

**THE INTEGRATION OF FEDERAL LIHEAP BENEFITS
WITH RATEPAYER-FUNDED PERCENTAGE OF INCOME PAYMENT PLANS (PIPPS):
Legal and Policy Questions Involving the Distribution of Benefit Dollars**

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ABSTRACT

This White Paper considers whether federal law requires that fuel assistance distributed through the Low-Income Home Energy Assistance Program (LIHEAP) in states with a ratepayer-funded Percentage of Income Payment Plan (PIPP) be used exclusively to pay a customer's percentage of income copayment. The paper reviews the three "models" through which LIHEAP benefits are integrated with PIPPs around the nation.

Each PIPP model operates in a fundamentally similar fashion. Each PIPP state allocates responsibility for the payment of a low-income customer's bill to different funding sources. The responsibility to pay one portion of the total bill, set equal to an affordable percentage of income, is allocated to the customer. The responsibility to pay the portion of the bill exceeding the affordable percentage of income is allocated to external resources. In none of the PIPP states are LIHEAP payments directed toward further reducing a customer's home energy bill below that percentage of income that has been found to be affordable by state regulators and/or legislators.

After reviewing the structure and operation of PIPPs around the United States, this analysis concludes that any suggestion that LIHEAP funds must be used to further reduce a PIPP customer's affordable payment amount is not supported by federal law, is contrary to the way in which LIHEAP benefits have been integrated with PIPPs in every state with a PIPP, and is unfair to non-PIPP customers. Through the three existing PIPP models, both the letter of the LIHEAP statute and the objectives of the LIHEAP statute are served.

This White Paper examines how to integrate the distribution of public dollars of benefits through the federal Low-Income Home Energy Assistance Program (LIHEAP) with the distribution of ratepayer-funded benefits through a state-prescribed Percentage of Income Payment Plan (PIPP). Under a PIPP, a household's home energy bill is divided into two distinct components:

- That portion of the bill which is at or below an affordable percentage of income (the payment of which is the customer's responsibility); and
- That portion of the bill which is above the affordable percentage of income (the payment of which is made by some set of external, non-customer resources). This portion of the bill is often referred to as the "shortfall" or "shortfall payment."

A PIPP then operates by devoting external resources to pay the difference between: (1) that portion of a bill that constitutes an affordable energy burden on the one hand,¹ and (2) the full energy bill at standard residential rates on the other hand. The external resources used to pay the unaffordable portion of the bill might include dollars from the federal LIHEAP program, dollars from a statewide "system benefits charge" (SBC), dollars paid by utility non-participants,² dollars provided by a state legislative appropriation, or dollars from some other similar non-customer revenue stream.

The question examined below is whether the federal LIHEAP statute requires LIHEAP assistance payments in a PIPP state to be used exclusively to reduce a customer's payment further below that level which has been determined by the state to be affordable, or whether a state may use those LIHEAP benefits to help make the shortfall payment as described above.

The review of the structure and operation of PIPPs around the United States, as presented below, finds that that any suggestion that LIHEAP funds must be used to further reduce a PIPP customer's affordable payment amount is not supported by federal law, is contrary to the way in which LIHEAP benefits have been integrated with PIPPs in every state with a PIPP, and is unfair to non-PIPP customers.

Before turning to a statutory analysis, the discussion below considers the design and operation of the three fundamental models used to integrate federal LIHEAP benefits with PIPPs throughout the nation.

1. THREE INTEGRATION MODELS FOR LIHEAP AND RATEPAYER-FUNDED PROGRAMS

Numerous states through the country today have adopted Percentage of Income Payment Plans (PIPPs). In setting a low-income household's bill payment equal to an affordable percentage of

¹ "Energy burden" is defined by the LIHEAP statute to mean "the expenditures of the household for home energy divided by the income of the household." 42 U.S.C. § 8622(2) (2009).

² Pennsylvania, for example, does not impose a System Benefits Charge (SBC). The costs of Pennsylvania's Customer Assistance Programs (CAPs) are recovered through a variety of utility-specific riders, base rate recovery, and other ratemaking mechanisms.

income, each state has determined that any bill payment above the affordable payment level should be subsidized with non-customer resources.³

In doing so, each of the PIPP states uses a fundamentally similar approach to defining the customer's obligation. The customer's payment obligation is limited to the affordable percentage of income payment. The *difference* between that payment and the customer's full bill (the "shortfall" as defined above) is subsidized through an external stream of dollars.

Universally, the stream of dollars used to subsidize the low-income customer's shortfall involves a combination of federal LIHEAP benefits and ratepayer-funded dollars.⁴ According to an analysis of the "integration" of LIHEAP with these ratepayer dollars:

Combining funds occurs when the LIHEAP dollars are added to funds generated through an electric or natural gas system benefits charge to form a single fund⁵ that does not distinguish between the benefits delivered based on the source of those benefit dollars. No legal impediment exists to prevent the combination of LIHEAP dollars into a single fund with system benefits charge dollars.⁶

Three basic models exist through which LIHEAP and ratepayer-supplied funds are distributed to meet PIPP affordability objectives. These include:

- The Utility Administrator Model
- The Public Administrator Model
- The Net Burden Model

Each of these models is examined in more detail below.

³ Different states have defined the home energy burden deemed to be "affordable" at different levels.

⁴ The fact that such an integration occurs is evidenced, if by nothing else, by the report prepared under contract to the federal LIHEAP office, titled "Integrating Government-Funded and Ratepayer-Funded Low-Income Fuel Assistance Programs" (May 2002), prepared by Roger Colton for LIHEAP Committee on Managing for Results, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance, Washington D.C., available at: <http://liheap.ncat.org/workbook/integrat.htm>. See also: Colton (1999). "Integration of LIHEAP with Energy Assistance Programs Created through Electric and/or Natural Gas Restructuring," prepared for the LIHEAP Committee on Managing for Results, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance, Washington D.C., available at: <http://liheap.ncat.org/workbook/appendixB.htm>.

⁵ Not all states have a "single fund." Pennsylvania and Maine, for example, both have utility-specific programs the costs of which are recovered through varying rate mechanisms.

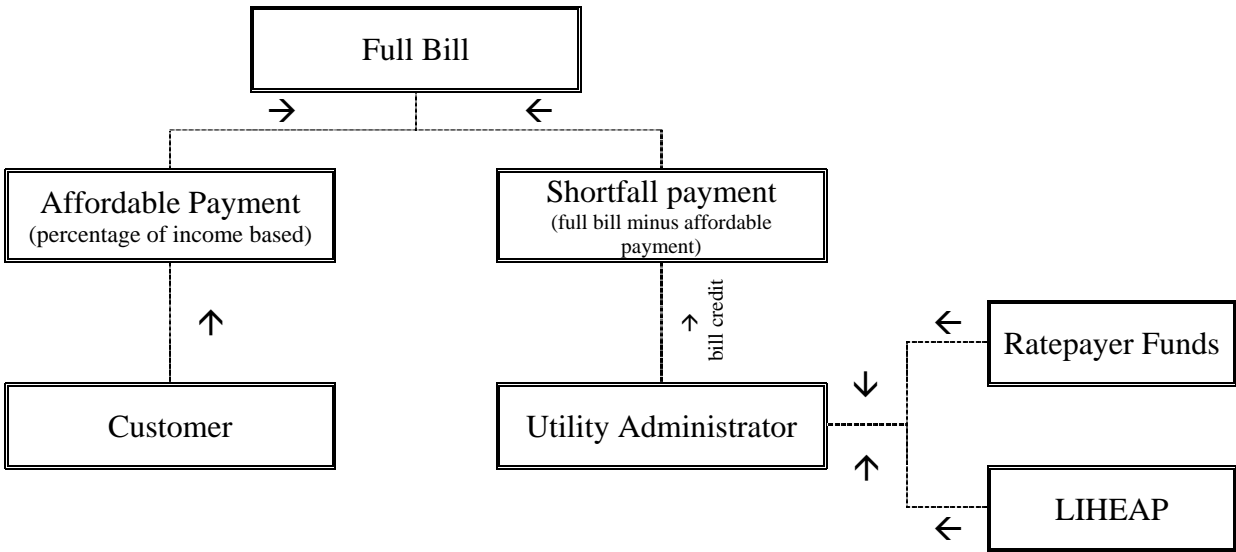
⁶ The report does include the standard disclaimer that the opinions represent those of the author and not necessarily those of the federal LIHEAP office.

