

**Memorandum of Understanding
Between
Department of Energy
And
Department of Housing and Urban Development**

Coordinating Recovery Act Funds for Home Energy Retrofits

This Memorandum of Understanding (“MOU”) is made this 6th day of May, 2009, by and between the U.S. Department of Energy (“DOE”) and the U.S. Department of Housing and Urban Development (“HUD”).

RECITALS:

R-1. The American Recovery and Revitalization Act of 2009, P.L. No. 111-5 (Recovery Act), provides \$16 billion to HUD and DOE that may be used in whole or in part to improve the energy efficiency of existing homes, which includes rental units. HUD’s programs include \$4.5 billion to renovate and upgrade public and Native American housing (a significant portion of which will be invested in energy improvements), as well as \$250 million for energy retrofits of privately owned federally assisted housing. DOE has been provided \$5 billion in weatherization funds; \$3.2 billion for Energy Efficiency and Conservation Block Grants that cities, counties, states, and Indian Tribes can use to retrofit homes, among other uses; \$3.1 billion for the State Energy Program; and other programs. Coordinated use of these funds will help achieve the President’s goal of weatherizing one million homes annually.

R-2. On February 27, 2009, HUD and DOE agreed to coordinate the use of the Weatherization Assistance Program, Energy Efficiency and Conservation Block Grant (“EECBG”) and other Recovery Act funds in local communities. The two Departments agreed to explore ways to increase the use of weatherization funds in public housing and assisted housing, and to coordinate the use of Community Development Block Grant and EECBG funds in local communities. The purpose of the HUD/DOE collaboration is to help catalyze a home performance/energy retrofit industry nationwide.

R-3. DOE’s Weatherization Assistance Program (under part A of Title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 *et seq.*)) is the largest residential energy conservation program in the Nation and operates in all 50 states, the District of Columbia, the U.S. Territories, and on several Native American reservations (collectively, “States”).

R-4. The Weatherization Assistance Program provides funding for the improvement of the energy efficiency of low-income dwellings, often employing advanced technologies, thereby reducing our country’s carbon footprint and dependence on foreign oil, while decreasing the cost of energy for American families in need.

R-5. Pursuant to the Recovery Act, DOE's Weatherization Assistance Program was allocated \$5 billion dollars of funding to achieve the purposes set forth in the Recovery Act.

R-6. The Weatherization Assistance Program presently provides weatherization assistance to more than 100,000 homes each year, but with the substantial funding increase under the Recovery Act, significantly more weatherization projects may be undertaken in an effort to achieve the President's goal.

R-7. HUD's public housing and assisted housing programs (for the purposes of this MOU, sometimes collectively defined as "HUD Qualified Housing"¹) operate in the same jurisdictions, and benefit the same low-income populations, as the Weatherization Assistance Program. HUD data show that, typically, residents of HUD Qualified Housing largely meet the income requirement for the Weatherization Assistance Program.

R-8. The income verification process applied by HUD for HUD Qualified Housing is rigorous, and owners or public housing authorities participating in HUD Qualified Housing must determine each participating family's income before the family is permitted to move into a HUD Qualified Housing rental unit, and must verify continuing eligibility at least annually thereafter. HUD developed and has implemented a sophisticated system of third-party income verifications, originally designated as the Upfront Income Verification ("UIV") system, now known as the Enterprise Income Verification or EIV system for such purposes.

R-9. For Low Income Housing Tax Credit Program ("LIHTC") projects, State Housing Finance Agencies ("HFAs") follow the income verification processes set forth in HUD Handbook 4350.3 REV1, IRS Code Section 42, and IRS Handbook 8823 (Chapter 5), and incorrect eligibility determinations may adversely affect the utilization of the tax credits. LIHTC owners/agents are required to recertify each low-income household at least annually, within 120 days of the anniversary date of the original occupancy. HFAs are required to review all tenant recertifications and all supporting documentation. State HFAs are required to perform an on-site inspection and a review of 20 percent of tenant files at least every 3 years. DOE expects these procedures will meet requirements of the Weatherization Assistance Program.

R-10. HUD and DOE wish to facilitate the use of Weatherization Assistance Program funds in HUD Qualified Housing and in the LIHTC projects, where such assistance is consistent with the Weatherization Assistance Program and can benefit residents. This may also help achieve economies of scale, public housing, assisted housing, and LIHTC projects to lower energy costs, train and increase the industry workforce, and further the purposes of the Recovery Act.

1. For the purposes of this MOU, "HUD Qualified Housing" includes public housing projects, and assisted housing projects that receive project-based Section 8 assistance, under the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437, et seq.), except for projects also benefitting from assistance under Sections 221(d)(3) and (d)(5) and 236 of the National Housing Act (12 U.S.C. 1715l (d)(3) and (d)(5), and 12 U.S.C. 1715z-1, respectively), Supportive Housing for the Elderly projects receiving HUD assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 17012), or Supportive Housing for Persons with Disabilities under Section 811 of the Cranston-Gonzales National Affordable Housing Act, as amended (42 U.S.C. 8013).

