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C.4. RENTERS AND OWNER/AUTHORIZED AGENTS

As required by 10 CFR 440.22(b), a provider may weatherize a building containing rental units using financial assistance for units eligible for weatherization. No multi-family building project that is four or more stories above grade, or is a centrally heated building with five or more units, may commence without prior written approval for the project from OEE.

This chapter will take you step-by-step through the regulations and the required procedures, and will outline some of the optional procedures a provider may adopt in order to provide service to rental units.

1. PERMISSION OF OWNER OR AUTHORIZED AGENT

The first step in the process is to obtain the written permission of the owner/authorized agent. Reluctance on the part of the owner to participate in the program can be a difficult problem to overcome. However, the negotiation process that takes place at this point should emphasize all possible expenditures as an investment in the property. You should keep records of all contacts with the tenant and the owner. Often initial problems can be minimized by approaching the owner with a presentation of the benefits of the services, an estimate of potential costs, and by carefully detailing all steps involved. If your agency has an Advisory Board, sometimes it is helpful to involve owners and tenant representatives. In this way both parties can become familiar with specific aspects of the program.

However, if the rental property is a multi-family building, vacant building, a partially occupied building, or group home, a provider would first need to determine if the building meets the eligibility requirements.

2. DETERMINING ELIGIBILITY IN MULTI-FAMILY BUILDINGS

Sixteen percent of Ohio's HWAP eligible households are in buildings which contain 5 or more units. Prior to 1980, every unit in a building had to be occupied by an eligible person in order to receive weatherization services. The regulations currently permit the weatherization of a multi-family building if at least 66% of the units are occupied by income eligible households. An exception is made for 2 unit and 4 unit buildings, where only 50% of the households need to meet income eligibility

requirements.

If the building meets the 66% eligibility requirement (or the 50% requirement where applicable), the entire building shell, including ineligible units and common areas, may be weatherized. This means the insulation and air sealing measures involved with addressing the building shell. However, only those measures that would improve the energy efficiency of the entire building may be installed on or in ineligible units and common areas. All combustion appliances (in all units) must be tested to ensure that no health and safety problems exist. If problems are detected in the combustion appliances of ineligible units, it is the complete responsibility of the owner / authorized agent to remedy the problem prior to weatherization activities beginning. Work performed in common areas in multi-family buildings shall be limited to measures that protect or enhance the performance of the measures completed on the individual units.

If the building does not meet the 66% eligibility requirement (or the 50% requirement where applicable), only the eligible unit may be weatherized. This means that the entire building shell can not be insulated or air sealed. No work can be performed within ineligible units or in common areas. However, due to the concern for the health and safety of the customer, all combustion appliances (in all units) must be tested to ensure that no health and safety problems exist. If problems are detected in the combustion appliances of ineligible units, it is the complete responsibility of the owner / authorized agent to remedy the problem prior to weatherization activities beginning.

a. Vacant Buildings

Completely vacant buildings may only be weatherized

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in conjunction with a federal, state, or local government program for rehabilitating the building or making similar building improvements.

You must get written assurance that at least 66% of the units (50% if applicable) will be occupied by income eligible persons within 180 days of the completion of the weatherization work. You must also follow-up to ensure that this occurs and to complete the BWR reporting procedures. See Section B.1.viii of this manual for reporting requirements.

b. Partially Occupied Buildings

Many times multi-family structures will have some vacant and some occupied units at the time eligibility is determined.

The building can be weatherized if it meets the appropriate criterion (66% or 50% eligible units). Vacant units are considered ineligible unless the requirements of the vacant building section are met.

c. Group Homes and Shelters

The eligibility of a particular group home is dependent on the "Definitions" section of the 10 CFR 440 regulations. The important definitions in determining group home eligibility are: Family Units, Dwelling Unit, and Separate Living Quarters.

The definitions for determining group home eligibility are as follows

-Family Unit – means all persons living together in a dwelling unit.

-Dwelling Unit – means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

-Separate Living Quarters – means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either (1) direct access from the outside of the building or through a common hall (2) or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living

alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements and includes shelters for homeless persons.

-Group Home – means a dwelling unit in which three or more people, not related by blood or marriage, are residing in a single unit, not owned by a government agency, where eating facilities are shared. In addition, a group home must have a clearly definable identity that distinguishes it from more informal, family-type settings. For example, a residence for mentally challenged people.

-Shelters – means a dwelling unit or units whose principal purpose is to house, on a temporary basis, individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

The following are examples of how to determine the eligibility, the allowable expenses, and the number of completed units for group homes. These examples illustrate that eligibility of group homes and the allowable expense for each home will be determined on a case-by-case basis.

Shelters for the homeless, battered spouses, etc., may also, be weatherized. However, to determine how many units to report for the shelter, you may either count each 800 square feet as a unit or each floor of the shelter as a unit.

EXAMPLE 1 -- ABC Group home is occupied by six residents. The home consists of a kitchen, living room, dining room, bath, and three bedrooms.

°Based on the definitions of "Separate Living Quarters," the ABC group home must be weatherized as one unit. The residents are considered a "family unit" living in a single-family home.

The ABC group home is subject to any limits or restrictions placed on single-family units, and the aggregate income of the residents must not exceed the poverty income guidelines for a family of 6, or one of them must receive TANF, SSI, PIPP or HEAP.

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EXAMPLE 2 -- XYZ Group home is located in a large building consisting of 20 bedrooms with bath, a large recreation area, a dining room, and a kitchen. Each bedroom is occupied by either one or two persons. All of the residents eat together in the common dining room. All residents are by definition low-income and the State subsidizes the maintenance of the residents.

°While the XYZ group home has the appearance of a multi-family building, it does meet the definition of a Group Home and may be counted as a multi-family dwelling unit. The number of units may be calculated by considering each 800 square feet as a unit or each floor of the group home as a unit.

EXAMPLE 3 -- OMEGA Group home is located in a converted hotel. It consists of 6 floors with 12 rooms (plus bath), on each floor off a common hall. There are a total of 72 units in the building, 60 of which are occupied by income eligible persons.

All residents pay modest rent. There is no common dining room, and the individual rooms do not have kitchen facilities.

°In this case the home qualifies as a multi-family building (entrances off a common hall, and residents do not live or eat together). Since more than 66% of the residents are income eligible, the entire building shell can be weatherized.

EXAMPLE 4 – Metropolitan Area Homeless Shelter is located on the top floor of the local YMCA Family Activity Center. The floor area equals 32,000 square feet. All residents are temporary, there are no individual sleeping rooms and there are no kitchen facilities.

○ The number of units may be calculated by considering each 800 square feet as a unit or each floor of the shelter as a unit.

Applications for HWAP services from group homes or shelters should be prioritized in the same manner as applications from other rental units. Applications for group homes should list all persons living within the home and their incomes.

Applications for shelters should only list the Shelter Name. No individual names of persons within the home or incomes should be requested. Since shelters are normally a temporary housing unit or may be used for occupants safety and well being, it is not imperative for the HWAP to know the tenants name or income.

3. TYPES OF INVESTMENTS BY THE LANDLORD / OWNER / AUTHORIZED AGENTS

The landlord should be made aware of their possible financial responsibility before the inspector visits the multi-family building. The financial responsibility of the landlord should be thought of as “an investment within their own building”. There are three major ways for this investment to occur.

a) Investments to alleviate an existing Health and Safety problem. (A REQUIRED INVESTMENT THAT MUST BE APPLIED TO THE JOB)

All combustion appliances (within eligible and ineligible units) must be tested for safety. When work is going to be performed on or in ineligible units and common areas, all combustion appliances within eligible units, ineligible units, vacant units and common areas must be tested for combustion safety (i.e.. all combustion analysis tests, worst case draft testing, fuel leakage tests, etc.).

If H&S problems are found in eligible units, the landlord must pay 50% of the material and labor cost to abate the H&S problems. If H&S problems are found in ineligible units, vacant units or common areas, the landlord must pay 100% of the material and labor cost to abate the H&S problem. All H&S work done on units whether eligible, ineligible, and vacant or in common areas must pass final inspection per the OWPS before any weatherization work takes place.

b) Investments in the weatherization of the building when the utilities / fuel costs are included in the rent. (A REQUIRED INVESTMENT THAT MUST BE APPLIED TO THE JOB)

If the fuel utility costs are included within the rent or if the multi-family building is master-metered, the

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tenant may not directly receive the benefit of the weatherization performed on the building. In other words, the utility costs may decrease due to the weatherization activities having been performed, but the tenants' rent may not decrease.

In all instances where the utility costs are included within the rent and the landlord is not income eligible for the HWAP service or currently receiving HEAP or PIPP, the landlord investment must equal 50% of the material cost to have the building weatherized.

It becomes very important for the HWAP to have an accurate inspection and detailed work-order for this type of investment situation. The information collected will be critical during the negotiations with the landlord/owner/authorized agent in reference to their "investment" dollar amount.

The investment can take the form of cash or an in-kind contribution that benefits the tenant. The owner/authorized agent should be given a choice. In-kind contributions are items such as:

- Rent rebates to the tenant, or
- Rent reduction to tenants, or
- Repairs that will allow energy conservation work to be performed within a one year period prior to the weatherization activities (i.e.. roof repairs to allow attic insulation, heating system replacements, energy efficient window replacements, Energy Star™ appliances, etc.)

c) Investment towards supplementing the HWAP program. (AN OPTIONAL INVESTMENT THAT MUST BE TRACKED, BUT DOES NOT NEED TO BE APPLIED TO THE JOB)

Where the tenant directly pays for the utility/fuel costs, there is no requirement that an owner/authorized agent must contribute as a condition of receiving HWAP service, unless Health and Safety problems are found, as discussed previously. However, HWAP providers are encouraged to solicit contributions from all owner/authorized agents as a means of leveraging funds to supplement HWAP.

Providers who wish to pursue this option must develop policies, which ensure that:

A. The procedures for eliciting owner/authorized agent contributions are not mandatory for owner/authorized agents who cannot afford to participate;

B. The level of the owner/authorized agent contribution will not act as a deterrent for a significant number of owner/authorized agents;

C. The owner/authorized agent has a clear understanding of how the voluntary contribution will be used by the agency.

Providers must develop procedures for tracking both cash and in-kind contributions. If the owner/authorized agent refuses to contribute, service can still be provided, but the building should be a lower priority than one where the owner/authorized agent is willing to contribute.

4. DETERMINING EXPENDITURE LEVELS

○ **Without a multi-family audit completed**

The per unit material dollar limit for centrally heated multi-family buildings with 5 or more units is \$450 per eligible unit, if a computerized multi-family audit is not completed. No window replacements are allowable without performing an audit.

The amount of money available to do the work is determined by multiplying the number of income eligible units times the materials dollar limit per unit. For example: In a 10 unit building where 8 units are income eligible, multiply the materials dollars limit (\$450) times the number of eligible units (8) to arrive at the materials dollar limit for the building (\$3,600).

○ **With a multi-family audit completed**

The multi-family audit performed on 5+ centrally heated buildings or buildings four stories or more in height, must take into account the local weather information, the fuel consumption and cost of the building for a minimum of one year, and the labor and material costs for the suggested retrofits. There is no dollar limit on activities performed on the building, but all retrofits must be based upon cost effectiveness determined by the audit. Currently, the Ea-Quip audit is recommended within the State of Ohio. Other audits are allowable, but must be pre-approved by the Office

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of Energy Efficiency.

o Individually heated units

If the building contains 5 or more units but is individually heated, there is no per unit dollar restriction. However, work must be done based on the list of required measures and diagnostic measurements or be based upon the results of a NEAT audit.

5. OWNER/AUTHORIZED AGENT/ TENANT/AGENCY AGREEMENTS (OTAA)

When using HWAP funds to weatherize any rental property, providers must ensure that the following requirements are met:

°Rents shall not be raised unless the increases are demonstrably related to matters other than the weatherization assistance provided through HWAP, and that a procedure exists to enforce this requirement;

°No undue or excessive enhancement shall occur to the value of the dwelling units;

°The investment in the building is secured against sale and the unlawful eviction of tenants; and

°The benefits of the weatherization will accrue primarily to eligible tenants.

To ensure compliance with these requirements, HWAP providers are required to have the owner/authorized agent and the tenant sign an agreement, which describes the terms under which the weatherization work will be done.

Providers are required to use the sample agreement included with this chapter. Providers are required to provide the tenant with a synopsis of the provisions contained in the OTAA.

a. Rent Increases

The first requirement to be discussed is rent increases. Weatherization program requirements stipulate that "For a reasonable period of time after weatherization work has been completed... the tenants in that unit (including households paying for their energy through

their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed."

In addition, it is required that "the enforcement of this section [rent increases] is provided through procedures established by the State by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the rent increase concerned is related to matters other than the weatherization work performed."

However, DOE has not provided guidance on what kind of matters are legitimate reasons for increasing rents, how such matters should be demonstrated or proven and what is a reasonable length of time in which rents cannot be raised. Therefore, providers must include provisions in the OTAA and institute procedures, which deal with these issues. Language for addressing limitations on rent increases can be found in the attached sample OTAA.

A provider's procedure for addressing client initiated complaints regarding undue rent increases must follow this basic process:

°If a tenant, in good faith, believes that his rent is being increased solely because of the weatherization work performed, the tenant may file, within a reasonable time, a written complaint to the provider.

Upon receipt of this complaint, if the provider believes there is good cause shown, the provider will forward such complaint to the owner/authorized agent.

°After reviewing all of the evidence presented, including, but not limited to, the owner/authorized agent's response to the complaint, the provider shall issue a finding determining whether the rent increase was related to the weatherization work performed.

Based on the process outlined above, providers should develop a written procedure that both tenants and owner/authorized agents can be aware of at the time the OTAA is signed.

The complaint appeal procedure outlined above is

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only for addressing customer initiated complaints about undue rent increases and not about other potential violations of the OTAA.

While involvement in a rent increase dispute may be a new experience for providers, OEE believes that determining if a rent increase violates the OTAA should be, in most cases, a simple process if the decision is based solely upon the record. Accordingly, OEE believes that the provider's decision is final and that appeals to OEE are unnecessary.

Furthermore, if a provider determines that a rent increase in fact violates the OTAA and the owner/authorized agent refuses to rescind the increase, the provider is not required to seek a remedy on behalf of the tenant in court.

Though providers are not required to take legal action on behalf of a tenant when an owner/authorized agent demands an unjustified rent increase, providers should take some appropriate action as a consequence against the owner/authorized agent. Such actions are probably limited to only penalties the provider itself can enforce. For example, OEE believes that one appropriate consequence is refusing to weatherize any more buildings owned by the owner/authorized agent until the owner/authorized agent has remedied the violation to the satisfaction of the provider.

b. Undue or Excessive Enhancement

The second requirement is preventing "undue or excessive enhancement." Again, DOE has not provided us with a clear definition of "undue or excessive enhancement". But the following paragraphs should provide you with some possible interpretations of the regulations and ways to deal with them through the OTAA.

An increase in the value of the rental property as a result of the weatherization, that is in excess of the average increase in value of other buildings weatherized in the same locale, could be considered undue or excessive enhancement. Another consideration could be a situation in which tax credits are available to a building owner, which allow a tax write-off based not only on the value of the owner/authorized agent's investment, but also on the

value of the weatherization investment.

However, undue or excessive enhancement could in some circumstances also be providing a moderate amount of weatherization service to one person or company or simply providing weatherization services to an owner/authorized agent whom is not income eligible for weatherization, without an investment by them in support of the weatherization activities.

There are certainly other situations, which could be defined as undue or excessive enhancement. Therefore, it is up to each weatherization provider to evaluate the situation and make a determination.

Specific provisions within the OTAA, which spell out the time frames in which rents may not be raised or provisions in which rents are reduced, are one way to satisfy the requirements. However, additional ideas about how to deal with this issue can be found in the attached sample OTAA.

c. Securing the Weatherization Investment

The third requirement is "to secure the federal investment made under this part [i.e..weatherizing rental property] and address the issues of eviction from and sale of property receiving weatherization materials under this part, States may seek owner/authorized agent agreement to placement of a lien or to other contractual restrictions."

While the Federal guidelines specifically mention liens as a method of securing the federal investment against the deliberate eviction of a tenant and the sale of a weatherized property by a owner/authorized agent seeking to appropriate for themselves the benefits of weatherization, OEE has determined that clauses mentioned in the OTAA are a more reasonable approach. Therefore, the practice of placing liens against rental properties is no longer allowable. Liens, though an effective tool for establishing a financial obligation, are cumbersome to file, monitor and remove. Also, the practice of placing liens against rental units may become a Public Relations problem if eligible homeowners, particularly the elderly, think that their homes will also have liens attached.

The sample OTAA at the end of this chapter contains

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clauses to address these issues.

As security against the deliberate eviction of a tenant and the sale of the building (or of any individual unit in the building), the OTAA requires the owner/authorized agent to rebate, to the provider, the cost of the weatherization work attributed to the tenant, the unit or the building in question; or to bind the new owner to the terms of the OTAA for its duration.

Unlike cases of tenant complaints about rent increases, the regulations place no requirements on establishing procedures for addressing complaints or disputes concerning eviction or property sale.

Though providers are a party to the OTAA, providers are not required to resolve or arbitrate such complaints. These complaints may be best handled by a legal service agency.

d. Benefits to the Tenant

The final requirement is that "the benefits of the weatherization accrue primarily to tenants." The concern has been that by providing services to renters, owner/authorized agents would benefit from the weatherization services. This was discussed earlier in this chapter, but due to its importance, will be reiterated.

If the tenant pays directly for the utility/fuel costs, then the tenant benefits directly from the weatherization service through reduced energy costs.

- For example, a tenant pays \$500 a month for rent, and receives a heating fuel bill that averages \$100 per month. If the weatherization service reduces the heating fuel costs by \$25 per month, this would be beneficial for the tenant.

However, where the tenant pays for the utility/fuel costs through the rent, the owner/authorized agent actually receives the benefit of the weatherization service through reduced energy costs. Thus, providers must look for a means of assuring a direct benefit to the income-eligible tenant.

- For example, a tenant pays \$500 a month for

rent, and the heating fuel cost is included in the rent. If the weatherization service reduces the heating fuel costs by \$25 per month, this would not benefit the tenant, since they will continue to pay \$500 a month. But, the owner/authorized agent would benefit by having a lower heating fuel cost.

The owner/authorized agent is also responsible for abating any H&S problem that may exist, by investing 50% of the materials and labor to address the problem.

6. ACCOUNTING FOR & USING OWNER/AUTHORIZED AGENT CONTRIBUTIONS

Owner/Authorized Agent contributions are not program income, but they must be tracked as leveraged funds. The funds contributed by the owner/authorized agent must be spent according to the terms of the agreement between the owner/authorized agent and the provider.

For buildings where an investment is required (i.e. where the utility/fuel cost is a part of the rent or where Health and Safety problems exist), the investment must be used to reduce the cost of the weatherization activity or remediation of the H&S problem.

Voluntary investments received from other owner/authorized agents may be used more flexibly, but they must be used in support of the HWAP and properly tracked. If the voluntary investment is not going to be used on the owner/authorized agents building, this must be within the terms of the OTAA.

Potential uses include, but are not limited to, the following:

- °Providing temporary heat for a customer until a heating unit can be repaired or replaced.
- °Performing repair work.
- °Purchasing weatherization tools and equipment.
- °Purchasing and distributing consumer education materials to eligible clients.

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- °Providing energy education workshops to eligible clients.
- °Providing other conservation materials or measures such as cookstoves, when repairs on these units can not be adequately made.
- °Supplementing the HWAP labor dollars.
- °Supplementing the HWAP materials dollars.

7. WORKING WITH OWNER/AUTHORIZED AGENTS

If your agency is experiencing difficulty in getting owner/authorized agents to permit weatherization of their buildings due to the fear of "strangers working on their property" or the "forfeiture of their rights through a OTAA", there are a few options open to you.

Publicity on the program aimed specifically at owner/authorized agents in local newsletters has been successful in generating interest in weatherization. The use of direct mailing of program announcements to the owners of low-income buildings has initiated good response from owner/authorized agents in Indiana and Maine.

Another option might be to work with owner/authorized agents through local owner/authorized agent associations. Providers in other states have negotiated agreements through these associations.

Whichever method you choose should demonstrate to the owner/authorized agent the Agency's willingness to cooperate and work in the best interest of all parties involved.

There will always be some owner/authorized agents who refuse to cooperate with weatherization providers. This may be even more of a problem where the utilities are a part of the rent and the owner/authorized agent refuses to contribute. Remind them that the minimum contribution is 50% of the cost of the weatherization materials that are to be installed, and highlight the benefits they will receive. In some cases you may still have to deny services to

that building.

8. IMPLEMENTATION, MONITORING, AND ENFORCEMENT OF AGREEMENTS

The OTAA must be signed by the owner/authorized agent, the tenant, and a representative of the agency because they each have responsibilities under the agreement. The owner/authorized agent is responsible for complying with all the conditions of the contract that concern ownership of the unit.

The provider is responsible for providing weatherization assistance under the conditions of the agreement.

The tenant should sign to show that he/she understands the terms of the agreement and will abide by the clauses that concern tenant responsibilities. Tenants provide the "monitoring" of the owner/authorized agent/tenant agreement. As a practical matter, it is not feasible for the local agency to keep track of all such agreements. The synopsis of the agreement is an effective way to ensure proper understanding of the agreement. If the agreement is violated by the owner/authorized agent, the tenant's best recourse is through a legal services agency. However, you need to keep in mind your role in addressing rent increase disputes.

9. ATTACHMENTS

- OWNER / AUTHORIZED AGENT / TENANT / AGENCY AGREEMENTS (OTAA)
Providers must use this rental agreement or an agreement that they have had legal counsel develop for their use.

-TENANT'S SYNOPSIS

Providers are required to provide the tenant with a synopsis of the provisions contained in the OTAA.

-SAMPLE LETTER TO OWNER/AUTHORIZED AGENT

A sample letter summarizing the OTAA is provided.

REQUIRED PAPERWORK

-Home Weatherization Assistance Program Home-

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owner/Authorized Agent Certification (EIA-29D)