



Dept. of Energy Announces New Regulations to Facilitate Weatherization of Subsidized Affordable Housing

DOE issues final rule minimizing duplicative verification requirements among Federal agencies.

Shortly after the American Recovery and Reinvestment Act (ARRA) was signed into law, HUD and the Department of Energy (DOE) announced an interagency effort to improve the energy efficiency and livability of HUD assisted and LIHTC homes by minimizing barriers to participation of these homes in the Weatherization Assistance Program (WAP). At the time, HUD Secretary Donovan remarked that "this partnership will ensure that HUD and DOE together can play a significant role in the Administration's goal to weatherize one million homes, while at the same time serving a population in need."

DOE has now announced that hundreds of thousands of HUD, LIHTC and USDA multifamily apartments meet certain WAP eligibility requirements without the need for further evaluation or verification by the State WAP administering agency or local subgrantee.¹ In doing so, DOE has significantly reduced the burden of evaluating WAP applications for these multifamily properties.

The following page includes a summary of DOE's guidance for evaluating WAP applications from buildings that are part of HUD assisted and public housing programs, the Federal LIHTC program, and the USDA Rural Development program. Key issues addressed in the final rule are:

Demonstrating Income Eligibility. For a property to be eligible for WAP, the owner must demonstrate that no less than 66% of the building's households have incomes at 200% of poverty or less. DOE has concluded that existing income verification procedures for HUD assisted, public housing, and LIHTC properties are sufficient for determining eligibility for WAP. As a result, HUD will identify properties that are income eligible and no further income verification process by the owner will be required.

Protecting Tenants from Rent Increases and Preventing Undue or Excessive Enhancement to the Value of the Dwelling Unit. Under WAP, a grantee must establish procedures that ensure a tenant is not subject to rent increases for a reasonable period of time after weatherization work has been completed. In addition, a grantee is required to ensure that WAP expenditures are focused solely on property enhancements that provide weatherization benefits and do not result in undue or excessive enhancement to the value of the property.

Ensuring the Benefits of Weatherization Accrue to Tenants. Under WAP, property owners must demonstrate that weatherization benefits will accrue primarily to multifamily tenants. This can easily be demonstrated through utility cost savings in cases where tenants pay utilities directly. DOE has now clarified that property owners can also meet this requirement through other means. As a model, DOE cited the State of Washington's policy recognizing that preserved low-income housing, added comfort, and environmental health benefits as a result of weatherization upgrades can be considered direct benefits to tenants.

Owner Financial Participation. DOE has not amended the regulatory provision regarding financial participation from multifamily building owners. DOE reiterated that "a State *may require financial participation where feasible* from multifamily owners" (DOE's emphasis). In fact, many States, including Kansas, Virginia and New York, are reducing or waiving this requirement, or reserving the option to negotiate the contribution requirement with each owner.

¹ Final Rule published in the Federal Register, Vol. 75, No. 15, Monday, January 25, 2010, pg. 3847. The final rule is effective February 24, 2010.

Housing Program	Demonstrating Income Eligibility	Protecting Tenants from Rent Increases and Preventing Undue or Excessive Enhancement to the Value of the Home	Ensuring the Benefits of Weatherization Accrue to Tenants
<p>HUD Qualified Assisted Housing (includes public housing projects, properties with project-based Sec. 8 assistance, and Sec. 202/811 properties. In addition, the rule applies to Sec. 236 and 221(d)(3) properties if at least 66% of households receive project-based Sec. 8 assistance.)²</p>	<p>If no less than 66% of the building’s households have incomes at or below 200% of poverty as determined by HUD data, the building is automatically income eligible for the Weatherization program. HUD will identify these properties and provide a list to DOE. No additional income verification procedures will be required for these properties.</p> <p>If less than 66% of the building’s households have incomes at or below 200% of poverty as determined by HUD data, the building is not automatically income eligible.</p>	<p>If the property is covered by a project-based Sec. 8 contract expiring in 3 years or beyond, the property satisfies the rent protection requirements under WAP without the need for further evaluation or verification.</p> <p>If the property is covered by a project-based Sec. 8 contract expiring in less than 3 years, it is up to the State to determine if the property satisfies the rent protection requirement under WAP. However, DOE is clear that a State may determine that these properties still satisfy the rent protection requirement depending on what the State views as an acceptable timeframe of rent protections.</p> <p>HUD will identify the terms of the property’s Sec. 8 contract so States will know the amount of time remaining on the contract.</p> <p>All HUD Qualified Assisted Housing satisfies the requirement to protect against undue or excessive enhancement of the weatherized building, without the need for further evaluation or verification.</p>	<p>Administering State agencies can take into consideration benefits other than reduced utility costs when ensuring that benefits of WAP services accrue primarily to tenants. Benefits can include a combination of long-term preservation of the property, continued monitoring of protections against rent increases, and a healthier living environment.</p> <p>States may also consider ways in which energy savings and owner contributions can be structured to provide benefits to tenants, including through property upgrades such as apartment modernization and improved security systems, or improved resident services such as broadband access and job training.</p> <p>HUD Qualified Assisted Housing programs in and of themselves do not ensure that benefits of WAP services accrue primarily to tenants, and the State agencies must establish procedures to satisfy this requirement.</p>

² DOE is clear that other HUD assisted properties, including Sec. 236 and 221(d)(3) properties with no Sec. 8 assistance, may still be eligible for the Weatherization Assistance Program assuming owners can demonstrate that the properties meet the requirements of the program.

Housing Program	Demonstrating Income Eligibility	Protecting Tenants from Rent Increases and Preventing Undue or Excessive Enhancement to the Value of the Home	Ensuring the Benefits of Weatherization Accrue to Tenants
<p>Low Income Housing Tax Credit</p>	<p>Same as HUD Qualified Assisted Housing.</p>	<p>LIHTC properties need to separately meet the rent protection AND excessive enhancement requirements. It is up to the State or local WAP grantee to establish the necessary conditions to meet these requirements.</p>	<p>Same as HUD Qualified Assisted Housing.</p>
<p>USDA Sec. 515</p>	<p>If 100% of a project’s units are occupied by households with incomes at or below 200% of poverty as determined by USDA data, the project is deemed automatically eligible. USDA will identify these properties and provide a list to DOE. No additional income verification procedures will be required.</p> <p>If less than 100% of the project’s households have incomes at or below 200% of poverty as determined by USDA data, the building is not automatically income eligible. The project may still qualify for WAP services, but the owner must demonstrate that at least 66% of households residing in a Sec. 515 building have incomes at 200% of poverty or less.</p>	<p>The final rule makes no reference to whether the Sec. 515 program has sufficient controls to provide tenants protection from rent increases or to protect against excessive enhancement of the building. Absent this determination, presumably it is up to the State or local WAP grantee to establish the necessary conditions to meet these requirements.</p>	<p>Same as HUD Qualified Assisted Housing.</p>