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Weatherization Assistance Program Rule. Chapter 25. 2016

Maine State Housing Authority

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99 INDEPENDENT AGENCIES - NOT PART OF STATE GOVERNMENT

346 MAINE STATE HOUSING AUTHORITY

CHAPTER 25 Weatherization Assistance Program Rule

Summary: The Maine State Housing Authority administers the federal Weatherization Assistance Program (“WAP”) for the State of Maine. WAP provides weatherization assistance to low-income households. This rule governs MaineHousing’s administration of WAP.

1. Definitions.

As used in this rule, the following terms shall have the identified meaning, unless the context otherwise requires:

- A. "Administration" means the management and planning activities respecting WAP that are reimbursable under Section 2 of this Rule;
- B. "Act" means the Maine Housing Authorities Act, 30-A M.R.S.A. § 4701 et seq., as it may be amended from time to time;
- C. "APA" means the Maine Administrative Procedures Act, Title 5, chapter 375 of the Maine Revised Statutes;
- D. “Appellant” means an individual or entity requesting a Fair Hearing under this Rule;
- E. "Catchment Area" means the geographic area within which the Subgrantee administers and operates WAP;
- F. "CHIP" means the Central Heating Improvement Program component of HEAP;
- G. "Completion Date" means the day that the Subgrantee allocates a source of WAP funds to pay for Weatherization Materials and services respecting a Dwelling Unit and deems the unit complete for billing purposes;
- H. “DOE” means the United States Department of Energy;
- I. "Dwelling Unit” shall have the same meaning as set forth in 10 C.F.R. §440.3, as may be amended from time to time;
- J. "ECIP" means the Energy Crisis Intervention Program component of HEAP;

- K. "Elderly" shall have the same meaning as set forth in 42 U.S.C. §6962(3) and 10 C.F.R. §440.3, both as may be amended from time to time;
- L. "Eligible Household" means a household which qualifies for services pursuant to this rule;
- M. "Emergency" means an unexpected circumstance which poses an immediate threat to the health or safety of one or more members of an Eligible Household;
- N. "Extenuating Circumstances" means substantial hardship respecting the Subgrantee's compliance with this rule or other significant program requirements;
- O. "Fair Hearing" means a hearing and opportunity to be heard called for by the Weatherization Act;
- P. "Fair Hearing Officer" means a hearing officer contracted for by MaineHousing to conduct Fair Hearings under this Rule;
- Q. "HEAP" means the Home Energy Assistance Program as administered and operated by MaineHousing;
- R. "Household Income" means gross income of a household earned and/or received before taxes during applicable tax year(s) for purposes of determining whether the household is an Eligible Household and includes the following:
1. Money, wages and salaries before any deductions;
 2. Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);
 3. Regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, worker's compensation, veteran's payments, training stipends, alimony, and military family allotments;
 4. Private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments;
 5. Dividends and/or interest;
 6. Net rental income and net royalties;
 7. Periodic receipts from estates or trusts; and
 8. Net gambling or lottery winnings.

Household Income does not include the following:

1. Capital gains;
 2. Any assets drawn down as withdrawals from a bank;
 3. Money received from the sale of a property, house, or car;
 4. One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
 5. Tax refunds;
 6. Gifts, loans, or lump-sum inheritances;
 7. College scholarships;
 8. One-time insurance payments, or compensation for injury;
 9. Non-cash benefits, such as the employer-paid or union-paid portion of health insurance;
 10. Employee fringe benefits, food or housing received in lieu of wages;
 11. The value of food and fuel produced and consumed on farms;
 12. The imputed value of rent from owner-occupied non-farm or farm housing;
 13. Depreciation for farm or business assets;
 14. Federal non-cash benefit programs such as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance;
 15. Combat zone pay to the military;
 16. Child support;
 17. Reverse mortgages; and
 18. Payments for care of foster children;
- S. "Incidental Repairs" shall have the same meaning as set forth in 10 C.F.R. §440.3, as may be amended from time to time;
- T. "MaineHousing" means the Maine State Housing Authority;
- U. "Low-cost/no-cost Weatherization Activities" mean those activities authorized pursuant to 10 C.F.R. §440.20, as may be amended from time to time;
- V. "Rework" means additional WAP activities necessary to correct significant deficiencies respecting the installation or quality of Weatherization Materials as determined by MaineHousing respecting a specific Dwelling Unit;
- W. "Self-help Weatherization" means the installation of a substantial amount of Weatherization Materials by a member of the Eligible Household, by volunteer

labor designated by the Eligible Household, by local community groups, or by any other non-Weatherization funded labor procured by the Eligible Household;

- X. "State Plan" means that document complying with the requirements of 10 C.F.R. §440.14, as may be amended from time to time;
- Y. "Subgrantee" shall have the same meaning as set forth in 10 C.F.R. §440.3, as may be amended from time to time;
- Z. "Weatherization Act" means the federal law and regulations that govern WAP including without limitation, 42 U.S.C. §6861 et seq., 10 C.F.R. §440.1 et seq., 2 C.F.R. Part 200, and formal guidance from DOE, all as may be amended from time to time;
- AA. "Weatherization Materials" shall have the same meaning as set forth in 10 C.F.R. §440.3 as may be amended from time to time.