1.1 The Utility Administrator Model

The first model that has been used as a way through which to integrate ratepayer-funded and LIHEAP-funded energy assistance in a percentage of income payment program is through the Utility Administrator Model of Pennsylvania and Colorado.

Illustration 1 sets forth the operation of the Utility Administrator Model.

Illustration 1. Utility Administrator Model



Utility Administrator Model Description

A customer's full utility bill is divided into two components: (1) the affordable component the responsibility for which is assigned to the customer; and (2) the "shortfall payment" the responsibility for which is assigned to external payment sources. The responsibility for applying the external resources, which are comprised of a combination of LIHEAP and ratepayer dollars, is assigned to the utility, which applies these resources as a bill credit.

1.1.1 Program Operations

Under the Utility Administrator Model, Pennsylvania utilities design and implement company-specific Percentage of Income Payment Plan (PIPP) programs called Customer Assistance Programs (CAP).⁷ Unlike other PIPPs in the country, the Pennsylvania CAPs operate under a tiered PIPP structure.⁸ A household with income at 150% of the Federal Poverty Level, in other words, pays a higher percentage of income toward his or her natural gas and electric bill than does a household with income at 75% of the Federal Poverty Level.⁹

Like the Public Administrator Model, the Pennsylvania CAP programs distinguish between the full bill that is rendered to a CAP participant and that portion of the bill representing the affordable payment that a customer is expected to pay toward his or her bill. Also similar to the Public Administrator Model, the difference between the full bill and the customer's affordable payment is considered to be a "shortfall" to be paid through non-customer sources of revenue. Those non-customer sources of revenue include the federal LIHEAP payment and ratepayer dollars supplied by non-participants.¹⁰

The Pennsylvania CAP is identical to the Public Administrator Model in that customers are responsible for that portion of the bill represented by their affordable percentage of income payments. That portion of the full bill that exceeds the affordable payment is then paid by external resources, including both LIHEAP and ratepayer supplied dollars. The difference between the Pennsylvania CAP and the Public Administrator Model is that, under the CAP, the ratepayer supplied funds are not forwarded to a public agency later to be returned as a grant to the utility. Under the Pennsylvania CAP, the ratepayer-supplied funds are instead applied as a direct bill credit against the portion of the bill that exceeds the affordable customer payment.¹¹

The Colorado Pilot Energy Assistance Program (PEAP) operated by Xcel Energy is modeled on a combination of program attributes from Pennsylvania and New Jersey. The Xcel PEAP is a percentage of income-based natural gas program. PEAP limits customer payments toward natural gas bills to an affordable 5% of income. The difference between the affordable customer payment and the full customer bill is paid by a combination of LIHEAP benefits and ratepayer-supplied dollars.¹² In Colorado, that portion of the bill exceeding the customer's affordable percentage of income payment is offset by a direct bill credit.

⁷ This stands in contrast to the statewide programs in PIPP states such as Nevada, Illinois, Ohio and New Jersey.

⁸ Central Maine Power Company's Electric Lifeline Program (ELP) also uses a tiered approach.

⁹ Some Pennsylvania utilities operate affordability programs other than a PIPP. These programs are set aside for purposes of this discussion.

¹⁰ A third source of payment revenue in Pennsylvania, not always used in other states, involves the reduction in standard operating expenses generated by operation of the CAPs. To the extent that a CAP helps a Pennsylvania utility reduce bad debt expense, for example, that bad debt reduction is to be used as a revenue source to help supplement the SBC revenues used to fund the bill credits.

¹¹ This is how the New Jersey USF and Central Maine Power Company ELP operate as well.

¹² In Colorado, LIHEAP dollars may well be supplemented also with dollars from Energy Outreach Colorado (EOC), the statewide fuel fund.

In Colorado, as in Pennsylvania, LIHEAP dollars are used to reduce the ratepayer-supplied bill credits. If the shortfall (i.e., full bill minus affordable payment) is \$600, and the LIHEAP payment is \$400, the shortfall is paid by combining \$200 in ratepayer-supplied funds with the LIHEAP payment.

As can be seen, under both the Public Administrator Model and the Utility Administrator Model, the PIPP applies the LIHEAP funding against the portion of the bill that exceeds the affordable customer payment. The difference between the Public Administrator Model and the Utility Administrator Model is that, under the Public Administrator Model, the public agency decides how to “package” LIHEAP and ratepayer funds as an external “grant” to the customer while, under the Utility Administrator Model, the LIHEAP agency delivers its normal LIHEAP benefit to be applied against the shortfall and the utility agrees to pay the difference between the shortfall and the LIHEAP benefit with ratepayer-supplied funds as a bill credit.

The effect on participating low-income customers, however, is the same. The program participant is expected to pay that portion of the bill represented by his or her affordable percentage of income payment. In contrast, that portion of the bill that exceeds the affordable payment is paid by a combination of external resources, including LIHEAP benefits and ratepayer-supplied funds.

1.1.2 “Excess Benefit Transfer” as One Area of LIHEAP Program Concern

One legitimate concern presented by the Utility Administrator Model¹³ involves the potential “transfer” of LIHEAP benefits from one customer to another in those limited situations where a LIHEAP benefit exceeds the PIPP shortfall (“excess benefit transfer”). Under a PIPP, LIHEAP benefits must be applied against PIPP participant shortfalls for individual accounts. So long as LIHEAP benefits are *less* than the customer shortfall, the issue of “excess benefit transfer” is not presented. However, in those limited instances where a LIHEAP benefit is *greater* than the shortfall, a question arises as to how the dollar amount by which the LIHEAP benefit exceeds the PIPP shortfall should be treated.

A limited number of situations exist where a LIHEAP benefit may be greater than the PIPP shortfall:

- The full customer bill at standard residential rates is sufficiently low to result in the LIHEAP benefit amount being greater than the difference between the full bill and the customer’s affordable percentage of income payment;

¹³ This situation would not arise under a Program Administrator Model, since the LIHEAP agency would adjust the “package” of LIHEAP benefits and ratepayer-funded benefits to reflect the shortfall on the front-end. This situation would not arise in the Net Burden Model since the level of the LIHEAP benefit is subtracted from the customer’s full bill at standard residential rates before calculating what the shortfall would be. If LIHEAP exceeded the shortfall, the shortfall would be set equal to \$0.

- A customer is removed from the PIPP before the customer's LIHEAP payment exceeds the customer's PIPP shortfall;¹⁴
- A customer leaves the PIPP due to a change in residences before the LIHEAP payment exceeds the customer's PIPP shortfall.¹⁵

It would be inappropriate for a utility to take the dollars by which a LIHEAP benefit exceeds a PIPP participant's shortfall and transfer those LIHEAP benefit dollars to another customer. This might occur if LIHEAP benefits were only credited against shortfalls in the aggregate.

An "excess benefit transfer" of LIHEAP benefits would be inappropriate under the LIHEAP statute. In those limited situations where a LIHEAP payment exceeds a customer's shortfall, the utility offering the percentage of income-based payment plan should either: (1) apply the amount by which the LIHEAP grant exceeds the shortfall against the payment then due for that same customer; *or* (2) return the amount by which the LIHEAP grant exceeds the shortfall to the LIHEAP agency to be redistributed as benefits to other low-income customers.

Neither of these two options, however, requires a fundamental re-design of an underlying PIPP. Assuring that the LIHEAP grants provided to individual customers are applied only against the bills of that customer presents an issue of financial accounting and monitoring. Providing such an assurance does not present an issue of PIPP program design. It certainly does not support the suggestion that all LIHEAP payments should be applied against the PIPP customers' "asked to pay" amount.

1.2 The Public Administrator Model

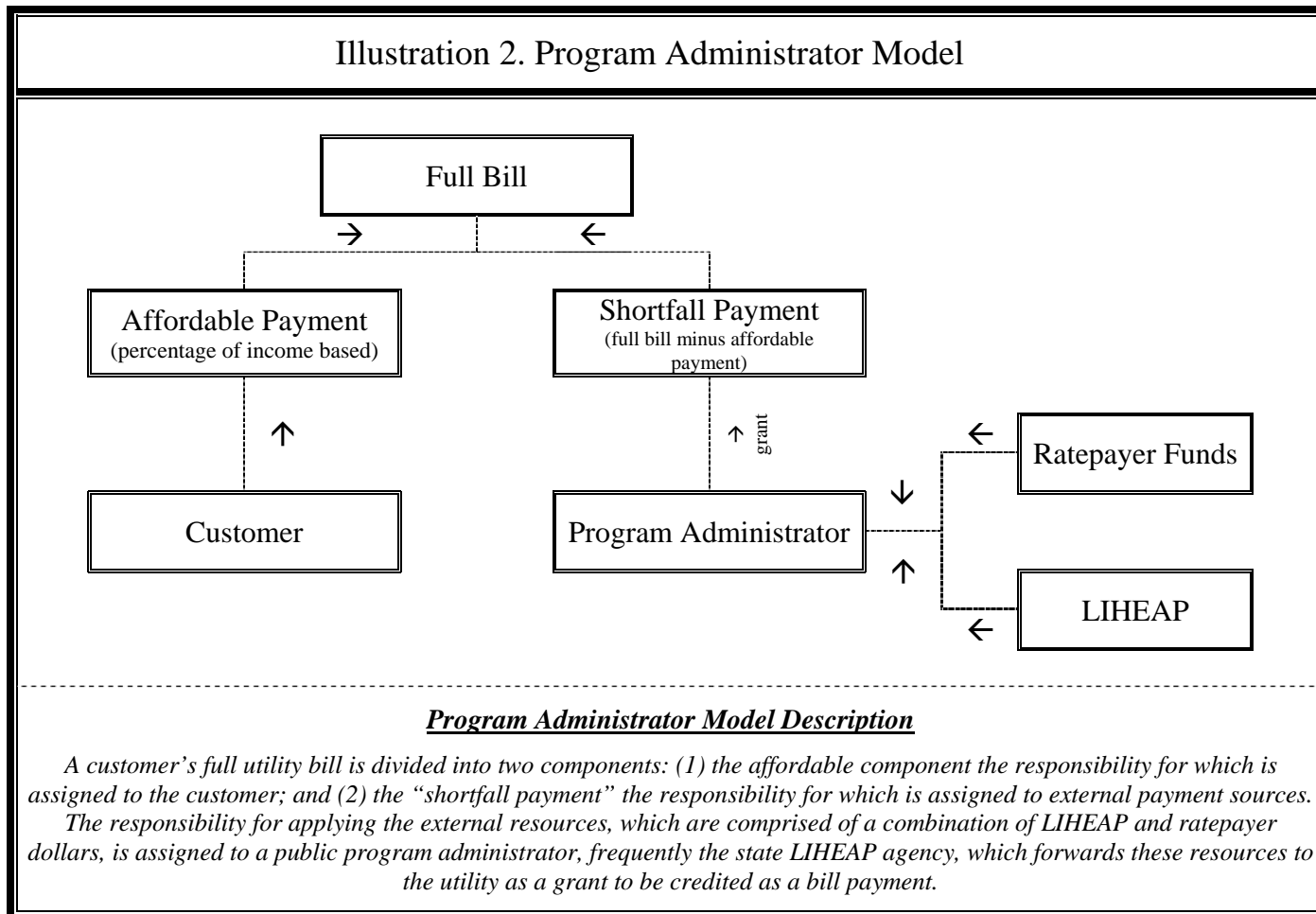
The second model through which public and ratepayer funds are combined to meet affordability objectives, the Public Administrator Model, is virtually identical to the Utility Administrator Model. Under the Public Administrator Model, LIHEAP benefits and ratepayer funds are combined under the auspices of a common public agency. An affordable percentage of income based payment is calculated for each PIPP participant.¹⁶ That PIPP payment is subtracted from the household's "full" household bill to determine the payment shortfall. To the extent that a shortfall exists, the Public Administrator makes a grant which includes either a LIHEAP benefit or a benefit from the state's System Benefits Charge (SBC),¹⁷ or some combination of the two, to retire the shortfall. States using a Public Administrator Model include, for example, Ohio, Nevada and Illinois.

¹⁴ While the LIHEAP benefit is paid in a lump sum, the PIPP shortfall builds from month-to-month. If a PIPP participant is removed from the program early in the program year, the LIHEAP benefit may exceed the PIPP shortfall accrued year-to-date.

¹⁵ If the customer changes residences but does not leave PIPP, no issue is raised. A change in residences is significant only if, as a result, the customer exits the PIPP leaving a LIHEAP benefit that exceeds the PIPP shortfall accrued year-to-date.

¹⁶ Not all low-income households receive benefits under a PIPP in *any* state. Almost universally excluded are customers of bulk fuel providers such as fuel oil and propane. Commonly, though not universally, excluded are customers of non-regulated utilities.

¹⁷ A System Benefit Charge may be referred to by a variety of names: a universal service charge, a wires charge, a public benefits charge, or some other name.



1.2.1 The Nevada Percentage of Income Payment Plan

The State of Nevada operates a PIPP funded through a combination of federal LIHEAP dollars and ratepayer-provided system benefits charge (SBC) dollars. Nevada's plan differs from other states not in the structure of how it delivers benefits, but rather in the way it assesses the "affordability" of the bill to be paid by low-income customers. Rather than prescribing an independently determined affordable percentage of income burden, Nevada ties its affordable burden to that burden paid by a household with the statewide median household income.

The difference between the residential bill at standard residential rates and the affordable bill is paid through a grant comprised of LIHEAP and ratepayer funds. The Nevada *2009 Energy Assistance Manual* explains the typical program process:

A Fixed Annual Credit (FAC) must be determined for each household approved for energy assistance benefits. . .¹⁸ The FAC is the amount of money sufficient to reduce the percentage of [the] applying household's income spent on heating and/or cooling to the median percentage of household income spent on same statewide. FAC benefits may be funded with Low Income Home Energy Assistance grant funds, monies from the Fund for Energy Assistance and Conservation,¹⁹ or both. The EAP computer system is designed to make the determination from which source an eligible household's benefit is paid.

2009 Program Manual, at Section 5.6. The Nevada LIHEAP State Plan provides a more detailed explanation of how a household's Fixed Annual Credit (FAC) is calculated:

1. Identify eligible household's annual income and apply 2.46% to determine the amount the household is expected to pay for their energy burden.
2. Identify household's annual energy usage in dollars (to include all energy sources).

¹⁸ While "energy assistance" is not a defined term, "Energy Assistance Program" is. The LIHEAP manual defines "Energy Assistance Program" to mean "The EAP program administered by the Division of Welfare and Supportive Services and funded by the LIHEA block grant through the U.S. Department of Health and Human Services. 2009 Program Manual, at page 5.

¹⁹ The Fund for Energy Assistance and Conservation is the fund into which the state's SBC collections are deposited.

3. Compare the 2.46% figure to the eligible household's annual energy burden (usage in dollars):
 - a. If the household energy burden is greater than 2.46% of the household's annual income, the difference is the FAC, for that household. The FAC is the benefit amount the household receives up to the maximum allowable.
 - b. If the household energy burden is less than 2.46% of the household's annual income the household receives a payment of \$180.

Nevada LIHEAP State Plan, at page 19. Several items are of significance in this program structure.

- First, Nevada distinguishes between the customer bill and the customer payment. The affordable percentage of income prescribed by Nevada is not the full bill rendered to the household. Rather, the percentage of income amount is “the amount the household is expected to pay for their energy burden.”
- Second, LIHEAP payments are applied to the customer's bill, not to the customer's payment. LIHEAP benefits, in other words, are not used to subsidize the customer's affordable payment amount (unless the household's energy burden is less than the affordable payment, at which time a minimum LIHEAP payment is made). Rather, the LIHEAP payment is part of the assistance used to “reduce the percentage of [the] applying household's income spent on heating and/or cooling” to the prescribed affordable percentage of income.
- Third, the difference between the full energy bill and the affordable customer payment can be subsidized with SBC funds, LIHEAP funds, or both. Not everyone is treated through the same source of funds, but rather “the EAP computer system is designed to make the determination from which source an eligible household's benefit is paid.”

1.2.2 The Illinois Percentage of Income Payment Plan

The Nevada program is quite similar to the Percentage of Income Payment Plan (PIPP) adopted by the Illinois legislature in 2009. Senate Bill 1918 uses a Public Administrator Model through which to administer LIHEAP funds and ratepayer funds collected through the Illinois system benefits charge so as to reduce low-income payments to an affordable percentage of income. The Illinois legislature declared it to be state policy that “a comprehensive low income energy assistance policy and program should be established which incorporates income assistance, home weatherization and other measures to ensure that citizens have access to affordable energy services.” Senate Bill 1918, at Section 15(b)(1). Moreover, the Illinois legislature declared that “resources applied in achieving this policy should be coordinated and efficiently utilized through

the integration of public programs and through the targeting of assistance.” Id., at Section 15(b)(3).

To help achieve the affordability goal, Illinois created a Supplemental Low-Income Energy Assistance Fund. 305 ILCS, §20/13. This Supplemental Fund is funded through a System Benefits Charge. Illinois then created a Percentage of Income Payment Plan, stating:

The Percentage of Income Payment Plan (PIPP or PIP Plan) is hereby created as a statewide bill payment assistance program for low-income residential customers of utilities having more than 100,000 retail customers as of January 1, 2009. The PIP Plan will: (1) bring participants’ gas and electric bills into the range of affordability. . .

A PIPP participant was statutorily defined to include customers who would receive “a percentage of income payment credit under the PIPP criteria” established by the statute. SB 1918, Section 18(b)(2).²⁰

The Illinois legislation established percentage of income-based limits on the amount that a PIPP customer²¹ would be responsible for paying toward his or her utility bill. Under the Illinois legislation:

The Department shall establish the percentage of income formula to determine the amount of a monthly credit, not to exceed \$150 per month per household, not to exceed \$1,800 annually, that will be applied to PIP Plan participants’ utility bills based on the portion of the bill that is the responsibility of the participant provided that the percentage shall be no more than a total of 6% of the relevant income for gas and electric utility bills combined, but in any event no less than \$10 per month. . .

SB 1918, Section 18(c)(2) (emphasis added). The responsibility of bill payment is then allocated between the customer and the PIPP.

- “The Department shall remit. . .to the utility or participating alternative supplier that portion of the plan participant’s bill that is not the responsibility of the participant.” SB 1918, Section 18(c)(3).
- “A plan participant is responsible for all actual charges for utility service in excess of the PIPP credit.” SB 1918, Section 18(c)(4).

As can be seen, the same basic policy choices incorporated into the Nevada program have been incorporated into the Illinois program as well. Clearly, the PIPP participant receives a full bill that is greater than the percentage of income payment. The legislation refers to the PIPP credit as applying to “the portion of the plan participant’s bill that is not the responsibility of the

²⁰ If a customer has a bill less than the affordable percentage of income, that customer would receive a normal LIHEAP grant, but would receive no bill credit through the PIPP.

²¹ A PIPP participant is also required to be an eligible LIHEAP recipient. SB 1918, Section 18(b)(4).

participant.” (emphasis added). The converse of this statement is that the percentage of income payment is the “portion of the participant’s bill” that *is* the responsibility of the participant. The complete bill to the customer is not one or the other of these two payments, but rather the sum of the two portions.

Second, the statute does not apply either LIHEAP benefits or SBC benefits to the affordable percentage of income payment. Rather, the benefits are applied to “that portion of the plan participant’s bill that is *not* the responsibility of the participant.” In contrast, the statute is also quite explicit in directing that each “*plan participant is responsible* for all actual charges for utility service in excess of the PIPP credit.”

1.2.3 Summary

One way to integrate LIHEAP funding with a ratepayer-funded Percentage of Income Payment Plan is through a Public Administrator Model. States such as Nevada, Ohio and Illinois all use this Public Administrator Model of integration. In each of these states, a household’s payment for home energy service is limited to a prescribed affordable percentage of income. The household is not responsible for paying that portion of the home energy bill that exceeds the affordable percentage of income.

In each instance, the difference between the full energy bill and the affordable household payment is subsidized through a combination of ratepayer-generated funds and federal LIHEAP dollars. This difference is the unaffordable portion of the bill.

In these Public Administrator Model states, rather than insisting that LIHEAP be confined to payment of the affordable portion of the bill for which the household is responsible, the LIHEAP payment is combined with the ratepayer-provided funds to retire the shortfall. The stated intention of each state in its use of the Public Administrator Model is to use the LIHEAP and ratepayer funds to pay the *unaffordable* portion of the household’s bill, not to further reduce the household payment below that level deemed to be affordable.²²

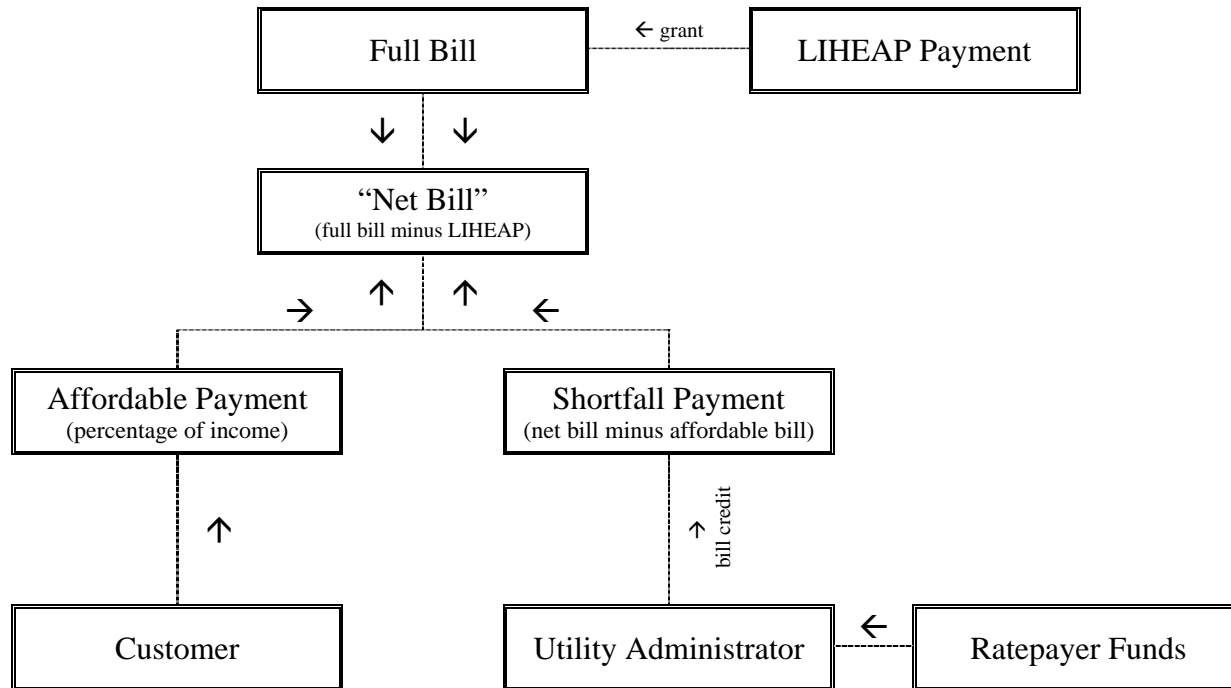
1.3 The Net Burden Model

A third model through which funds generated through a ratepayer-supported System Benefits Charge (SBC) and funds provided through the federal LIHEAP program are integrated to promote home energy affordability involves the Net Burden Model. The Net Burden Model is the approach used in New Jersey and Maine (Central Maine Power Company).

Illustration 3 sets forth the operation of the Net Burden Model.

²² In each case, if a customer has a bill that is already below the affordable percentage of income burden, the customer receives a LIHEAP payment, but receives no benefits through the PIPP.

Illustration 3. Net Burden Model



Net Burden Model Description

A customer's full utility bill is reduced by the amount of a customer's LIHEAP payment. The "net bill" (the full bill minus the LIHEAP payment) is divided into two components: (1) the affordable component the responsibility for which is assigned to the customer; and (2) the "shortfall payment" the responsibility for which is assigned to external payment sources. The responsibility for applying the external resources, which are comprised of ratepayer dollars, is assigned to the utility, which applies these resources as a bill credit

1.3.1 The New Jersey Universal Service Fund

New Jersey has implemented its Universal Service Fund (USF) through the state Board of Public Utilities (BPU). Through the USF, New Jersey ratepayers pay a prescribed System Benefits Charge that is distributed to reduce low-income home energy bills to an affordable percentage of income. New Jersey has defined an affordable burden to be 6% of income, split 3% for electricity bills and 3% for natural gas bills (or 6% for combined gas/electricity or all-electric bills).

The New Jersey program is operated through a collaborative effort of the state's utilities and the state's LIHEAP administrator. Customers are enrolled in USF through the state's LIHEAP program (either by completing a LIHEAP application or by completing the home energy assistance section of a Food Stamp application).²³

Once a customer is enrolled in LIHEAP through one of these two mechanisms, customers are "screened" for the extent to which, if at all, they will receive USF benefits. The USF program pays that portion of a customer bill that exceeds the prescribed affordable percentage of income after that bill has already been reduced by standard LIHEAP benefits (and state "Lifeline" benefits).²⁴ According to the USF Program Evaluation, the screening employs the following steps:

- a. Affordable electric bill / affordable gas bill – The household is assigned an affordable electric bill amount that is computed as 3 percent of the household's annual income (6 percent if the household heats with electricity). The affordable gas bill amount is computed as 3 percent of the household annual income.
- b. HEA benefit – The household is assigned a (Home Energy Assistance, referred to as HEA or LIHEAP) benefit based on the HEA benefit determination procedures.
- c. Lifeline benefit – Lifeline files are checked to determine whether the household has received a Lifeline benefit in the most recent fiscal year.
- d. Electric energy burden / Gas energy burden – An information request is sent to the household's utility companies for information on the projected annual energy burden for the household.
- e. Net electric energy burden / Net gas energy burden – [The state Office of Information Technology, OIT] computes the household's net electric energy burden as the reported electric energy burden minus any assistance amounts (HEA or Lifeline) that were credited to the household's electric account. The household's net gas energy burden is computed as the reported gas energy burden minus any assistance amounts (HEA or Lifeline) that were credited to the household's gas account.

²³ The federal Food Stamp program is now known as the Supplemental Nutrition Assistance Program (SNAP).

²⁴ New Jersey has a state-funded energy assistance program for the elderly known as "Lifeline."

- f. Annual USF Electric / Gas Benefit – OIT computes the annual USF electric benefit as the net electric energy burden minus the affordable electric bill. The annual USF gas benefit is computed as the net gas energy burden minus the affordable gas bill. A household is eligible for a USF benefit if the computed benefit is greater than \$0.
- g. Maximum annual benefit – The maximum combined electric and gas USF benefit is \$1,800 per year. A household with a higher computed benefit is capped at \$1,800.
- h. Monthly USF Electric / Gas Benefit – The monthly benefit is computed by dividing the annual benefit by 12. If the monthly benefit is less than \$5, the benefit is set at \$5.

(Apprise, Inc. (April 2006). Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund, at 8 – 9, prepared for the New Jersey Board of Public Utilities).

According to the New Jersey USF evaluation, “the customer is asked to pay an electric and/or gas bill that, in most cases, is equal to 3 percent of the customer’s income. The program considers that to be an affordable energy bill.” (USF Evaluation, at 9).

Similarities and differences appear between the Public Administrator Model (Illinois, Nevada) and the Net Burden Model (NJ) as described above. The fundamental similarity is the view that LIHEAP benefits are not to be applied against a household’s affordable percentage of income payment. Despite the fact that household payments are limited, by policy, to an affordable level defined as 6% of income (3% gas; 3% electric), the state does not adopt the position that it is those payments against which LIHEAP assistance is to be applied.

New Jersey does differ somewhat, from the Illinois and Nevada models described above. In New Jersey, LIHEAP benefits are segregated from the SBC funds and calculated independently of SBC percentage of income limitations. The LIHEAP dollars are then applied first. Should application of a LIHEAP grant reduce a natural gas or electric “net burden” below that level deemed to be affordable, the impact is simply to make the customer ineligible for additional SBC assistance. In Nevada and Illinois, the household percentage of income payment is applied first, with the LIHEAP and SBC combined to make-up the difference.²⁵

²⁵ The only situations where this difference would make a difference are where application of the LIHEAP benefit reduces a home energy bill to a burden that is less than the prescribed affordable percentage of income. To illustrate, assume that a customer has a home energy bill of \$800 and an annual income of \$10,000 (a burden of 8%). The customer has an affordable burden of 6% (\$600). In Nevada and Illinois, the customer would be required to pay \$600 and be eligible for a credit (through a combination of either SBC or LIHEAP or both) of \$200 (\$800 - \$600). In New Jersey, the LIHEAP benefit would be determined independently of the percentage of income burden. If the LIHEAP benefit were \$350, the customer would receive that \$350 and, because the “net burden” is less than 6% (\$800 - \$350 = \$450 / \$10,000 = 4.5%), the customer would be responsible for paying the net bill (\$450) and would receive no USF credit.

1.3.2 The Central Maine Power Company Electric Lifeline Program (ELP)

Central Maine Power Company (CMP) operates a percentage of income program through its Electric Lifeline Program (ELP). Through its ELP, Central Maine Power offers a percentage of income rate differentiated by income and annual usage. The percentage of income requirements are broken into two tiers:

- The first tier is directed toward households with income at or below 75% of the Federal Poverty Level. Households in this income range with annual usage of 5,000 kWh or less must pay 4.0% of their income for electricity. Households in this income tier with annual consumption at 14,000 kWh or more must pay 9% of income.²⁶
- The second tier is directed toward households with income above 75% of the Federal Poverty Level. Households with income in this income range with annual usage of 5,000 kWh or less must pay 6.0% of income for electricity. Households in this income range with consumption of 14,000 kWh or more must pay 10% of income.²⁷

The CMP Electric Lifeline Program operates in the same manner as the New Jersey program. According to the ELP tariff, “participating customers will receive their ELP benefit in the form of credits on their electric bill. . . *The customer is responsible for all charges in excess of the available ELP benefit.*” CMP Terms and Conditions, 11th Revised Tariff, Docket No. 2008-106, (October 1, 2008). (emphasis added).

The calculation of the percentage of income-based bill in Maine is based on the following steps:

- An annual “participant co-payment” is determined by multiplying household income times the required percentage of income payment.
- An annual “ELP benefit” is calculated by subtracting the participant co-payment from the estimated annual bill.

(CMP ELP Tariff, Section 33.5(B) – (C), “Annual ELP Benefit,” Residential Electric Lifeline Program, October 1, 2008).

Historically, the Maine LIHEAP payment has been applied against the annual ELP benefit. According to Barbara Alexander, Director of the Consumer Assistance Division of the Maine Public Utilities Commission at the time the ELP was first implemented, “there was an intent from the beginning that the LIHEAP grant would be used to reduce the otherwise required ratepayer subsidy for this program.”²⁸ To accomplish this result, the LIHEAP payment was subtracted from the total annual bill before calculating the ELP benefit. The CMP tariff stated that “the ELP benefit shall be reduced by any HEAP benefit the participant applies to his or her

²⁶ The percentage of income requirement for households with intermediate consumption is set by a formula, that increases the percentage of income payment proportionate to the increase in consumption.

²⁷ For this tier, too, the percentage of income requirement for households with intermediate consumption is set by a formula that increases the percentage of income payment proportionate to the increase in consumption.

²⁸ Correspondence, Barbara Alexander to Roger Colton (October 6, 2009).

account, except for supplemental HEAP benefits.” (CMP ELP Tariff, Section 33.5(C), superseded as of October 1, 2008).

Beginning in 2008, the relationship between LIHEAP and the ELP was modified and the language regarding HEAP benefits removed from the tariff. (In Re. Central Maine Power Company, Revision to Terms and Conditions, Section 33 (Residential Electric Lifeline Program), Docket No. 2008-200). According to Derek Davidson, current Director of the Consumer Assistance Division of the Maine PUC:

(Beginning in program year 2009),²⁹ any LIHEAP benefit a customer receives is in addition to the ELP benefit. Phrased another way, a customer's ELP benefit is not offset by a LIHEAP benefit. In 2008, we asked CMP to remove the provision in its tariff that required it to offset a customer's ELP benefit by an amount equal to any LIHEAP benefit the customer received for electricity. The reason for our request was a ceiling benefit amount that CMP had established for its ELP program (\$600). Prior to a ceiling being [put into] place, the ELP was providing a full credit for the customer's electricity usage over the customer's co-pay amount. Thus, the offset was necessary to prevent a redundant benefit. However, with the ceiling in place, customers are not necessarily receiving redundant benefits between LIHEAP and ELP.³⁰

(emphasis added). After filing its ELP tariff with the Maine PUC in 2008, CMP submitted this revision to the PUC, stating: “Upon further discussions with Consumer Assistance Staff, CMP and Staff have agreed not to reduce ELP benefits when CMP's ELP customers receive HEAP benefits.” (Correspondence, Paul Dumais, Director, Regulatory Services, Central Maine Power, to Maine PUC, Docket 2008-200, (June 17, 2008). CMP stated, however, that the process of calculating a customer's annual ELP benefit is otherwise unchanged.³¹

As can be seen, the CMP Electric Lifeline Program operates in a fashion similar to other percentage of income payments. The low-income customer is required to make an affordable percentage of income co-payment. The difference between that customer co-payment and the full bill at standard residential rates is paid with external resources. Those external resources represent a combination of LIHEAP funds and ratepayer funds.

In Maine, as in other PIPP states, however, the LIHEAP benefit is applied against the portion of the bill that exceeds the affordable percentage of income payment. The LIHEAP payment is not applied against the customer's Percentage of Income Payment.

²⁹ Beginning October 2008.

³⁰ Correspondence, Derek Davidson to Roger Colton (October 6, 2009).

³¹ Accordingly, the Maine LIHEAP payment is subtracted from a household's total electric bill at standard residential rates. The household's affordable percentage of income is subtracted from this “net” bill. The difference between the net bill and the household's percentage of income payment is provided through an ELP benefit, up to a maximum of \$600 per year.

1.3.3 Summary

The objective of both LIHEAP and state percentage of income programs is to reduce utility bills charged to low-income customers to an affordable burden. The “net burden” model operated by New Jersey’s Universal Service Fund (USF) and Central Maine Power Company’s Electric Lifeline Program (ELP) seek to accomplish this objective in fundamentally the same manner. The purpose of both programs is to reduce low-income bills to an affordable burden, but not to provide “redundant” benefits. To prevent these redundant benefits, the LIHEAP benefits are first subtracted from a household’s full bill at standard residential rates. This net bill is compared to the affordable bill as measured by an affordable percentage of income. The difference between the net bill and the affordable bill is then paid through application of a bill credit up to a maximum (\$600 in Maine; \$1,800 in New Jersey) prescribed by the State Commission.

2. IDENTIFYING THE STATUTORY LIHEAP OBJECTIVE

The objective of the federal LIHEAP program, as set forth by statute, is to reduce low-income home energy³² burdens of high burden households to a more affordable percentage of income.³³ The federal statute references this objective in at least the following separate sections. The statute provides that:

- The authority of the federal LIHEAP program is to make grants “to assist low-income households, particularly those with the lowest incomes, *that pay a high proportion of household income for home energy*, primarily in meeting their immediate home energy needs.” 42 U.S.C. §8621(a) (2009) (emphasis added).
- In order to receive LIHEAP funds to distribute, a state must agree to “use the funds. . .to. . .provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes *that pay a high proportion of household income for home energy*. . .” 42 U.S.C. §8624(b)(1)(A) (emphasis added).
- In order to receive LIHEAP funds to distribute, states must agree that “the highest level of assistance will be furnished to those households which have the lowest incomes *and the highest energy costs or needs in relation to income*, taking into account family size. . .” 42 U.S.C. §8624(b)(5) (2009) (emphasis added).³⁴
- In order to receive LIHEAP funds to distribute, states must agree to “conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, *and households with high home energy burdens*, are made aware of the assistance available.” 42 U.S.C. §8624(b)(3) (2009) (emphasis added).

³² For the moment, this discussion sets aside the implications of the statutory definition of “home energy” as limited to a “source” of heating and/or cooling.

³³ The LIHEAP statute does not ensure that an affordable burden will be achieved, merely that an unaffordable burden will be reduced to more affordable levels.

³⁴ It is not clear why the LIHEAP statute provides that states need take into account only *family* size rather than taking into account *household* size. Given the definition of “household” in the LIHEAP statute (42 U.S.C. §8622(5)), the distinction between a “family” and a “household” is recognized by the LIHEAP statute.

- Should the state allot LIHEAP dollars to weatherization, those weatherization dollars are to be used “for residential weatherization or other energy-related home repair for low-income households, particularly for those low-income households with the lowest incomes that pay a high proportion of household income for home energy.” 42 U.S.C. §8624(k)(2)(A) (2009).

Each year, each state LIHEAP agency must submit a “state plan.” 42 U.S.C. §8624(c)(1) (2009). The State Plan is explicitly required to “describe(. . .) any steps that will be taken. . .to target assistance to households with high home energy burdens.” 42 U.S.C. §8624(c)(1)(E) (2009). The State Plan is further required to “describe how the State will carry out the assurances” (42 U.S.C. §8624(c)(1)(F) (2009)), including the assurance that “the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size. 42 U.S.C. §8624(b)(5) (2009).

These State Plan requirements operate as restrictions on how LIHEAP funds are distributed. “The State *shall* expend funds in accordance with the State Plan. . .” 42 U.S.C. §8624(d) (2009) (emphasis added).

As is evident from the repeated references to providing LIHEAP assistance to households with the highest energy bills in relation to income, as well as to repeated references to the need to target both the availability of assistance and the level of assistance to households with the highest energy burdens, the objective of the LIHEAP statute is to reduce the energy burdens of low-income households experiencing high energy burdens.

3. STATUTORY AND POLICY CONSIDERATIONS IN INTEGRATING LIHEAP WITH PIPP

A suggestion has recently been made that a state acts contrary to the federal LIHEAP statute to the extent that the state applies a customer’s LIHEAP grant against the customer’s “shortfall” (as described above). This argument urges that, since a customer’s payment obligation is limited by a state’s prescribed affordable percentage of income, the “shortfall” does not constitute an “immediate home energy need” for which the state is authorized to make a LIHEAP grant. 42 U.S.C. §8621(a) (2009).

This argument fails as a matter of statutory construction. The phrase “immediate home energy needs” should be read *in pari materia* with the phrase “highest home energy needs” as used elsewhere in the LIHEAP statute. (*see e.g.*, 42 U.S.C. §8624(b)(5) (2009)). The fact that the term “home energy needs” is modified by the word “highest” in one section and by the word “immediate” in another does not detract from the fact that the phrase “home energy needs” is identical in both instances. Being identical, the phrase “home energy needs” should be construed to give it an identical meaning in both instances to the extent possible.

The term “highest home energy needs” is a phrase that is specifically defined by the LIHEAP statute. “Highest home energy needs” is defined by the statute to mean “the home energy requirements of a household determined by taking into account both the energy burden of such household and the unique situation of such household that results from having members of

vulnerable populations.” 42 U.S.C. §8622(4) (2009). From this language, it is possible to parse the phrase “highest home energy needs” to determine the meaning of its component parts:

- The term “home energy needs” is equivalent to the term “home energy requirements.”
- The term “highest” is to be determined based on a consideration of the home energy burden and the unique situation of the households. The LIHEAP statute consistently makes clear that the concern with “energy burdens” relates to whether those burdens are “high” or not.

Taking the lessons from this defined term (“highest home energy needs”), it is thus further possible to discern the meaning of the phrase “immediate home energy need.” “Immediate home energy need” defines a household’s “home energy requirements” taking into account different factors, factors that relate to the immediacy rather than to the size of the household’s “home energy requirements.”

Arguing that LIHEAP benefits cannot be used to reduce the shortfall between an affordable percentage of income payment and bills at standard residential rates is contrary to this statutory language. A household’s “home energy requirements” encompasses the household’s total home energy bill,³⁵ not merely that portion of the bill represented by the percentage of income payment that a state has defined to be affordable for purposes of allocating that bill between customer payments and payments made by external third parties.

This reading of the statute is consistent with Assurance 7 as well. The LIHEAP statute provides that should a State choose to pay home energy suppliers directly, the state must “assure that the home energy supplier will charge the eligible household, *in the normal billing process*, the difference between the actual cost of the home energy and the amount of the payment made by the State under this chapter.” 42 U.S.C. §8624(b)(7)(B) (2009) (emphasis added). A PIPP, of course, does precisely this. “In the normal billing process,” the eligible household is charged the difference between the actual cost of the home energy and the amount of the LIHEAP payment. In the PIPP billing process, which differs from the “normal billing process,” the total bill is then allocated to two different payment sources: (1) the LIHEAP payment is allocated to pay the unaffordable portion of the customer bill, and (2) the customer payment is allocated to pay the affordable portion of the bill.

In contrast, if a PIPP bill is considered to be the full bill to a LIHEAP customer, it would be in conflict with this Assurance, since the PIPP bill would not be “the difference between the actual cost of the home energy and the amount of payment made by the state.” Assurance 7, if nothing else, contemplates exactly what PIPPs do. PIPPs render a full bill “in the normal billing process” based on “the actual cost of the home energy” and then allocate that bill between an affordable customer payment and a payment of the unaffordable portion by external (i.e., non-customer) resources.

³⁵ The phrase “total home energy” bill here is not used in contra-distinction to the LIHEAP statute’s definition of “home energy” as limited to home heating and/or cooling, but rather is used to identify the “total bill” as the sum of customer payments and non-customer payments.

3.1 The LIHEAP Focus on Total Home Energy Bills, Not Percentage of Income Payments³⁶

Arguing that LIHEAP benefits cannot be used to pay the shortfall between total home energy bills and affordable percentage of income payments would create a need to fundamentally restructure LIHEAP payments in PIPP states. This need would arise:

- In deciding who should be targeted to receive LIHEAP benefits;
- In deciding what level of LIHEAP benefits should be paid; and
- In deciding who can receive LIHEAP-funded weatherization services.

3.1.1 PIPP and the Targeting of LIHEAP Benefits

As discussed above, by statute, LIHEAP benefits are to be directed toward households with the highest home energy burdens. One of the LIHEAP “assurances” is that a state must agree to “use the funds. . .to. . .provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes *that pay a high proportion of household income for home energy.* . .” 42 U.S.C. §8624(b)(1)(A) (emphasis added).

Should PIPP be construed as a limitation on a customer’s bill (rather than on that portion of the bill toward which a customer makes an affordable payment), PIPP participants would, by definition, not fall within this statutory section. Under this construction, a PIPP participant would not “pay a high proportion of household income for home energy,” but rather would pay only an affordable percentage of income.

Under this approach, a state’s LIHEAP benefits would be targeted away from PIPP participants and toward PIPP nonparticipants. To the extent that PIPP participation is directed toward regulated utilities, low-income customers of these utilities would receive low priority for LIHEAP participation in order that LIHEAP benefits could be targeted to customers of bulk fuels and unregulated utilities whose bill payments are not limited by PIPP affordability constraints.

3.1.2 PIPP and the Level of LIHEAP Benefits

By statute, the highest benefits are to be paid to households with the highest home energy burdens. One of LIHEAP’s “assurances” is that a state must agree to furnish “the highest level of assistance. . .to those households which have the lowest incomes *and the highest energy costs or needs in relation to income,* taking into account family size. . .” 42 U.S.C. §8624(b)(5) (2009) (emphasis added).

³⁶ Reference to “total home energy bills” will be explained in the discussion below. The phrase is not intended to stand in contrast to the statutory definition of “home energy” as being restricted to home heating and/or cooling.

Should PIPP be construed as a limitation on a customer's bill (rather than on that portion of the bill toward which a customer makes an affordable payment), PIPP participants would, by definition, not fall within this statutory section. Under this construction, a PIPP participant would not have "the highest energy costs or needs in relation to income," but rather would pay only an affordable percentage of income. Moreover, one PIPP customer would have the same energy costs in relation to income, taking into account family size, as every other PIPP customer.

