help weatherization subcontractors, (private contractors whose sole purpose at this time is to provide installation and audit services to a number of WAP agencies in our state)?

**A:** Private contractors are vital to the work of weatherization. DOE does not have a legal relationship with contractors or statutory authority to provide funds to contractors. NASCSP and our national partners continue to advocate for relief for our private contractors.

The [U.S. Small Business Administration \(SBA\)](https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources) is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). Upon a request received from a state's or territory's Governor, the SBA will issue under its own authority, as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act that was recently signed by the President, an Economic Injury Disaster Loan declaration. See the SBA website for more information on the available loans and additional relief for small businesses:

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

Unemployment and tax resources are also available from the [IRS](#), [National Association of State Workforce Agencies](#), and the U.S. [Department of Labor](#).

**Q10:** Will DOE provide clear guidance on what they expect of Subgrantees during the shutdown or slowdown?

**A:** DOE does not have a legal agreement with the Subgrantee. DOE will provide guidance on the legal flexibilities they can be provided to the Grantee, but the Grantee must ultimately determine the answer to this question.

**Q11:** Can DOE assistance agreements be extended to enable full expenditures?

**A:** As noted in [Memo 60](#), DOE will extend grant periods until reasonable analysis demonstrates realistic ability for Grantees, and subsequently Subgrantees, to resume operations and expend funds. Keep your DOE Project Officer informed of changes to your production plan and the need for an extension in your state or territory.

Grantees have the authority to extend agreements with their Subgrantees.

**Q12:** How will this delay work on state plan preparation for July 1 states?

**A:** DOE is operational and able to execute awards on time. States may conduct virtual public hearings (see Q1 above) and should work to submit the state plan as soon as possible.

As of March 31, 2020, ten of the thirteen April 1 states had approved awards. We anticipate the remaining April 1 states will have an award soon and DOE will begin reviewing July 1 state plans as soon as they are submitted.

**Q13:** Can we use T&TA funds to pay for cancellation fees for trainings and conferences that have been cancelled?

**A:** Grantees and Subgrantees need to follow their travel policies. Under normal policies and procedures if this is covered, then there should not be an issue. This is a Uniform Guidance rule ([2 CFR 200.474](#)) and the current situation does not change that which is normal and allowable. Consult your written travel policies.

**Q14:** Can administrative spending be increased from 10% (5% for state)?

**A:** This is a statutory limit so without an act of Congress states cannot exceed the 10% limit annually. However, there is a possibility that unspent administrative funds from prior years in the current grant cycle (PY 17 – PY 19) could be utilized during PY 2020 as admin. If your state will

carry over prior year administrative funds, provide a budget justification and carryover explanation in your state plan [Budget File](#). [Contact NASCSP](#) for assistance with developing your State Plan.

**Q15:** Can we increase T&TA funding above the 17% for online training and learning?

**A:** Grantees have received the maximum allowable DOE T&TA. However, Grantees could look at who is spending and not spending T&TA within their Subgrantee network and adjust disbursement of those funds for online learning options at this time. Grantees can also adjust T&TA allocations to Subgrantees in the state plan draft to DOE.

**Q16:** In times of crisis can WAP vehicles be used for other emergency programs such as delivering food to seniors?

**A:** Yes, federal rules allow equipment to be used by multiple programs provided the WAP is reimbursed ([2 CFR 200.313](#)). See also [WPN 12-7](#), p. 2: "Local agencies may use weatherization vehicles and/or equipment to help assist in disaster relief provided the WAP is reimbursed according to the DOE Financial Assistance Regulations."

WAP funding **cannot** be used to pay for staff time performing work in other programs.

**Q17:** Can Grantees provide revisions to their LIHEAP plan applications to assist with the COVID-19 crisis? (i.e. revise the plan to allow for an increase to the average cost per unit to assist with paying crew, auditors, and QCI during suspended WAP field operations).

**A:** Yes, LIHEAP Grantees may provide plan revisions to the LIHEAP plan during the program year. Plan revisions do not need to be submitted prior to implementing the changes, and can be submitted after the fact; however, states should consult with their LIHEAP program officer and/or consult with the Office of Community Services to make sure their activities are in compliance with the LIHEAP statute and regulations. (Source: <https://www.acf.hhs.gov/ocs/resource/liheap-disaster-relief>). Grantees do not need to hold a public hearing on Revised LIHEAP Plans, but must make them "available for public inspection," which could include publishing on a website. Grantees must allow for "timely and meaningful review of, and comment upon" substantial changes to their Revised LIHEAP Plans or underlying policies. Public participation can be tailored to facilitate the timely implementation of urgent substantial changes, e.g., via brief public comment opportunities, stakeholder communications, etc. Grantees should follow their own state, territorial, or tribal procedures for making administrative changes to rules or policies. WAP Grantees who do not administer LIHEAP in-house will need to coordinate with your State's LIHEAP office to initiate the plan revision process. See the [LIHEAP Guidance](#) published April 1 for more detail on how to submit a plan revision.

The plan revision process is in the statute: Section 2605(c)(2). *Please note the following requirement with regards to LIHEAP plan amendments: “(2) Each plan prepared under paragraph (1) and each substantial revision thereof shall be made available for **public inspection** within the State involved in such a manner as will facilitate timely and meaningful review of, and comment upon, such plan or substantial revision.”*

If your approved state LIHEAP Plan follows “Entirely DOE” or “Mostly DOE” rules, you do not need to revise the LIHEAP Plan when a DOE rule or policy changes.

**Q18:** Could you provide any good resources on HIPAA and how or if it pertains to WAP? What types of questions should we use in the screening process with clients?

**A:** Covered entities are defined in the HIPAA rules as (1) **health plans**, (2) **health care clearinghouses**, and (3) **health care providers** who electronically transmit any health information in connection with transactions for which HHS has adopted standards. Based on this definition, WAP providers are **not** covered entities and therefore, HIPAA is not triggered.

Per WPN 17-7, Table of Issues, Occupant Pre-existing or Potential Health Conditions, Subgrantees are required to screen occupants to review known or suspected health concerns. For operational WAP agencies, the health and safety of local crew and contractors depends on screening this information during the COVID-19 pandemic, and clients who are not feeling well or that have contracted COVID-19 could be put on a deferred wait-list. Another state shared their notes from a call with CAPLAW regarding this issue, see below.

*CAP agencies who continue to go into people’s homes for weatherization or other activities should create a screening tool that they use with ALL clients (to ensure there is no discrimination).*

- a. *Screening tool should ask things like:*
  - i. *Has anyone in the house been sick in the last two weeks?*
  - ii. *Has anyone traveled to an infected area?*
  - iii. *Is anyone in the household feeling nauseous/sick/trouble breathing?*

Here is a link to free [HIPAA training](#) for local staff: and

Additionally, here is a link CAPLAW document to help CAA’s and State Associations as Employers. [.https://www.caplaw.org/resources/PublicationDocuments/CAPLAW\\_ManagingCoronavirusRisksCommunityAction\\_March2020.pdf](https://www.caplaw.org/resources/PublicationDocuments/CAPLAW_ManagingCoronavirusRisksCommunityAction_March2020.pdf)

*HIPAA Privacy and COVID-19: In light of the Novel Coronavirus (2019-nCoV) outbreak, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is providing this bulletin to ensure that HIPAA covered entities and their business associates are aware of the ways that patient information may be shared under the HIPAA Privacy Rule in an outbreak of infectious disease or other emergency situation, and to serve as a reminder that the protections of*

*the Privacy Rule are not set aside during an emergency. The HIPAA Privacy Rule protects the privacy of patients' health information (protected health information) but is balanced to ensure that appropriate uses and disclosures of the information still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes.*

<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

**Q19:** If local agencies choose to allow or require employees use paid leave, are they required to provide paid leave under the new Coronavirus Acts passed by Congress?

**A:** The Families First Coronavirus Response Act requires employers to provide up to two weeks of paid sick leave to employees forced to miss work for qualifying reasons due to the COVID-19 outbreak. The Act also expands the federal Family and Medical Leave Act (FMLA) by providing **paid leave** to employees who are unable to work or telework because they are caring for a minor child whose school or childcare provider is closed or unavailable due to a public health emergency. These provisions are effective April 1 and will remain in effect until December 31, 2020. The new leave requirements apply to businesses with under 500 employees. For additional information see the CAPLAW resources [here](#) and the U.S. Department of Labor [FAQs](#).

**Q20:** How will Federal monitoring be impacted?

**A:** OMB has directed Federal agencies to postpone non-essential travel. DOE is postponing on-site monitoring visits. If you have a visit scheduled with DOE this year we recommend checking in with your Project Officer on any change in plans. OCS is also postponing all LIHEAP on-site monitoring visits through May 2020. See the [LIHEAP Guidance](#) published April 1, 2020 for more information.