2. Administration.

- A. Administrative Costs. Expenditures for Administration shall be governed by 10 C.F.R. §440.18(e), as may be amended from time to time. Surplus administrative funds will be reprogrammed into direct WAP services in the next fiscal year as allowed by DOE.

Allowable administrative costs are categorized in 2 C.F.R. Part 200. Allowable costs include, without limitation:

- 1. All direct costs of Administration including but not limited to salaries, fringe benefits, travel and telephone costs, office equipment and supplies which are exclusively used by the Subgrantees in WAP;
- 2. Any other direct administrative costs which have been allocated as WAP's share of total agency Administration under a current cost allocation plan; and
- 3. The share of subgrant funds authorized by MaineHousing which corresponds to the current indirect cost rate for apportioning indirect administrative costs out of the Subgrantee's cost pool.

In the case of Subgrantee cost allocation plans and indirect cost rates, MaineHousing reserves the right to review pertinent documentation for such plans or rates before authorizing the expenditure of subgrant funds on this basis.

- B. Responsibilities of MaineHousing. MaineHousing's responsibilities under this rule shall include, but shall not be limited to, the following:
1. Select proposed Subgrantees to receive WAP subgrants;
 2. Ensure effective coordination of WAP with HEAP, CHIP and ECIP operated by MaineHousing, other human services programs, and other weatherization and conservation efforts;
 3. Employ sufficient professional staff to monitor compliance and provide appropriate training and technical assistance to Subgrantees and to perform regular periodic Subgrantee monitoring;
 4. Train and maintain adequate staff to administer WAP;
 5. Establish requirements regarding the expenditure of funds allocated to Subgrantees and define the Subgrantee Catchment Area; and
 6. Select Subgrantees in a manner consistent with the requirements of 10 C.F.R. §440.15, as may be amended from time to time. Nothing in this rule shall prevent MaineHousing from selecting Subgrantees by a request for proposals or by another form of competitive bidding.
- C. Allocation of WAP Funds. WAP funds shall be allocated to Subgrantees in the manner provided for in this paragraph.
1. MaineHousing shall identify criteria indicating the need for WAP services in each Catchment Area. These criteria may include the number of applicants on a current waiting list for WAP services, number of Elderly or persons with disabilities in the Catchment Area, per capita income, percentage of income-assisted households, percentage of households in subsidized housing, heating degree days, population density and the number of HEAP assisted households.
 2. MaineHousing reserves the right to reallocate funds from one Subgrantee to another in the event of an Emergency, Extenuating Circumstances, special needs, program failure or completion in any Catchment Area, or for demonstration and pilot projects.
- D. Subgrant Suspension and Termination. MaineHousing may temporarily suspend or terminate a subgrant with any Subgrantee at any time for cause pursuant to the

procedures set forth below. MaineHousing may take immediate steps to suspend a subgrant with a Subgrantee in the event of Subgrantee's failure to comply substantially with the provisions of the Weatherization Act.

1. Any suspension or termination must be preceded by a notice to the Subgrantee stating the grounds for suspension or termination and requiring the Subgrantee to show cause why the subgrant should not be terminated.
 2. The Subgrantee shall have the opportunity to show cause why the subgrant should not be terminated by requesting, within 14 calendar days of receipt of the notice, an informal conference to be held within 14 calendar days of receipt of request.
 3. The informal conference will be conducted by a person other than the one who made or approved the decision under review or a subordinate of this person. MaineHousing will review the file, conduct necessary research, and give the Subgrantee an opportunity to present written or oral objections to the decision under review. In rendering a decision MaineHousing will evaluate the details surrounding the deficiency or failure to comply with the rule, Weatherization Act or contract and objections presented by the Subgrantee. MaineHousing will communicate the results of the review to the Subgrantee.
 4. Action against a Subgrantee for failure to comply with the provisions of the Weatherization Act or this rule shall disqualify the Subgrantee from participating in the program until the Subgrantee again complies with the Weatherization Act and/or this rule.
3. Responsibilities of Subgrantees. Subgrantees shall be responsible for the operational management and provision of WAP services as provided for in this section.
- A. Certification of income eligibility of all applications which must be taken by the Subgrantee HEAP office within 30 calendar days of the date of application and forwarded by any other HEAP Subgrantee in the Subgrantee's Catchment Area within 30 days of receipt of the application.
 - B. Subgrantees must recertify household eligibility in the case of any household whose initial application was completed and dated more than twelve months prior to the proposed WAP activity.
 - C. Subgrantees must provide allowable WAP services in accordance with this rule and the Weatherization Act. No Subgrantee employee, agent or contractor shall

