



GREGORY W. SULLIVAN
INSPECTOR GENERAL

The Commonwealth of Massachusetts
Office of the Inspector General

JOHN W. McCORMACK
STATE OFFICE BUILDING
ONE ASHBURTON PLACE
ROOM 1311
BOSTON, MA 02108
TEL: (617) 727-9140
FAX: (617) 723-2334

June 25, 2012

Aaron Gornstein
Undersecretary
Department of Housing and Community Development
100 Cambridge St., Ste. 300
Boston, MA 02114-2531

Re: Weatherization Assistance Program

Dear Mr. Gornstein:

Since the passage of the American Recovery and Reinvestment Act of 2009 (ARRA),¹ the Massachusetts Office of the Inspector General (OIG) has conducted a number of reviews of stimulus-funded programs in Massachusetts. This included a review of the U.S. Department of Energy's (DOE) Weatherization Assistance Program (WAP) as administered by the Massachusetts Department of Housing and Community Development (DHCD). This letter contains the results of this review. The OIG review should not be construed as an outcome of any audit, investigation, or comprehensive programmatic review.

In October 2009 Massachusetts received \$125,077,457 in ARRA-WAP funding from DOE to weatherize 17,000 homes.² DOE designated DHCD as the primary grantee of these funds. To administer WAP, DHCD allocates funding to 20 sub-grantees. The federal grant completion deadline has been extended to September 2012.

WAP enables eligible low-income households to reduce their energy costs through energy efficiency measures that are provided under the program. Typical WAP energy efficiency services include air sealing, attic and dense-pack sidewall insulation, weather-stripping, and window replacement. WAP may also fund minor repairs associated with weatherization work. DOE relies on the states to manage program operations. Many states, including Massachusetts, contract with local not-for-profit agencies and local governments to identify clients and to provide program services.

¹ Also known as the federal stimulus program.

² DHCD believes that final total may exceed 20,000 homes.

In most cases, WAP eligibility is based on client enrollment in the Low-Income Home Energy Assistance Program (LIHEAP). LIHEAP is therefore the gateway program for WAP. LIHEAP is a U.S. Department of Health and Human Services' (HHS) program also administered by DHCD. LIHEAP subsidizes heating costs for low-income households during the winter months. DHCD contracts with 21 not-for-profit and municipal agencies to administer LIHEAP; many of these are also WAP sub-grantees.

The OIG completed a review of the LIHEAP program in conjunction with the WAP review. Amongst other findings, the OIG found that the LIHEAP program may be vulnerable to fraud and abuse, primarily through false claims by applicants. As a result, if applicants fraudulently receive LIHEAP benefits then they may also receive WAP benefits for which they are not entitled. The OIG recommended that DHCD improve intake verification procedures to deter fraud and abuse. These recommended steps should help reduce WAP fraud as well.

WAP Findings

WAP STRUCTURE AND PROCESS

1) Friction exists between lead and sub-lead agencies.

To administer WAP, DHCD uses 20 sub-grantees referred to as local administering agencies or LAAs. According to DHCD, when DOE cut WAP funding in the mid-1990s, to compensate for diminished DHCD resources and to ensure that all WAP agencies continued to receive at least some funding, DHCD designated 12 of these LAAs as "lead agencies" to act as middle management for the program. The remaining eight LAAs or "sub-lead agencies" have a reporting relationship to the lead agencies. DHCD requires the sub-lead agencies to enter into agreements with the lead agencies rather than with DHCD directly. The OIG found inconsistent relationships and other issues that could impact production goals and quality and internal controls. For example:

Lead agency agreements are not uniform. Since the agreements between lead and sub-lead agencies are intended to replace agreements with DHCD, these agreements should be uniform and contain the terms and conditions that reflect program goals and guidelines. The OIG review found that these agreements differ widely in content and format. The absence of uniformity could diminish DHCD's ability to effectively and efficiently monitor LAA activity and could create an uneven and inequitable playing field amongst the LAAs. DHCD should consider requiring uniform agreements.

Sub-lead agencies believe the system inequitable. Under the current system, DHCD funding for the sub-lead agencies flows through the lead agencies and is distributed pursuant to the agreements between the lead and sub-lead agencies.

Some sub-lead agencies claim that lead agencies do not always share information from DHCD in a timely manner. Other sub-lead agencies claim that lead agencies unfairly take funding that should be allocated to the sub-lead agencies. In some cases, sub-lead agencies claim that lead agencies withhold administrative funding and create cash flow problems for the sub-lead agencies based on the timing of the distribution of funding. DHCD has stated that it will mediate disputes that may arise and continually monitors funding distribution.

One of the sub-agency relationships may violate state law. DHCD should obtain a legal opinion and consult with the Massachusetts Department of Revenue concerning the lead agency role of a not-for-profit with regard to a municipal agency performing as a sub-lead agency. Under this arrangement, the not-for-profit controls funding for and “supervises” a municipal agency. This relationship requires further review as it could violate constitutional principles, state law, and sound public policy.

2) LAA contracts are not rebid.

The Economic Opportunity Act of 1964 (EOA) established 24 private, nonprofit, human-service agencies in Massachusetts known as Community Action Agencies³ or CAP agencies. Many of these CAP agencies are the LAAs that have been providing LIHEAP and WAP services under contract with DHCD since the inception of these programs. There has never been a competitive procurement process for these services. The CAP agencies and DHCD believe that pursuant to federal regulation, the CAPs are to be given preference in the award of these services. This position may conflict with state regulations (801 CMR 21.00: *Procurement of Commodities or Services, Including Human and Social Services*.) Moreover, from a sound business practice standpoint, relying on the same vendors year after year without competition could have negative impacts on cost and quality. DHCD should review the matter and consider whether a competitive procurement could benefit the program as a whole.

3) LAAs may not be serving all priority clients.

WAP establishes service priorities to address those perceived as the most vulnerable clients first. Points are assigned based on priority. For example, an elderly client residing with two minor aged children would receive higher points than an elderly client without minor aged children and therefore would be a higher priority for services.

While some LAAs informed the OIG that they had funding to provide services to all high priority clients, others claimed they had inadequate funding. Also, some LAAs must actively seek out clients while other LAAs have long waiting lists, some covering multiple years. As a result, it appears that on a statewide basis not all high priority applicants are served and priorities are addressed at local rather than on a statewide

³ The CAP agencies are also known as Community Action Program agencies.

basis. It seems unfair and detrimental to the WAP program that high priority clients may be unable to receive benefits in one community while lower priority clients are served in another community. DHCD should examine whether the servicing of high priority clients can be improved statewide.

4) Each LAA has a different understanding of the “25% rule” that allows for discretionary WAP spending.

LAAs are allowed to weatherize up to 25% of their annual unit production goals outside the pre-established WAP client priority system. This is referred to as the “25% rule.” The 25% rule is intended for use with clients with “an excessive energy burden and/or consumption not previously identified by LIHEAP” or “a condition that endangers the health and safety of the eligible low-income household.” The OIG found that LAAs have no standard method for using the 25% rule. In some cases, LAA staff claimed no knowledge of the rule while others stated that the 25% could be used for ineligible households or other discretionary purpose. Also, some agencies completed their 25% rule households before addressing priority goals. LAAs have wide discretion in their use of the 25% rule and the apparent lack of clarity on the part of LAAs about the rule allows for inconsistency, possible unsound practices when ineligible units might be served before high priority units, and this discretion creates vulnerability for fraud and abuse. DHCD should re-educate LAAs concerning the 25% rule and review LAA rule use.

5) LAAs should have uniform documentation standards and software.

LAAs currently use a wide variety of forms, agreements, and software. This lack of uniformity and consistency does not ensure adequate and consistent information capture and presumably makes DHCD program oversight more difficult. DHCD should consider requiring more uniformity.

6) DHCD should consider WAP succession planning.

Many WAP managers and staff members both at DHCD and at the LAAs are eligible for retirement, close to retirement eligibility, or have already retired. As a result, there could be a swift statewide turnover of key staff throughout the program in a short period of time. This would deprive the program of significant expertise and institutional knowledge that could have a negative impact on program success. According to DHCD, LAAs have been addressing succession planning and the ability to hire new staff under ARRA has assisted with this process. DHCD should track planning progress.

7) LAAs should consider greater efficiencies.

The OIG has identified inconsistent LAA practices that create inefficiencies. For example, some LAAs with small staffs use energy auditors to perform office duties such as soliciting potential WAP clients and scheduling appointments. These auditors are

being paid an energy auditor's salary even though a portion of their work is clerical in nature. Arguably, auditors should devote their time to energy audits and contractor oversight. DHCD should review whether LAA resources have been allocated to achieve optimum efficiency.

LEVERAGING FUNDS

8) Municipal permitting requirements add to WAP costs.

LAAs have informed the OIG that local permitting requirements are driving up program costs and are contributing to schedule delays. Permitting costs had not previously been an issue and so had not been factored into LAA program budgets. According to LAAs, the large increase in weatherization work in some municipalities has caused local building inspectors to require building and other permits for WAP-related work. Moreover, LAAs assert that some municipalities refuse to grant permits if local taxes are owed by owners of WAP-eligible properties. According to the LAAs many of the owners they deal with are low income residents or the WAP clients are tenants of those who may owe taxes. The LAAs claim that municipal actions harm intended WAP clients. According to DHCD, it is addressing the issue on a case by case basis.

9) Public utilities administer their own weatherization programs but, with little coordination with WAP.

Public utilities are required to have their own WAP-type programs both for low-income households as well as offering rebates and other incentives for households not eligible for WAP benefits. However, there appears to be little coordination between programs. For example, according to the LAAs the utility programs differ in the type of weatherization services that can be provided. This creates situations where LAAs must co-mingle utility and federal grant funds when attempting to leverage these funds to serve the greatest number of households. Additionally, WAP contractor pricing may differ between the programs. This does not allow for combined procurement to leverage program buying power. Moreover, this means that a contractor could be paid at different material and labor rates for the same services provided on the same project. This creates vulnerability to fraud, waste and abuse. Furthermore, LAAs note that utilities have limited oversight of the use of weatherization funding while WAP has robust oversight requirements. According to DHCD, there is an on-going process to create more uniformity between programs including a pricing structure.

10) Municipal light plants do not contribute to WAP.

Municipal light plants (MLPs), unlike other public utilities, are excluded by statute from having to contribute to weatherization programs. According to the LAAs, this limits available WAP funding in communities with MLPs and strains what funding is available. For example, the LAAs must fund work in MLP communities that would normally be paid

for with public utility funds. This directly impacts those in need within MLP communities and could act to discourage LAAs from expending resources in MLP communities. DHCD should consider working with MLPs to gain some financial or perhaps in-kind contributions for work being performed in their communities. Another option would be for DHCD to consider filing legislation to require MLPs to contribute to WAP.

INTERNAL CONTROLS

DHCD WAP oversight consists of on-site visits and remote “desk” reviews of LAA files. Although the DHCD review includes verifying that application files contain required documents, DHCD does not independently verify applicant information.

11) Affinity risks.

DHCD employs a small number of WAP staff and this staff has overseen the same LAAs for many years. Moreover, the WAP “community” is small statewide creating unavoidable affinity relationships that may have developed over decades. Unfortunately, the use of the same oversight staff from year to year can give rise to complacency and possible staff co-option. The OIG is not suggesting that this has occurred. The OIG is simply pointing out that a risk exists. Familiarity between parties can lead to staff becoming forgiving of failings or complacent. Despite resource constraints, DHCD should maintain oversight integrity. The OIG also identified that LAAs claim to have “a pretty good idea” when DHCD oversight staff will perform site reviews. DHCD must make every effort to conduct as many surprise or unannounced visits as possible using different staff members.

12) Many LAAs do not segregate intake, certification, weatherization audit and oversight functions.

Many of the LAAs reviewed by the OIG have small WAP staffs. Pre-ARRA, some LAA WAP programs consisted of one or two individuals making it difficult to segregate intake, certification, contractor oversight, and auditing functions. The segregation of duties is a key internal control function and a primary anti-fraud measure. Allowing one employee to initiate, authorize, and/or oversee a transaction not only increases the opportunity for errors, but it also increases the risk for fraud, waste, and abuse. DHCD should ensure the adequate segregation of duties by LAAs.

13) Change orders for in-process work should be monitored closely.

Most change orders are straightforward and usually result from miscalculations or omissions from the original scope of work. However, the change order process could also be used to inflate the cost of a project to garner extra profits for contractors. Of particular concern in the WAP program is the ability of LAAs to add change orders for non-weatherization items. For example, if a project calls for attic insulation and the

contractor informs the LAA that a leaky roof needs to be repaired for the insulation work to proceed then the LAA can approve a change order to repair the roof. Although, the LAA has a responsibility to negotiate a fair price for the added work, the vulnerability exists that this added work, purchased without the benefit of fair and open competition, could be steered to favored contractors perhaps at a premium price. The OIG suggests that larger value change orders receive additional oversight scrutiny.

14) The weatherization of ineligible units in multi-unit dwellings.

Ineligible units may be weatherized if these units are part of a structure where a majority of the units are WAP-eligible. One LAA offered the following example. In an apartment building with five units, if four were eligible units, then the LAA would weatherize the fifth (ineligible) unit to ensure that all sides of the structure is weatherized for maximum energy efficiency. In 2010, the OIG conducted a sample review of multi-unit structures that had been weatherized under ARRA. The OIG found that 40% of the units that had been weatherized had been WAP ineligible. This is a possible result of a majority of multi-unit dwellings consisting of two units with only one of those being eligible. LAAs weatherized these units at an approximate cost of \$340,000 (113 units at an average of \$3,000 per unit). Weatherization of ineligible units is sometimes necessary and unavoidable. However, this practice is vulnerable to fraud and abuse because it provides a benefit worth thousands of dollars to ineligible individuals and/or property owners with little oversight. These individuals and owners also stand to save significant energy costs over time and, depending on the work performed, enjoy an increase in property value. This could create an incentive for collusion between LAAs and owners. The flexibility that allows LAAs to service ineligible units creates vulnerability because it provides an opportunity for LAAs to service ineligible units simply to meet production goals or to provide services to favored parties. The OIG suggests that all projects involving ineligible units receive DHCD pre-approval and that DHCD track the type of work, the property owners involved, and the percentage of work performed for ineligible units to detect patterns.

Of note, landlords and property owners are not required to contribute to any WAP or related expenses, including those for ineligible units. And in some cases, public funds may be used to pay for an expense that a property owner refuses to pay for, such as a code violation that must be addressed before WAP work can begin. These expenses should be well-documented and every effort should be made at the LAA and DHCD level to negotiate with owners for financial or in-kind contributions.

15) Consistent practices needed to prevent potential unit re-weatherization.

WAP rules prohibit the re-weatherization or “re-WAP” of units. If a homeowner availed themselves of the WAP program previously, they are not entitled to new weatherization work. However, the safeguards against this practice rest with the LAAs

that, as with many other program practices, have a variety of different methods to control against re-wap. A central database of units, reviewable by DHCD, would make it more difficult for an LAA or contractor to mistakenly or purposefully “re-wap” units.

16) Before-and-after photos should be taken for WAP projects.

As a best practice, the OIG suggests that LAA field staff maintain a photographic record of WAP projects. Currently, only a small number of LAAs use photographic records. A photographic record increases contractor accountability and could decrease the number of WAP-related performance and payment disputes.

17) LAAs do not maintain adequate records.

The OIG found that some LAAs failed to maintain complete WAP procurement records. This violates ARRA’s accountability and transparency provisions, ARRA’s recordkeeping requirements, the state public-records law, and federal regulations. Without complete records, the OIG could not verify that some LAAs complied with applicable procurement practices. The OIG also found that some LAAs disputed the applicability of ARRA’s six-year record retention requirement. DHCD should clarify with LAAs the type of records to be retained and for what time period.

CONTRACTORS

18) The selection of WAP contractors is vulnerable to fraud and abuse.

The OIG found that the LAA contractor-selection process is vulnerable to fraud, waste, and abuse. Some LAAs informed the OIG that they select contractors for projects based on subjective criteria such as their opinion of a contractor’s ability. Others stated that they have “preferred” contractors based on the longevity of business relationships; some WAP contractors have been working with the same LAAs since the 1970s. These relationships also appear to reduce the need for some LAAs to perform more than cursory oversight of these “good” contractors. These relationships may foster uneven work allocation and the risk that LAA staff could inappropriately steer work to certain contractors. The lack of a competitive process for contractors adds to this vulnerability. For example, one LAA informed the OIG that it split out lucrative window work from a project and gave it to another contractor ostensibly to “speed” the contract along. However, LAAs have told the OIG that window work can be highly profitable for contractors and many would “love” to get window work rather than insulation work. The lack of a competitive process, the use of subjective criteria, and the flexibility of LAA staff to assign work to favored contractors creates vulnerability to fraud and abuse.