Under this approach, customers participating in a PIPP should presumably receive identical LIHEAP grants irrespective of income or Poverty Level. After all, if, as the LIHEAP statute requires, states must agree to furnish "the highest level of assistance. . .to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size," and, if all PIPP participants bear the same energy costs as a percentage of income, the state has no basis upon which to distinguish benefit levels between these PIPP customers.

Moreover, as with the targeting, those customers who do not participate in PIPP, including customers of unregulated bulk fuels and customers of unregulated utilities not offering a PIPP, would bear the highest energy burdens referenced by the statute. Accordingly, should this perspective of PIPP hold, households *not* participating in PIPP³⁷ should receive substantially greater LIHEAP benefits. These customers would have the "high" burdens as referenced by the LIHEAP statute and, as a result, by statutory directive, should receive the greatest benefits. 42 U.S.C. §8624(b)(5) (2009).

3.1.3 PIPP and Allotment of LIHEAP Weatherization Funds

By statute, should a state allot LIHEAP dollars to weatherization, those weatherization dollars are to be used "for residential weatherization and or other energy-related home repair for low-income households, *particularly for those low-income households with the lowest incomes that pay a high proportion of household income for home energy.*" 42 U.S.C. §8624(k)(2)(A) (2009).

Similar to the discussion immediately above, however, should PIPP be construed as limiting total home energy bills, rather than as defining an affordable customer payment, this statutory section would eliminate the ability to serve PIPP customers with LIHEAP-based weatherization funds. As discussed above, should PIPP be construed as limiting total home energy bills, PIPP participants would not "pay a high proportion of household income for home energy." Rather, they would pay a smaller, affordable percentage of income for home energy and thus not be eligible for targeted LIHEAP-based weatherization assistance.

3.2 PIPPs and the LIHEAP "Emergency" Assistance Grants

Aside from these specific conflicts, construing PIPPs as a limitation on a customer's total bill, rather than as a limitation on a customer's payment, would be inconsistent with the totality of the LIHEAP statute. Consider, for example, that the LIHEAP statute authorizes an appropriation of

³⁷ This observation applies to customers not participating in PIPP because they use fuels not covered by PIPP, not those customers who do not participate in PIPP because their home energy burdens are less than the burdens that PIPP defines to be affordable.

“emergency” funds “to meet the additional home energy assistance needs of one or more states arising from a natural disaster or other emergency.” 42 U.S.C. §8621(e) (2009). The term “emergency” is defined by the LIHEAP statute to include, among other things, “a significant increase in the cost of home energy as determined by the Secretary. . .” 42 U.S.C. §8622(1)(C) (2009). If, however, the “cost of home energy” is limited to a prescribed affordable percentage of income, increasing home energy costs would not result in “additional home energy assistance needs.”³⁸

Accordingly, under this statute, a state operating under a PIPP would not be eligible for emergency dollars due to increasing regulated fuel prices since the PIPP would hold the household’s bill constant as a percentage of income. Actual regulated fuel prices would no longer be relevant to emergency funding decisions under such an approach.

This has never been the way that the federal LIHEAP office has construed the “emergency” funding provisions of the federal LIHEAP statute. The federal LIHEAP office has always construed significant increases in regulated fuel bills (e.g., natural gas, electricity) as increasing the “home energy assistance needs” of low-income households in states with PIPPs and distributed LIHEAP emergency funding accordingly. The federal LIHEAP office has not previously viewed statewide PIPPs as limiting the home energy bills of PIPP participants to the affordable percentage of income payment.

3.3 Conclusions

It is unreasonable to construe the LIHEAP statute in a fashion so narrow as to create the unnecessary conflicts identified above. Nor is this result a necessary outcome of the LIHEAP statutory language if a PIPP is construed appropriately. Under a PIPP, what is changed is the allocation of resources to pay a low-income household’s full bill. One source of resources involves customer payments, the burden of which is limited to an affordable percentage of income. Under a PIPP, external resources are used as an additional source of funds to complete the payment of a household’s total bill.

Under this perspective, the customer’s “home energy requirements” (42 U.S.C. §8622(4) (2009)) at a standard residential rate present the home energy expenditures of the household. These expenditures are met through a combination of customer and non-customer resources, including the customer’s percentage of income payment, the federal LIHEAP benefit, any state supplemental energy assistance payment, any System Benefits Charge (SBC) payment, and any utility ratepayer funds directed toward the shortfall.

³⁸ Reference to the phrase “home energy assistance needs” is a reference to the dollars needed to reduce home energy burdens to more affordable levels. The LIHEAP statute provides that a state must certify that “the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs and needs in relation to income, taking into account family size. . .” 42 U.S.C. §8624(b)(5) (2009). If through a PIPP, a household’s costs in relation to income are held constant at an affordable level of income, then increasing home energy costs pursuant to 42 U.S.C. §8622(1)(c) would not result in increasing home energy assistance needs for purposes of emergency funding.

4. SUMMARY AND CONCLUSIONS

Two types of public assistance programs exist to help low-income households receive affordable home energy service grounded in percentage of income principles. At the federal level, Congress funds LIHEAP, a cash assistance program designed to reduce the home energy burdens of high burden, vulnerable households to more affordable levels. At the state level, utility ratepayers provide funds to pay the difference between low-income payments at an affordable percentage of income and full energy bills at standard residential rates in states with Percentage of Income Payment Plans (PIPPs).

A question has been raised about whether LIHEAP benefits can be used in PIPP states to fund the portion of a low-income customer's bill that exceeds the affordable percentage of income. The argument urged is that customers do not "owe" the portion of the bill above their affordable percentage of income and, accordingly, that portion of the bill is not an "immediate energy need" for which a LIHEAP grant may be made. The counter is that customers owe the entire bill, even though an affordable portion of the bill is allocated to a customer payment with the other portion paid by external resources.

Both legal and policy considerations support the conclusion that LIHEAP funds may be used to pay the shortfall between a customer's percentage of income payment and the full customer bill. From a legal perspective, to comply with the federal LIHEAP statute, states not only must target the distribution of LIHEAP assistance to high burden households, but they must also provide the highest level of assistance to high burden households. In addition, where states allot some of their LIHEAP funds to weatherization activities, those weatherization services must be targeted to high burden households. To hold that the home energy bills of PIPP participants are limited to their affordable percentage of income payments would make PIPP participants subject to these statutory constraints. If the bills to PIPP participants are comprised only of the percentage of income payment, by definition, those PIPP participants are not "high burden" households who are entitled to receive anything more than nominal LIHEAP benefits.

From a policy perspective, to hold that LIHEAP may not be used to pay the portion of a PIPP participant's bill that exceeds the affordable percentage of income would require a major restructuring of PIPPs throughout the nation. Three models exist through which states distribute funds to reduce low-income home energy bills to an affordable percentage of income. While different states may define the threshold of "affordability" differently, each PIPP state views the bill at standard rates as the full bill. Each PIPP state then allocates responsibility for the payment of that bill to different funding sources. The responsibility to pay one portion of the total bill, representing an affordable percentage of income, is allocated to the customer. The responsibility to pay the portion of the bill exceeding the affordable percentage of income is allocated to external resources. Whether paid through a Public Administrator Model, through a Utility Administrator Model, or through a Net Burden Model, these external resources include a combination of LIHEAP and ratepayer funds. In no PIPP state are the LIHEAP payments directed toward further reducing a customer's home energy bill below that percentage of income that has been found to be affordable by state regulators and/or legislators.

Through the three existing PIPP models, both the letter of the LIHEAP statute and the objectives of the LIHEAP statute are served. Customer payments are set at an affordable level (as measured by a percentage of income) with the portion of the total home energy bill exceeding that affordable burden paid by external resources (including LIHEAP and ratepayer funds).