perform work, which under state law or local ordinances or codes, must be performed by a licensed or certified technician or repair person unless that person possesses such qualifications.

- D. Subgrantees must procure Weatherization Materials, supplies, and services in accordance with the Weatherization Act.
- E. Subgrantees must provide written notification to households denied WAP benefits of the grounds for denial and of the right to appeal as outlined below.
 - 1. Any application denial or Dwelling Unit failure to be approved for WAP services shall be subject to a Fair Hearing pursuant to Section 11 below.
 - 2. An application neither denied nor approved within a reasonable time is subject to an informal review unless the delay was caused by the household's lack of cooperation in providing necessary and reasonable evidence.
 - 3. An informal review will be conducted by a person other than the one who made or approved the decision under review or a subordinate of this person. The Subgrantee or MaineHousing will review the file, conduct necessary research, and give the applicant an opportunity to present written or oral objections to the decision under review. In rendering a decision MaineHousing will evaluate the accuracy of the calculations, the level of documentation provided by the applicant, and the reason for any delay. The agency conducting the informal review will communicate the results of the review to the applicant. This decision will represent final agency action in regards to that determination.
 - 4. Subgrantees must also participate as necessary in any scheduled Fair Hearing. The Subgrantee agrees to disclose to the applicant on request, all information pertaining to a decision on eligibility for assistance.
- F. Subgrantees must submit reimbursement requests and reports as required by MaineHousing.
- G. Subgrantees must inform the public of the availability of WAP services and other available energy services by coordinating with HEAP outreach activities.
- H. Subgrantees must maintain fiscal and program records in accordance with the requirements of 2 C.F.R. Part 200 for no less than three years.

- I. Subgrantees must participate in an annual audit of WAP by MaineHousing or an auditing firm approved by MaineHousing.
- J. Subgrantees must not discriminate against program participants or applicants for WAP benefits on the basis of race, color, national origin, sexual orientation, disability, age, sex, or religion.
- K. Subgrantees must provide service to Eligible Households on a first come, first serve basis, except in the case of Emergency or Extenuating Circumstances as determined by the Subgrantee in accordance with this rule.

No Dwelling Unit may be reported to MaineHousing as completed until the Subgrantee has performed a final inspection and certified that applicable work has been completed in a workmanlike manner.

4. Eligibility Determination.

- A. Eligibility for WAP shall be as provided for in the Weatherization Act.
- B. Work on an eligible Dwelling Unit previously weatherized under WAP may be reopened if:
 - 1. The reopening takes place within 6 months of completion of the original WAP service; and
 - 2. The reopening is required because the previous service is the proximate cause of an immediate threat to the health and/or safety of the unit or its occupants; or the quality of Weatherization Materials or its installation is deemed deficient by MaineHousing.
- C. Reworks.
 - 1. MaineHousing may order a Rework if it determines that the overall quality of work is poor, installed Weatherization Materials are inappropriate for the Dwelling Unit, or Weatherization Materials billed to MaineHousing have not been installed.
 - 2. The Rework shall be completed within 30 days of the Subgrantee's receipt of a form issued by MaineHousing ordering the completion of the Rework, unless otherwise specified by MaineHousing in writing.

3. A Rework form shall be submitted to MaineHousing with a billing summary sheet.

5. Priorities for WAP Services.

In addition to the priority scheme set forth in the Weatherization Act, the Subgrantee agrees to establish priorities in the following order for purposes of selecting income-Eligible Households for WAP services:

- A. Households which are eligible for HEAP fuel assistance benefits, have a high energy burden, and include a household member who is:
 1. Elderly;
 2. A person with disabilities; or
 3. Under 24 months of age.
- B. All other households which are eligible for HEAP fuel assistance benefits;
- C. Households that applied for HEAP fuel assistance benefits and have a Household Income equal to or less than 200% of the poverty guidelines.