Also, increasing vulnerability is the volume of work itself. Before ARRA, program rules dictated that no one contractor could get more than 33% of an LAA’s WAP work. This rule was made, in part, to mitigate fraud vulnerability. However, because of the

volume of ARRA-related work, this provision was lifted. DHCD should monitor the level of work performed by contractors, test the methods LAAs use to choose contractors and the work quality of contractors that receive large amounts of business from LAAs.

19) Competition for contractors could impede WAP efforts.

Currently, each LAA is responsible for identifying eligible weatherization contractors. LAAs prepare a list of “prequalified” contractors for WAP work. The cost of this process is paid for as a WAP administrative expense. The OIG review has found that LAAs are highly protective of their prequalified lists and rarely share information with other LAAs including those LAAs involved in lead/sub lead agency relationships. According to LAA staff, historically there have never been enough contractors to “go around” so LAAs become highly possessive of the “good” contractors. This could impede statewide productivity since an LAA that has met production quotas may not readily refer contractors to another LAA with a backlog. Moreover, an LAA that has identified a poorly performing or unscrupulous contractor may not share this information with other LAAs. DHCD maintains a centralized contractor list that it provides to LAAs upon request. DHCD should consider the routine distribution of this information as well as contractor performance information.

20) LAAs should address possible conflicts of interest.

Some LAAs may be fostering at least the appearance of conflicts of interest by allowing WAP contractors to make charitable contributions to the LAAs with whom they may have contractual relationships with and by allowing, in at least one case, contractors with whom they do business with to sit on their board of directors. This creates a vulnerability to fraud and abuse and the appearance of impropriety. DHCD should require LAAs to at least disclose all related-party transactions and contractor donations relating to the WAP program.

21) Criminal background checks should be performed when required.

The OIG understands that WAP contractor staff employed for residential work must undergo Criminal Offender Record Information (CORI) checks. However, there appears to be some confusion amongst the LAAs regarding the responsibility for performing these checks and whether CORI checks alone are adequate. According to DHCD, this remains an open issue that is awaiting federal input. DHCD should ensure that LAAs understand their current responsibilities and ensure that any new guidelines are promulgated when available.

FRAUD, WASTE AND ABUSE

22) LAAs should be more proactive in raising awareness of and preventing fraud, waste, and abuse.

Many LAAs do not have comprehensive policies in place to prevent fraud, waste, or abuse. Anti-fraud policies are important for accountability, transparency, and maintenance of a robust control environment. Developing an anti-fraud policy makes it clear that an organization will not tolerate fraud by employees and vendors and that it takes potential fraud seriously. The OIG suggests that LAAs introduce clear, comprehensive, and enforceable anti-fraud measures within their programs.

23) Instances of fraud may go unreported.

Recipients of ARRA funding are required to report suspected fraud, waste, or abuse to appropriate oversight agencies. However, the OIG has learned from its review of various ARRA programs that some grantees/subgrantees may have encountered possible fraud by individual recipients of or applicants for grant benefits but have not reported it. For example, grantees have found that applicants may have submitted false or misleading income information to qualify under program eligibility requirements. The OIG found that some grantees/subgrantees remained unaware of this requirement and believed that a denial of benefits would be sufficient. However, this action is insufficient; suspected fraud should be reported.

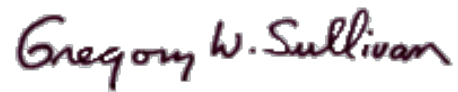
24) Ethics provisions in LAA contracts should be strengthened.

Boiler-plate contract language specifies that work is to be done “in good faith without fraud” and references the federal vendor codes of conduct as the basis for appropriate conduct. While the OIG acknowledges DHCD’s efforts to incorporate ethical standards into contracts, the OIG suggests more specific references and clearly stated admonitions against fraud including noting that fraud could be the basis for contract termination and possible civil and or criminal action against the offender. The OIG also recommends that contracts require ethics training for employees and the development of anti-fraud measures such as risk assessments, audits, and internal control plans.

Conclusion

The OIG hopes that this review will assist DHCD in identifying vulnerabilities and protecting the integrity of WAP spending. As a reference, the OIG has also attached an outline of WAP audits and reviews from around the nation. (See Appendix A) Please contact the OIG if you have any questions or concerns or if you require assistance with these or any other issues.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The script is cursive and fluid, with the first name "Gregory" being more prominent than the last name "Sullivan".

Gregory W. Sullivan
Inspector General

cc: Steven Carvalho, DHCD

Appendix: Nationwide Audits and Reports

The following WAP-related reports have been issued nationwide:

1. ARIZONA

November 2010: *"The Department of Energy's Weatherization Assistance Program Under the American Recovery and Reinvestment Act for the City of Phoenix—Agreed-Upon Procedures."* This audit report by the U.S. Department of Energy's Office of the Inspector General (DOE OIG) found that Phoenix had not:

- Procured contractor services using a competitive process.
- Documented contractor costs.
- Verified payroll costs.
- Implemented policies/procedures for ensuring cost reasonableness.

2. FLORIDA

February 2011: *"The Department of Energy's Weatherization Assistance Program Under the American Recovery and Reinvestment Act for the Capital Area Community Action Agency [CACAA]—Agreed-Upon Procedures."* The DOE OIG review identified the following:

- State guidelines were inconsistent with department regulations.
- The state required LAAs to search a centralized data system that only contained units weatherized in the last 10 years.
- Some WAP recipients were ineligible.

3. ILLINOIS

a. December 2009: *"Management Alert on the Department's Monitoring of the Weatherization Assistance Program in the State of Illinois."* The DOE OIG audit identified significant internal-control deficiencies in the management of Illinois's WAP, including the following:

- Units had not been inspected at seven of the 35 LAAs.
- There was no system for aggregating and tracking major findings identified during on-site monitoring visits.
- U.S. DOE had not performed required on-site monitoring visits.

b. October 2010: *"The State of Illinois Weatherization Assistance Program."* The Community and Economic Development Association of Cook County (CEDA) received approximately \$91 million to weatherize an estimated 12,500 homes. This report revealed the following:

- Use of inappropriate weatherization measures.

- Substandard workmanship.
- A 62% final-inspection error rate with no follow-up with contractors.
- Contractors billing for costs not incurred.
- Unreasonable material costs.
- The state not completing its WAP training plan.

4. INDIANA

August 2011: *"The Department of Energy's Weatherization Assistance Program Funded Under the American Recovery and Reinvestment Act in the State of Indiana."* The DOE OIG audit found the following:

- Inadequate documentation to support weatherization costs.
- Failure to ensure that units had not previously received WAP services.

5. MISSISSIPPI

June 30, 2010: *"Independent Oversight of Recovery Act Funding for Mississippi's Weatherization Assistance Program."* The U.S. Government Accountability Office (GAO) reviewed data provided by the Division of Community Services (DCS) that identified significant mismanagement by Southwest Mississippi Opportunity (SMO).

- SMO failed to provide adequate contractor oversight and failed to perform inspections of weatherized units.
- SMO paid contractors in excess of established price levels.
- DCS terminated its subgrant with SMO.

6. MISSOURI

August 2011: *"The Department of Energy's Weatherization Assistance Program Under the American Recovery and Reinvestment Act in the State of Missouri."* The DOE OIG audit found the following:

- Approximately 30% of re-inspected units still had deficient work.
- Sampling found that 55% of the units failed final inspections.
- An LAA used ARRA funds to acquire more vehicles than needed.
- Missouri had not fully implemented its WAP training program.

7. NEW JERSEY

- a.** March 2010: *"Department of Community Affairs American Recovery and Reinvestment Act Weatherization Assistance Program Eligibility: April 1, 2009 – December 4, 2009."* This review by the N.J. State Auditor found:

- Inadequate controls to determine program eligibility, including a lack of supporting documentation for income and number of household members and lack of Social Security numbers.
 - The lack of a clear definition of “household member” in regulations.
 - System control issues with the online database allowed ineligible applicants to be placed on the WAP list.
- b.** November 2010: *“Department of Community Affairs American Recovery and Reinvestment Act Weatherization Assistance Program; Weatherization Agencies: April 1, 2009 – July 30, 2010.”* This review by the N.J. State Auditor found:
- The Department of Community Affairs’ controls to determine the allowability and propriety of administrative and program costs for its recipients were not being effectively implemented.
 - Required inspections were not completed, and program costs were not always documented.
 - Contractors were not complying with wage requirements.

8. NEW YORK

- a.** October 2010: *“Stimulus Oversight Panel: Third Quarterly Report.”* A report by New York State’s Stimulus Oversight Panel detailed an on-going investigation of the Community Environmental Center’s (CEC) administration of a window-replacement contract at a housing complex and a completed investigation of the Community Action Commission to Help the Economy’s (CACHE) administration of a WAP job in Sullivan County. Findings included:
- CACHE’s WAP director improperly steered contracts to one vendor, including one ARRA-funded contract.
 - CACHE lacked adequate inventory controls for supplies and equipment purchased with ARRA and state funds.
- b.** September 2011: *“People’s Equal Action and Community Effort, Inc. [PEACE]—Weatherization Assistance Program Funds Provided by the American Recovery and Reinvestment Act of 2009.”* The DOE OIG contracted with the independent certified public-accounting firm, Otis and associates, PC, to conduct this examination that found:
- PEACE had not developed a list of previously weatherized multi-family projects or information to determine eligibility.
 - PEACE had not performed post-inspections on all units with weatherization service deficiencies.

- PEACE had not maintained a list of all weatherization measures installed, thereby precluding the occupant from certifying that the work was completed.

9. OHIO

a. September 2011: *“Community Action Partnership of the Greater Dayton Area—Weatherization Assistance Program Funds Provided by the American Recovery and Reinvestment Act of 2009.”* The DOE OIG contracted with independent certified public-accounting firm Lopez and Company, LLP, to conduct an examination of Dayton’s implementation of WAP which found that:

- Dayton procured weatherization materials, equipment, and services without evidence of a cost or price analysis or competitive bidding, resulting in \$70,800 in questionable procurement costs.
- Dayton had a high percentage of homes requiring re-work.
- Dayton did not ensure that employee timecards reflected actual work hours and contained necessary approval signatures.

b. September 2011: *“Cuyahoga County of Ohio Department of Development—Weatherization Assistance Program Funds Provided by the American Recovery and Reinvestment Act of 2009.”* An examination by Lopez and Company, LLP, found:

- The county may have approved applicants for services based on outdated income information.
- Thirteen of 35 homes required re-work.
- The county did not verify reported contractor work hours or verify compliance with Davis-Bacon Act prevailing wage requirements.

10. PENNSYLVANIA

November 2010: *“Selected Aspects of the Commonwealth of Pennsylvania’s Efforts to Implement the American Recovery and Reinvestment Act Weatherization Assistance Program.”* The DOE OIG’s review of Pennsylvania’s WAP, including the Department of Community and Economic Development (DCED), identified the following weaknesses:

- Forty-three local agencies involved in Pennsylvania’s program had not expended \$15.8 million of the \$42.7 million in advances received from DCED.
- LAAs weatherized lower-energy users before high-energy users.
- State officials had not reviewed LAA financial activity.

11. TENNESSEE

- a. December 2010: Letter to the Department of Human Services from the Comptroller of the Treasury outlining internal control and compliance weaknesses in weatherization processes. The Comptroller review found:
 - Poor recordkeeping.
 - Inadequate home-inspection forms.
 - Contractors were paid for uninspected work, work not performed, and poor quality work.
 - Energy audits conducted by uncertified or unauthorized individuals.
 - Subgrantees' energy auditors recommending measures not allowable under the program.
- b. September 2011: *"The Department of Energy's Weatherization Assistance Program Under the American Recovery and Reinvestment Act in the State of Tennessee."* The DOE OIG's review of Tennessee's Department of Human Services and three LAAs found the following:
 - Only one-third of the energy measures installed by contractors in 41 homes met department-directed minimum energy-savings-to-investment ratios (DOE questioned \$100,000 claimed for those measures).
 - Change orders to WAP contracts at the three LAAs had not been approved prior to work completion and were not reviewed to ensure they were cost-effective (total of \$15,500 questioned).
 - Several homes had previously received WAP services making them ineligible for additional services (\$12,000 questioned).
 - There were recurring problems with contractor quality across the state due to ineffective cost measures, inadequate LAA final inspections, and lack of adequate controls over work.

12. VIRGINIA

- a. May 2010: *"Preliminary Audit Report: Management Controls over the Commonwealth of Virginia's Efforts to Implement the American Recovery and Reinvestment Act Weatherization Assistance Program."* This DOE OIG audit found that Virginia's Department of Housing and Community Development had not taken the following measures:
 - On-site financial monitoring of ARRA subgrantees.
 - Review of documentation supporting reimbursement requests.
 - Reconciliation of payments to subgrantees to actual costs.

- Maintenance of vehicle and equipment inventories.
- Accurately reporting WAP results to U.S. DOE.

b. August 2011: *“The Department of Energy’s Weatherization Assistance Program Funded Under the American Recovery and Reinvestment Act for the Commonwealth of Virginia.”* Subsequent to issuing its interim report in May 2010, the DOE OIG tested three of Virginia’s LAAs, including Crater District Area Agency on Aging (Crater) and Community Housing Partners Corporation (CHPC), and found that:

- Crater and CHPC had not always supported reimbursement requests. (DOE questioned \$1.2 million in costs incurred).
- Crater provided services to ineligible applicants.
- Crater and CHPC did not always inspect completed work.
- Crater had not always ensured Davis-Bacon Act wage compliance.

13. WISCONSIN

May 2011: *“The Department of Energy’s Weatherization Assistance Program Funded Under the American Recovery and Reinvestment Act for the State of Wisconsin.”* The DOE OIG analyzed the activities of three LAAs, including the Ashland County Housing Authority (ACHA), and found the following:

- Wisconsin had not required LAAs to retain supporting documentation to verify applicant eligibility.
- ACHA had not separately accounted for ARRA funds and weatherization funds received from other programs.

14. U.S. DEPARTMENT OF ENERGY

February 2010: *“Progress in Implementing the Department of Energy’s Weatherization Assistance Program Under the American Recovery and Reinvestment Act.”*

- One year after ARRA, only 8% (\$368.2 million) of the total \$4.73 billion had been drawn by grantees.
- Thirteen grantees had not weatherized any residences.
- Factors contributing to delays included the prevailing-wage ARRA requirement, untimely preparation of states’ required program plans, state hiring freezes, problems with local budget shortfalls, and statewide planned furloughs.

15. GAO REPORTS TO CONGRESS

a. May 2010: *“States’ and Localities’ Uses of Funds and Actions Needed to Address Implementation Challenges and Bolster Accountability.”* The GAO reported on the uses of and accountability for ARRA funds (including WAP

funds) in 16 selected states, certain localities, and the District of Columbia and commented on the jobs estimated in recipient reports. The GAO made the following recommendations:

- DOE, in conjunction with state and local weatherization agencies, should develop and clarify WAP guidance that:
 - § Establishes best practices to determine and document income eligibility and issue specific guidance that does not allow self-certification of income by applicants as the sole method of documentation.
 - § Clarifies the specific methodology for calculating the average cost per home weatherized.
 - § Accelerates current DOE efforts to develop national standards for weatherization training, certification, and accreditation.
 - § Develops a best-practice guide for key internal controls at the LAA level.
 - § Sets time frames for development and implementation of state monitoring programs.
 - § Revisits the methodologies used in determining WAP work that should be performed and develops methodologies that ensure priority to the most cost-effective WAP work.
 - § Considers and addresses how WAP program guidance is impacted by increased amounts of multi-family units.
- DOE should clarify its production targets, funding deadlines, and associated consequences while emphasizing meeting program requirements.

Regarding the GAO's review of WAP in the selected states, certain localities, and the District of Columbia, the GAO found the following:

- Recipients' ability to meet targets for weatherizing homes with ARRA funds varied greatly, and as of March 31, 2010, only 14% of the total \$4.73 billion in available funds had been spent.
- While some jurisdictions were meeting or exceeding targets for weatherization production, others such as the District of Columbia, Georgia, and North Carolina were behind schedule.
- Delays in spending WAP funds were due to time needed to develop the infrastructure to manage the increase in funding, to hire and train new staff, to identify and certify new contractors, and to implement Davis-Bacon wage requirements.

- b. December 2011:** “Recovery Act: Progress and Challenges in Spending Weatherization Funds.” This review is an update of the GAO’s May 2010 report findings regarding WAP. The GAO’s findings include:
- Most recipients experienced implementation challenges in the first year of ARRA than in the third year due to implementing new wage and reporting requirements and balancing training and technical assistance requirements with production targets.
 - Recipients reported concerns with completing ARRA requirements by DOE’s established grant deadline of March 31, 2012.
 - The quality of data reported by grantees has improved.



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ◆ Timothy P. Murray, Lt. Governor ◆ Aaron Gomstein, Undersecretary

June 15, 2012

Mr. Gregory Sullivan
Inspector General
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

Re: OIG Massachusetts Weatherization Assistance Program (WAP) Risk Assessment, May 2012

Dear Mr. Sullivan:

DHCD has reviewed the confidential draft risk assessment report of the Weatherization Assistance Program (WAP) issued by the Office of the Inspector General (OIG). DHCD appreciates the observations and recommendations as well as the opportunity to respond to this detailed and thorough report.

The significant increase of funding for the WAP through the American Recovery and Reinvestment Act (ARRA) created many opportunities for increased production, new partnerships, and even for innovation. At the same time it created vulnerabilities as DHCD was required to significantly expand what had been a relatively small program in a very short period. We recognized the potential for fraud and abuse of program resources as we began the ramping up process for increased production. We also recognized the need for increasing the awareness by DHCD and local sub-grantee staff and weatherization contractors of the need for accountability and transparency in the operation of the program. In response, DHCD identified areas of concern and provided training for local agency staff and weatherization contractors, much of that based on the recommendations of the Massachusetts Office of the Inspector General's follow-up interview in 2009. DHCD also developed a programmatic Policies and Procedures Manual that assembled and clarified WAP administrative requirements into a single document that was then distributed to all Local Administering Agencies (LAAs).

We have appreciated the time Deputy Inspector General Neil Cohen and his staff spent with DHCD personnel in July 2009, as we were beginning the ARRA Program, his visits to each of the local agencies that administer the WAP, and the follow-up with DHCD staff. His presence at the local agencies reinforced to them the importance of accountability that we had been emphasizing in our own meetings with local agency staff. The observations and recommendations he made during his follow-up meeting with DHCD staff provided us with useful guidance in areas where we could strengthen our program operation - and already we have been able to implement many of those enhancements.

Highlighted below are areas where DHCD has or will continue to pursue changes to improve WAP program operations and accountability based on the recommendations of the OIG:

WAP Structure and Process

1. DHCD is aware of the difficulties in the relationships between Lead and Subcontract agencies. Through the ARRA grant we worked with the network of LAAs to make certain the difficulties were addressed, that all LAAs had sufficient resources to operate the program and that all were working toward the common goal of meeting ARRA production, quality and accountability requirements. Going forward, DHCD will review subcontract agreements and work with the agencies in an effort to create a uniform agreement. Further, the WAP will request a legal opinion from DHCD Chief Counsel regarding the OIG-questioned relationship between a non-profit agency and a municipal agency.
2. After consultation with our Chief Counsel, DHCD believes that we are in compliance with the U.S. Department of Energy requirements for Sub-grantees outlined in 10 CFR 440.15; the federal program regulations limit our discretion and that as long as we take into account comments made during the public hearing, we *must* contract with existing sub-grantees unless and until we find their performance to be unsatisfactory pursuant to the criteria set forth in the regulations. DHCD will make certain that all Public Hearings address this matter and that our sub-grantee evaluation process and results are well documented.
3. DHCD understands that historically there have been differences in service availability to high priority clients due to limited funding, and also acknowledges differences in agency outreach activities. The substantial increases in the ARRA, as well as availability of supplemental resources through utility-funded efficiency programs and the increased local awareness of those programs have resolved some of the issues identified in the report. Many LAAs have served most of the high priority clients that have been wait-listed in the past, and in most agencies have cleared the backlog. Agency outreach efforts have improved with additional staff available and awareness of the program.
4. DHCD clarified the "25%" allowance for some discretionary WAP spending through many of our meetings with local agencies as well as annual program assessments. The WAP Client Priority Policy is outlined in the Policy and Procedures Manual.
5. In the past, local agencies have been free to develop much of their own in-house energy audit/inspection packages, and contractor work order systems. Reporting of all units has to date been completed in a DHCD developed MS Access based software package to ensure that all DOE required information, expenditures and statistical data is collected. While the system has been effective, it is old, cumbersome and lacks flexibility. Beginning in the 2012 program year, DHCD is moving WAP reporting to the DHCD LIHEAP software vendor; this will enable local agencies and DHCD to coordinate data management between LIHEAP, HEARTWAP, (DHCD's heating system program) and the WAP and utility programs. DHCD and local agencies are working with the vendor to institute more uniform WAP information management that will incorporate all aspects of the program from client intake and prioritization through the energy audit process and reporting. The secondary benefit of this coordination will be the ability of DHCD to utilize the common data to better target and coordinate services to the most needy, evaluate the effectiveness of the programs and provide DHCD an enhanced ability to complete remote desktop monitoring to ensure compliance with program regulations.
6. The significant increases in the ARRA funding have mitigated some of the OIG's concerns about succession planning. Staff hired by local agencies as a result of the ARRA came very well trained both in the technical side of the program and with management skills. DHCD was able to provide ongoing

training in all areas of program operation and will continue to monitor training needs and make certain that local agencies have adequate staff and skills to effectively administer the program.

7. Additional staffing at the LAAs has allowed for greater efficiency in the use of staff expertise. DHCD also facilitated peer to peer training recommendations and best practices to assist LAAs in improving utilization of the skills of their staff.

Leveraging funds

8. While DHCD has no jurisdiction over the municipal permitting process, we did meet with the staff of the Massachusetts Bureau Building and Regulations and Standards to discuss and resolve some of the permitting problems that were identified. LAAs and their contractors were able to identify and resolve the majority of the obstacles that the permitting process presented at the beginning of the ARRA.
9. While DHCD has no regulatory oversight of utility leveraged low-income energy efficiency funds, we have and continue to work with the WAP network through the Low-income Energy Affordability Network (LEAN) and their subsidiary Best Practices Group to ensure that services to WAP eligible households are coordinated to the greatest degree possible. Through the efforts of LEAN there is increased consistency of allowable measures as well as material and labor rates in the low-income programs regardless of funding source.
10. DHCD and the WAP Network of local agencies LEAN have and continue to work with Municipal Light Plants to access efficiency funds for clients who live on those cities and towns. During the ARRA WAP operation, with its high average allowable cost per unit, LAAs were generally able to maximize the use of their Department of Energy ARRA WAP funds to ensure that households in those service areas received comparable benefits.

Internal Controls

11. – 13. The significant increase in funding through the ARRA as well as the requirement for accountability and awareness of internal controls provided the means to ensure that several of the OIG's concerns were addressed. ARRA funding resulted in increases of local agency technical and administrative staff that provided improved efficiency in staff utilization, improved management, provided greater segregation of duties, and allowed increased oversight of contractors completing weatherization work from multiple agency staff members. It is standard practice at the LAAs to have different staff members complete the initial inspection, award work and conduct the final quality assurance inspection. Statewide, the WAP significantly increased the number of private sector contractors working in the program and provided the resources for training the contractors in the type of work the program completes. The increased contractor base and DHCD's ongoing monitoring of LAA contractor selection, utilization, payments and site inspections of the work help ensure that work completed in the program is compliant with DOE requirements and that contractors are treated fairly, consistently and equitably. DHCD will continue to monitor local agencies for compliance with procurement requirements and contractor selection, and ensure that procedures are in place to prevent conflict of interest and waste, fraud and abuse. DHCD monitors for and requires that any significant variation from the original job order must be authorized by an appropriate agency staff person.

14. The weatherization of ineligible units in a multi-family building is allowable according to the US DOE WAP program regulations within certain guidelines. The purpose of this regulation is consistent with good building science that in most small multifamily buildings it is best to treat the entire building rather than individual units. From a practical point, in Massachusetts most of the multifamily buildings served are duplexes, triple-deckers and a few 4-6 family buildings that greatly benefit all by the treatment of the entire building. In most instances of small multi-family buildings weatherized in Massachusetts, it is necessary to treat the ineligible unit to effectively treat the eligible units, i.e. air seal and insulate the entire attic of a duplex or insulate all the walls and attic of a balloon framed triple decker. In many small multi-family buildings, the ineligible households are also borderline low-income or for some reason decline to apply for the services. DHCD will monitor larger multi-projects greater than 5 units and require prior approval in instances where ineligible households receive service.
15. As part of each LAA annual Program Assessment, DHCD reviews the LAA's system of identifying previously weatherized units. While each system is different, they consistently are able to identify addresses that have received services. The information included in DHCD's current reporting database is used as a basis for LAAs to create their own method of tracking. As DHCD and LAAs move to a new reporting system and historical data is incorporated, DHCD will use the system to create safeguards to prevent re-weatherizing units.
16. Prior to ARRA, most LAAs used digital photography to document before and after photos of WAP projects. DHCD began requiring digital photography as a best practice during audits, in-process inspections and quality control inspections. Contractors are also required to provide digital photos of attic air sealing work prior to installing insulation.
17. LAA are contractually required to retain records consistent with procurement and ARRA requirements. DHCD will continue to review recordkeeping requirements with LAA staff.

Contractors

18. Based on the OIG exit interview in with DHCD in 2009 and our own concern, DHCD closely monitored LAA contractor utilization and addressed the issue of "preferred" contractors based on longevity relationships. The addition of many new companies, which following WAP-provided training produced high quality work and a greater understanding of program requirements, coupled with the need for increased production, combined to mitigate the perceived "favoritism."
19. DHCD has provided LAAs with contact information for contractors working for other LAAs. Information is also shared if a company does less than acceptable quality work. Competition for contractors did not prove to be an impediment to production.
20. The LAA's contract with DHCD requires disclosure of Conflict of Interest situations and DHCD will look to strengthen those requirements consistent with the OIG recommendation.
21. Neither the US DOE nor DHCD requires CORI checks of WAP contractor or LAA staff. Utility funded energy efficiency programs do require CORI checks and since most WAP units also receive utility funds a background check is required. The WAP network, through LEAN, is working with the utilities to provide consistent guidelines.

Fraud, Waste and Abuse

22. - 23. DHCD required training for LAA line and management staff through the LIHEAP Training conference on Fraud, Waste and Abuse and Risk Assessment. Additionally, DHCD provided LAA's with literature from a variety of state and federal agencies including the Office of the Attorney General. DHCD also sent all LAA managers reports from various other State OIG's and the US DOE OIG related to the WAP nationally as a reminder that Fraud, Waste and Abuse is a very serious concern. DHCD staff has also participated in training sessions sponsored by the Mass Office of Administration and Finance, and the Mass OIG. The WAP now follows the LIHEAP regulations regarding reporting of suspected fraud, waste and abuse.
24. DHCD will review LAA contracts in an effort to strengthen Ethics Provisions as recommended and will provide additional training.

Once again, DHCD appreciates the OIG's observations and recommendations regarding the Weatherization Assistance Program in Massachusetts, and this opportunity to update you on the many ways we have strengthened the integrity of the program. We continue to seek to strengthen the WAP, and believe that the observations made during the initial exit interview in 2009 have allowed us to improve our operation and accountability of the program. We will continue those efforts in the future and look forward to continued collaboration in the future.

Sincerely,



Aaron Gornstein
Undersecretary

cc: Neil Cohen, OIG
Steven Carvalho, Chief of Staff
Deborah Goddard, DHCD
Leverett Wing, DHCD
Louis Martin, DHCD
David Fuller, DHCD