R-11. DOE and HUD desire to resolve or offer pathways to a resolution, to the extent practicable, of the issues that may hinder DOE, its grantees, and HUD from realizing the benefit of such economies of scale and lower administrative costs through the interaction of HUD's programs and LIHTC projects with the Weatherization Assistance Program. Specifically, not only has the income verification process for multi-unit buildings been burdensome to grantees, but the Weatherization Assistance Program requirements for the states to demonstrate satisfactory rent controls, that there will be no undue or excessive building enhancements, and that the benefits accrue primarily to the low-income tenants resulting from the work performed under the Weatherization Assistance Program, all must be addressed.

I. Purpose.

Consistent with the above recitals:

- A. HUD has provided and DOE has reviewed the procedures utilized by HUD or its grantees, and owners/agents, for determining the income eligibility for residents of HUD Qualified Housing and the LIHTC projects, respectively.
- B. DOE recognizes that the HUD and LIHTC programs rely on robust procedures to verify participants' income. DOE has determined that these procedures are sufficiently robust to rely on in demonstrating income eligibility requirements of the Weatherization Assistance Program.
- C. HUD will provide DOE with a list of the HUD Qualified Housing projects and the LIHTC projects that, based on HUD data, would meet the income eligibility requirements under the Weatherization Assistance Program.
- D. HUD and DOE will continue to work together to develop guidance for states on evaluating the eligibility of HUD Qualified Housing and LIHTC Housing under the Weatherization Assistance Program.
- E. DOE and HUD intend to provide joint guidance within 60 days of this MOU to all affected entities, including states, local governments, and nonprofit and for-profit partners, describing how these programs can be further aligned.
- F. DOE and HUD also intend to conduct a series of joint forums throughout the country to facilitate implementation of this MOU and educate stakeholders on how to make this MOU operational.
- G. DOE and HUD intend to provide a structure for the necessary technical assistance to assure successful execution, including suggested training, subject matter expertise, and performance measurement.

H. DOE and HUD agree to work cooperatively to explore more highly leveraged and innovative approaches to weatherizing low-income homes.

II. Authorities.

DOE's Weatherization Assistance Program (under part A of Title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.); The American Recovery and Reinvestment Act of 2009, P.L. No. 111-5.

Public housing projects, and assisted housing projects that receive project-based Section 8 assistance, under the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437, et seq.), Supportive Housing for the Elderly projects receiving HUD assistance under section 202 of the Housing Act of 1959 (42 U.S.C. 17012), or Supportive Housing for Persons with Disabilities under Section 811 of the Cranston-Gonzales National Affordable Housing Act, as amended (42 U.S.C. 8013).

III. Expenses of Each Party.

This MOU does not obligate funds, personnel, services, or other resources of either Department to the other. Each party to the MOU will bear its own expenses in connection with the preparation, negotiation, and execution of the MOU, and neither party shall be liable to the other party for such expenses.

This MOU is an expression of intent only, that each party acts as an independent party with respect to the performance of duties under the MOU and does not represent that it is an employee or agent of another party to the MOU.

This MOU does not give a third party any benefit, legal or equitable right, remedy, or claim under any agreement contained herein.

This Agreement in no way restricts either of the Parties from participating in any activity with other public or private agencies, organizations, or individuals.

This Agreement is strictly for internal management purposes for each of the Parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either Party.

IV. Effective Date, Duration, and Amendments.

The effective date of this MOU shall be from the latest date of the signatures below. This MOU shall remain in effect until the termination by either party, which termination shall be effective thirty (30) days after the sending of written notice to the other party. Amendments to this MOU will be effected by the mutual consent of the parties in writing.

V. Implementation

DOE and HUD intend to: (i) provide joint guidance within 60 days after the execution of this MOU to stakeholders in the Weatherization Assistance Program and HUD's housing programs, and (ii) conduct a series of joint forums to facilitate the implementation of this MOU.

DOE and HUD will comply with all statutory and regulatory requirements in carrying out this MOU, and will identify and work to reconcile issues, in order to achieve the realization of the mutual benefits under this MOU.

DOE and HUD will coordinate all public statements and other disclosures with regard to this MOU, and neither DOE nor HUD may enter into any publicity regarding this MOU, unless the agencies consult in advance on the form, timing, and contents of any such publicity, announcement, or disclosure.

VI. Points of Contact.


Designated points of contact between the agencies will be determined by mutual agreement of the two agencies within 30 days of signature.

VII. Dispute Resolution Mechanism.

In the event of any disagreement arising under this MOU, the parties shall attempt to resolve the disagreement through negotiations in good faith. If the parties are unable to resolve the disagreement, this MOU may be terminated, which termination shall be effective thirty (30) days after the sending of written notice to the other party.

VIII. Signatures.

The following officials agree to the terms and conditions of this MOU:

HUD: 
Shaun Donovan, Secretary

DOE: 
Steven Chu, Secretary

Date: MAY 6 2009

Date: May 6, 2009