6. Permissible Weatherization Expenditures.

- A. Materials Expenditures.
 1. The cost of any Weatherization Materials which do not conform to applicable product standards will not be allowable or reimbursable by MaineHousing.
 2. The cost of window and door replacements will be allowed when justified by a savings to investment ratio of at least one.
 3. Priorities for the installation of Weatherization Materials.
 - a. The Subgrantee shall complete an on-site inspection of each Dwelling Unit in order to identify which installed Weatherization Materials would be the most cost effective as defined in the Weatherization Act.

a manual designed to assist Subgrantees to understand the procedures for operating the WAP. This rule shall control in the event of any inconsistency between the program guide and the rule.

9. State Plan.

MaineHousing will prepare and submit an annual State Plan for WAP to Efficiency Maine Trust in accordance with 35-A M.R.S.A. §10104(8) and to the Secretary of the United States Department of Energy in accordance with the Weatherization Act. MaineHousing will notice a public hearing for the purpose of taking comments on the State Plan and will also prepare a transcript of the hearing.

10. Confidentiality of Records.

A. No Subgrantee shall release or make available for public inspection, the name, address or phone number of any applicant for WAP services, their Household Income, assets, value of services received, or descriptions or photographs of their Dwelling Unit. Such information shall be kept confidential and shall not be released to any person or agency not directly involved in the Administration or auditing of WAP, except when:

1. The applicant gives written consent to the release;
2. The Subgrantee or other agency directly involved in the Administration of WAP requires this information for audit, management, evaluation or record keeping purposes; or
3. Disclosure is required under applicable law.

B. All WAP services subcontracts shall contain a provision setting forth confidentiality requirements.

11. Fair Hearings.

A. MaineHousing shall provide for a Fair Hearing in accordance with the APA whenever:

1. an application for WAP is denied;
2. an application is certified as income eligible but the Dwelling Unit is not approved for WAP services; or

3. a Fair Hearing is requested by a Person facing Debarment as provided in Section 12 below.
- B. The Appellant requesting a Fair Hearing must submit to MaineHousing a written request for a Fair Hearing within the respective time period called for in the applicable section of this rule. Any applicant requesting a Fair Hearing must submit the written request no later than 30 calendar days from the postmarked date of a notice of denial or Debarment from the Subgrantee.
- C. Fair Hearings shall meet the following standards:
1. Fair Hearings shall be conducted by a Fair Hearing Officer.
 2. The Appellant will be sent a hearing notice providing an explanation of MaineHousing's Fair Hearing procedures, the pre-hearing right to discovery and the date, time and location of the Fair Hearing.
 3. MaineHousing will provide the Appellant with any exhibit documentation to be presented free of charge no later than 5 business days prior to the scheduled Fair Hearing. If the Appellant wishes to obtain copies of additional documentation they will be allowed to copy any documents related to the hearing at a cost of \$.10 per page. MaineHousing will entertain requests for waivers of the fees in the case of de minimus numbers of copies or family hardship.

MaineHousing must be given an opportunity to examine, at MaineHousing offices, before the hearing, any Appellant documents that are directly relevant to the hearing. Whenever an Appellant requests a Fair Hearing, MaineHousing will automatically mail a letter to the Appellant requesting a copy of any Appellant documents that the Appellant wishes to present or utilize at the hearing. The Appellant must make the documents available no later than 5 business days prior to the scheduled hearing date. The Appellant can satisfy this requirement by providing the documents via mail or in electronic form within the time constraints outlined above in order to allow MaineHousing the opportunity to prepare for the hearing. Failure to comply with this obligation may result in the Fair Hearing Officer not allowing the documents into evidence.
 4. The Appellant may be represented by a lawyer or other representative at the Fair Hearing at their own expense.

5. The Fair Hearings will be conducted in accordance with the APA. The Fair Hearing officer is responsible to manage the order of business and to ensure that Fair Hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person engaging in behavior that interferes with the orderly conduct of the hearing may be barred in whole or part from participation by the hearing officer.
6. Any evidence to be considered by the Fair Hearing Officer must be presented at the time of the Fair Hearing. Evidence may be included without regard to the rules of evidence applicable to judicial proceedings. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. If either MaineHousing or the Appellant fail to comply with the discovery requirements described above, the Fair Hearing Officer will refuse to admit such evidence. Other than the failure of a party to comply with discovery, the Fair Hearing Officer has the authority to overrule any objections to evidence.
7. The Fair Hearing Officer must issue a written decision, stating briefly the reasons for the decision and shall include findings of fact sufficient to apprise the parties of its basis. Factual determinations must be based on a preponderance of evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the Appellant.
8. A final decision and order will be made by the Director of MaineHousing in writing within 30 days of receipt of the Fair Hearing Officer's recommendation. The Director's decision and order shall include findings of fact sufficient to apprise the parties of its basis. A copy of the decision and order will be provided promptly to each party to the proceeding or their representative of record. Written notice of the party's right to appeal the decision and other relevant information will be provided to the parties at the time of the decision and order.

12. Debarment

For purposes of this section and Section 11 only, the following terms shall have the following meaning:

- A. "Person" shall mean any individual, corporation, partnership or other business entity, and shall include affiliates, associates and subsidiaries of any such entity. Person shall also include directors and officers who are closely connected to or

associated with such an entity so as to control it or have the power to control it in any business dealings.

- B. "Debarment" shall mean disqualification from bidding on or sub-contracting for any project administered by the MaineHousing.
- C. "Bidding Crime" shall mean any act prohibited by state or federal law committed in any jurisdiction involving fraud, conspiracy, collusion, perjury or material misrepresentation with respect to bidding on any public or private contract, and shall include violations of state anti-trust laws, federal anti-trust laws, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et seq., and the Mail Fraud Act, 18 U.S.C. § 1341, et seq.
- D. MaineHousing shall have the authority to Debar any Person for the following reasons for such period of time as it deems appropriate.
 - 1. Conviction of a Bidding Crime resulting from either a jury or bench trial; any plea of guilty or nolo contendere to a charge of a bidding crime; or any admission by any Person of a Bidding Crime; or any testimony under oath by an unindicted co-conspirator indicating a Person's involvement in a Bidding Crime.
 - 2. Conviction of any offense indicating a lack of moral or ethical business integrity as may reasonably be perceived to relate to or reflect upon the business practices of the Person.
 - 3. Debarment by any other State or Federal agency for substantially any of the reasons listed in this Section.
 - 4. Making false, deceptive, or fraudulent statements on any documents submitted to MaineHousing.
 - 5. Any other cause affecting a Person's responsibility as a contractor of a serious and compelling nature.
- E. Notification and Right to Hearing
 - 1. Any Person considered for Debarment shall be sent written notice by certified mail and allowed the opportunity for a Fair Hearing to determine whether Debarment is appropriate. The notice shall state that Debarment is being considered, the reasons underlying the consideration of

Debarment and that the Person under consideration shall be afforded an opportunity for a hearing on a specified date.

2. Hearings shall be conducted in accordance with Section 11.

13. Additional Provisions.

- A. Any provision of applicable Federal or Maine law including, without limitation, the Act, and the Weatherization Act shall take precedence over this rule in the event of any inconsistency.
- B. This rule does not preclude such additional or alternative requirements as may be necessary to comply with the Act and the Weatherization Act.
- C. This rule establishes a pool of eligible applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement on any person or entity eligible hereunder.
- D. Waivers. Upon determination for good cause, the Director of MaineHousing, or the Director's designee, may, subject to statutory limitations, waive any provision of this rule. Each waiver shall be in writing, and shall be supported by documentation of the pertinent facts and grounds for the waiver.
- E. The Director of MaineHousing, individually or by exercise of the delegation powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the Director shall constitute final agency action.

BASIS STATEMENT: This rule replaces in its entirety the current *Weatherization Program Rule* for the following purposes: to remove the LIHEAP weatherization program from the rule; to refer to revised federal regulations on administrative requirements, cost principles, and auditing requirements and to comport with federal guidance on household income calculations; to revise the procedures for suspending or terminating a subgrantee; to make clarifications to the fair hearing process for applicants and for debarment of contractors; and to make other minor technical revisions and updates.

PUBLIC COMMENT:

Process: Notice of Agency Rule-making Proposal (MAP-3) was published in the State of Maine's rulemaking notice in newspapers statewide on Wednesday, January 27, 2016, sent to Interested Parties on January 26, 2016, and on MaineHousing's website on January 26, 2016.

MaineHousing held a public hearing on Tuesday, February 16, 2016 to receive testimony on its proposal to repeal and replace the rule. The comment period was held through close of business on Friday, February 26, 2016. MaineHousing received comments from the Maine Community Action Association Housing Council and Western Maine Community Action.

Summary of Comments and Responses to Comments:

Sandy Albert, Chair of the Maine Community Action Association submitted a written comment recommending that the cost of window and door replacements be allowed when a home is modeled for energy savings and the tasks achieve the minimum SIR of 1 or greater consistent with current practice without the need for prior written approval from MaineHousing.

Response: MaineHousing agrees with this comment and has revised Section 6.A.2. accordingly.

STATUTORY AUTHORITY: 30-A M.R.S.A. §§4722(1)(W) and 4741(15)

EFFECTIVE DATE: