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IN THIS ISSUE

While Maximum Income Limits May Differ for Various Energy Assistance Programs, Such Outcomes May be Merited by Outcomes Sought.

NOTE TO READERS

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Different Energy Assistance Programs Merit Different Definitions of "Low-Income" Based on the Problems Sought to be Resolved.

In the last few years, one issue that has increasingly presented itself to state utility regulators, or other decisionmakers facing choices on how to structure "low-income" utility assistance programs, is how to define "low-income" for purposes of setting maximum income thresholds for income eligibility.

The issue was raised to the forefront, perhaps, by Congressional approval of the Low-Income Household Water Assistance Program (LIHWAP), a federal COVID-19 emergency relief program. LIHWAP set maximum income eligibility at 60% of State Median Income (SMI). That seemed reasonable given the fact that LIHWAP's permanent energy counterpart, the Low-Income Home Energy Assistance Program (LIHEAP) also sets its maximum income eligibility at 60% of SMI.[1]

[1] More specifically, LIHEAP's maximum income eligibility is 60% of SMI or 150% of Poverty Level, whichever is greater. The LIHEAP statute provides that benefits are to be distributed to:

"households with incomes which do not exceed the greater of--

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income; except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State,

States adopting energy and/or water affordability programs have often mirrored the LIHWAP/LIHEAP standards. One reason to do so is because of the increased administrative ease, both from the perspective of the recipient and the program administrator, in having programs use the same income eligibility. One other reason is to avoid confusion by the household that must apply for assistance.

There are, however, good reasons to set different maximum income thresholds for different programs. The discussion below will explain why.

LIHEAP / LIHWAP

LIHEAP and LIHWAP are both government-funded social assistance programs. They are intended to be income transfer programs. Saying that means that LIHEAP and LIHWAP are structured to provided assistance to households simply because they are poor. It is not pejorative (or a criticism) to say that out loud. LIHEAP, for example, is statutorily directed to helping households meet their "immediate home energy needs." But, someone who is income-eligible is entitled[2] to receive benefits. States do not retain the discretion to deny benefits to an applicant by asserting that "you're not in need." If someone is at or below the income standard, they are, by definition, "in need" pursuant to the statute.

That approach is entirely appropriate for a publicly-funded social service program.

but the State may give priority to those households with the highest home energy costs or needs in relation to household income." 42 U.S.C. 8623(b)(2)(B).

[2] Entitled within the confines of LIHEAP being a block grant program.

Ratepayer-Funded Social Assistance Programs.

In the design and rationale for a ratepayer-funded utility rate assistance program, some states –Massachusetts is a good example—adopt a social service perspective for their rate assistance. This manifests itself in two ways. On the one hand, it is never presented as anything other than a social service program. If a customer is income-qualified, the customer receives assistance. Neither the amount of assistance, nor the rational for providing assistance, is ever attempted to be directed toward achieving a utility-related objective.

This can be seen, for example, by the fact that Massachusetts discounts are flat across-the-board discounts. A customer with an income of $50,000 receives the same discount as a customer with an income of $5,000. A customer with an electric bill of $4,000 receives the same percentage bill discount as a customer with an electric bill of $400. A customer with an energy burden of 25% of income receives the same discount as a customer with an energy burden of 2.5% of income.

Ratepayer-Funded Bill Affordability Programs.

In contrast to the ratepayer-funded social assistance programs are ratepayer-funded bill affordability programs. These utility programs are designed to achieve a utility-related objective rather than simply to reduce a bill by "some" amount. The utility, by seeking to achieve affordability, is seeking to reduce disconnections; seeking to reduce arrears; seeking to improve either/both the timeliness and the completeness of payment. In seeking to achieve these utility objectives, however, some customers receive more assistance while other customers receive less. If someone needs more help to achieve an affordable bill, they get more

help. If they need less they receive less. And, yes, if someone needs no assistance, they receive none.[3]

The impact of adopting an affordability program, however, is effectively to place reduced limits on income eligibility. The higher a household's income, the more likely it will be that a utility bill will be affordable even without utility assistance. Consider the various income levels at different ranges of Poverty below for a 3-person household in 2023.

2023 3-person Household		
FPL	Annual Income	Affordable Bill (6% burden)
50%	$12,430	$746
100%	$24,860	$1,492
125%	$31,075	$1,865
150%	$37,290	$2,237
175%	$43,505	$2,610
200%	$49,720	$2,983
250%	$62,150	$3,729

As can be seen, as income increases as a percentage of Poverty, it becomes less and less likely that a household's home energy bill will exceed the affordable percentage of income. If the objective of the program is to achieve an affordable bill, rather than simply to provide some amount of discount to a household because they are poor, adopting a program with an objective of achieving an affordable bill will effectively set an upper income limit. If a utility's bills are higher, that upper limit will be higher. If a utility's bills are lower, that upper limit will be lower.

It would appear from the Table above that an upper income limit for an affordability-based utility bill assistance program would frequently, if not generally, fall within the range of 150% to 200% of Poverty.

Cold Weather (Hot Weather) Shutoff Protections

Cold weather (or hot weather) shutoff protections can easily justify a higher maximum income eligibility than would be used to justify an affordability-based ratepayer assistance program.[4] A higher income eligibility could be grounded on two lines of reasoning.

First, and foremost, cold weather protections are, by their very nature, designed to achieve a socially-defined objective. The objective is not to achieve a utility-related objective (e.g., to reduce working capital expense by reducing the incidence or magnitude of arrears). Rather the cold weather protection is a public health measure. The policy foundation of cold weather shutoff protections is that no-one should be in danger of freezing to death because they lost their winter utility service due to an inability-to-pay. That decision, however, is clearly a policy decision, not an economic decision.[5]

[3] Need no assistance in order to achieve an affordable bill.

[4] While, for brevity's sake, this discussion will reference "cold weather protections," it is intended to apply with equal force to hot weather protections as well.

[5] This assumes, however, that utilities have been protected against tort liability for failing to take reasonable actions to prevent the imposition of cold weather harm on a customer.

It is because of this policy decision that cold weather shutoff protections are frequently available to ***all*** customers without imposition of a means test.

To the extent that regulators seek to justify a means test for cold weather protections, they advance the reasoning that while low-income customers may not make winter payments because they are unable-to-pay, to the extent that ***non***-low-income customers fail to make winter payments, those higher income customers are unwilling-to-pay. Adopting this reasoning, however, places regulators in the difficult position of deciding at what income level demarcates the "unable-to-pay" from the "unwilling-to-pay."

Even if regulators choose to base this decision on an "affordability" analysis, the maximum income eligibility for cold weather protections would still be substantially higher than the maximum income eligibility for a rate assistance program. The maximum income eligibility for a rate affordability program is based on ***annual*** bills as a percentage of ***annual*** income. In contrast, the exposure to potential cold weather disconnections attributable to nonpayment are driven by monthly bills that reflect seasonal variations.

Even if one adopts a percentage of income approach to any effort to define inability-to-pay (rather than unwillingness-to-pay), the maximum income would need to reflect the seasonal variation in bills. Consider, again, the same 2023 income ranges for a 3-person household used above. Instead of looking at affordability on an ***annual*** basis, this Table looks at affordability on a monthly basis. It seems clear from this Table that it is much more likely that a seasonal cold weather bill could/would exceed an affordable bill threshold. The odds seem high that a January/February/March total heating and electricity (gas plus electricity, or, all electric) bill could easily exceed a level of $250 to $300. If that was indeed the case, the "effective maximum income limits" discussed above with respect to annual bills would no longer be appropriate.

2023 3-person Household			
Income	FPL Range	Monthly Income	Monthly Affordable Bill (6%)
$12,440	50%	$1,037	$62
$24,880	100%	$2,073	$124
$31,100	125%	$2,592	$156
$37,320	150%	$3,110	$187
$43,540	175%	$3,628	$218
$49,760	200%	$4,147	$249
$62,200	250%	$5,183	$311

A different way to consider the maximum income eligibility for cold weather shutoff protections is to consider the "self-sufficiency income" throughout a state.[6] Referencing the self-sufficiency standard informs income eligibility for cold weather protections in two different ways.

First, a self-sufficiency standard will demonstrate that the income at which a household will be "self-sufficient" varies widely based on the composition of a household. Self-sufficiency incomes calculate incomes for 719 different households of different sizes and compositions. A three-person household, for example, can have 15 different compositions,

[6] Self-sufficiency standards by state can be accessed at https://selfsufficiencystandard.org/state-data/

comprised of differing numbers of adults, infants, pre-school children, school-age children, and teen-agers. Based on the family composition, just for a three-person household, the self-sufficiency income in Adams County (PA) in 2021 can range from roughly 200% to 250% of Poverty Level. In contrast, a four-person household can have 35 different types of composition (based on differing numbers of adults, infants, pre-school children, school-age children, and teenagers). In Adams County (used simply for illustration), the 2021 self-sufficiency income can range 160% to more than 270% of Federal Poverty Level.

Not only does the self-sufficiency income vary by household composition, it varies by geography as well. Staying in Pennsylvania, and using a three-person household (one adult and two school-age children) as an illustration, the self-sufficiency income in 2021 ranged from 159% to 275% of Poverty. Within this range, each household was a 3-person household. Moreover, each household had one adult and two school-age children; and each household would have had an income of $25,260 at 100% of Poverty Level. The difference identified is solely a function of a difference in the county in which the household resided and the cost-of-living in that county.

The conclusion to be drawn is that any designation of a single statewide range of Poverty Level as being the income which demarcates the point at which a household with income less than the self-sufficiency income would be wrong. In Pennsylvania, for this particular three-person household (1 adult; 2 school-age children), the self-sufficiency income would range from a low of $40,121 to a high of $69,357.

Households with other household sizes and other household compositions, of course, would demonstrate even further differences in dollars and Poverty Level ranges.

In short, if one accepts the proposition that winter shutoff protections should be means-tested (and consideration of this should not be read as implying an endorsement of doing so), it is clear that it would be inappropriate to use the same maximum income eligibility as is used for a rate affordability program. The limited data above would appear to indicate that a means-tested winter shutoff protection program would not be unreasonable to consider a maximum income eligibility of 300% of Poverty or more.

Crisis Assistance / Hardship Funds

Providing crisis assistance (hardship assistance) presents entirely different income eligibility issues than providing either rate affordability assistance or cold weather shutoff protections.

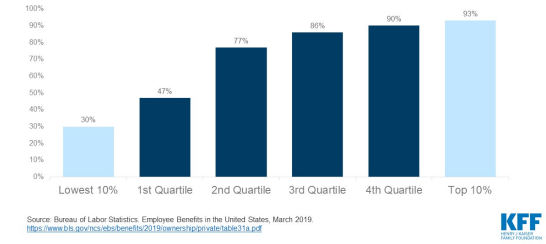
Means-testing for rate affordability assistance, as well as for cold weather shutoff protections (if one decides to use a means-test for cold weather shutoff protections) serve distinctly different functions. Cold weather shutoff protections are designed to ensure that essential life services are not placed in jeopardy during life-threatening months due to nonpayment attributable to an inability-to-pay for home utility services.

Service may be placed in jeopardy because a household's income was unable to respond to certain exigencies. Looking at these exigencies considers not merely the *level* of a household's income, but the *fragility* of the household's income as well.

Low-income workers can have their ability to pay utility bills threatened due to unavoidable disruptions in their economic lives. A personal illness requiring time off or the illness of a child requiring time off generally represents a permanent loss of income. The jobs of low-wage workers simply do not provide the paid leave required to respond to such circumstances.[7] The Chart below, for example, shows the percentage of workers with paid sick leave by wage level as reported by the U.S. Census Bureau.

Figure 1

Share of Private Industry Workers with Paid Sick Leave, by Wage Level, 2019



Source: Bureau of Labor Statistics. Employee Benefits in the United States, March 2019. https://www.bls.gov/ncs/ebs/benefits/2019/ownership/private/table31a.pdf

KFF

The vulnerabilities faced by low wage workers to economic disruptions due to the lack of paid leave has been well-documented.[8] The difference is particularly evident for women. The Kaiser Family Foundation reports that "across the board, low-income women and those with part-time employment are less likely to be offered any of these benefits compared to their higher income and full-time counterparts."[9] The KFF data is set forth in the Table below. KFF reports that "low-income mothers who must miss work when their child is sick are far more likely to lose pay (75%) compared to higher income mothers (33%).[10]

Working Women who are low-income or in part-time jobs are less likely to be offered employer benefits such as paid sick leave and parental leave

	Paid Vacation	Paid Sick Leave	Paid Parental Leave	Paid Family and Medical Leave
Income				
<200% FPL	51%	46%	27%	28%
=>200% FPL	74%	73%	48%	45%
Work Status				
Part-time	37%	35%	20%	19%
Full-time	78%	75%	50%	48%

[7] Claxton and Levitt (March 2020). Paid Sick Leave is Much Less Common for Lower-Wage Workers in Private Industry, Kaiser Family Foundation.

[8] Claxton (March 2020). Paid Sick Leave is much less common for lower-wage workers in private industry, Kaiser Family Foundation (Lower wageworkers are much more likely to lack access to paid sick leave. "Among the 25% of private industry occupations with the lowest wages ($13.25 per hour or less) 47% have access to paid sick leave; for the 10% of private industry occupations with the lowest wages ($10.48 per hour or less), the percentage with access to paid sick leave falls to 30%. Workers in higher-wage occupations are much more likely to have access to this benefit. For example, 77% of private industry workers with occupations in the second wage quartile ($13.25 to $19.00 per hour) have access to paid sick leave, with the percentage rising up to 90% of private industry workers with occupations in the top wage quartile.") See also, Ranji, et al. (Dec. 2020). Coronavirus puts a spotlight on paid leave policies, Kaiser Family Foundation; Boyens, Karpman, and Smalligan (July 2022). Access to paid leave is lowest among workers with the greatest needs: Findings from the December 2021 well-being and basic needs survey, Urban Institute.

[9] Ranji, et al. (April 2021). Difficulty Tradeoffs: Key Findings on Workplace Benefits and Family Health Care Responsibilities from the 2020 KFF Women's Health Survey, Kaiser Family Foundation.

[10] Id.

It is not, however, simply the lack of paid leave that presents situations leading to a potential inability to pay utility bills at a particular time. It is the lack of flexible work arrangements. One study reports that "many lower-wage workers are caring for multiple children, generally in homes where both parents are working or in single parent homes. Many also are providing care to elderly relatives or other family members with significant health conditions. Yet others have acute or chronic medical conditions themselves that often require medical treatment or time away from work. Thus, like higher-wage worker, many lower-wage workers need flexible scheduling, alternative start and end times, compressed workweeks, and the ability to work some hour at home (providing the job can be done at home)."[11] Nonetheless, "lower wage and lower-income workers have fewer options and less access to flexible work arrangements than higher-wage and higher-income workers."[12]

The cause of a utility crisis situation, however, is not simply a function of income. Many lower income households may be able to manage their payments so long as life is stable. But any number of factors, including but not limited to the loss of income discussed above, may introduce instability. Significant unexpected expenses, including extraordinary seasonal changes in utility bills due to weather, may disrupt household lives.

Indeed, disruption may be introduced even if a household would not typically be considered "low-wage" or "low-income." Frequently, for example, the loss of the primary wage earner (e.g., due to death or divorce) may introduce disruptions.

In short, the traditional definitions of maximum income limits by which to identify income eligible households for low-income assistance programs do not appear to be applicable to crisis intervention programs. The purpose of a crisis intervention program is not to respond to ongoing, chronic inability-to-pay in typical circumstances. It is instead designed to respond to short-term inability-to-pay when exigencies present themselves.

It would be reasonable to provide crisis assistance without a maximum income limitation. Should this be done, the focus of the crisis intervention would be on the nature and extent of the exigency, and the inability of the household to respond to the exigency.

Should maximum income ceilings be set for crisis intervention, it would not be unreasonable to set those income limits in excess of 200% of the Federal Poverty Level. As discussed above, county self-sufficiency incomes, at least in Pennsylvania, equal or exceed 275% of Poverty.

Low-Income Weatherization

Maximum income limitations for ratepayer-funded low-income weatherization programs should be considered at levels that substantially exceed maximum income limitations for rate affordability assistance and/or shutoff prevention/protection programs. The ceiling on income-eligibility for a low-income weatherization program is not tied to whether a utility bill is "affordable" in the absence of utility assistance or to whether a customer is in danger of losing access to essential utility services in the absence of assistance.

[11] Danziger and Boots (2008). Lower-Wage Workers and Flexible Work Arrangements, Urban Institute, Georgetown University Law Center.

[12] Id.

A low-income weatherization program instead has an entirely different objective. The objective of a low-income weatherization program is to deliver investments in energy efficiency improvements to households that, in the absence of the program, would be excluded from making such improvements. The factors leading to such exclusion are commonly referred to as "market barriers." The market barriers faced by low-income households are different than those which are faced by non-low-income households.

Given that low-income weatherization is often , if not generally, tied to market barriers that would prevent low-income investment in usage reduction measures in the absence of external assistance, the maximum income eligibility for these programs is often also tied not to the affordability of the underlying home energy bills, but rather to the affordability of the underlying housing. Accordingly, even if a ratepayer-funded bill affordability program has a maximum income eligibility equal to 150 percent of FPL, the maximum income eligibility for a ratepayer-funded weatherization program might reach as high as 60% to 80% of either State Median Income (SMI) or Area Median Income (AMI).

Three of the primary market barriers facing low-income households—though clearly not the only ones—impeding low-income investment in energy efficiency include: (1) the likelihood that low -income households are renters rather than homeowners; and (2) the frequent mobility of low-income households; and (3) the extent to which low-income household are financially "over-extended" by their housing costs, thus not having sufficient discretionary funds to invest in energy efficiency, even if such investments would be cost-effective in the short- to medium-term. Without addressing each barrier in depth, it is possible to consider some of the data presented in a Wisconsin energy efficiency proceeding supporting these conclusions.

Renter Status: People often talk about the "split incentive" issue with low-income efficiency. The term "split incentives" refers to the situation where the cost of installing measures is generally borne by the owner of a housing unit while the benefit of reduced consumption (and thus reduced bills) is directed toward the resident (i.e., the tenant). As a result, since the costs and benefits are borne by different stakeholders, no investment occurs.

The problems caused by renter status, however, go well beyond this economic problem. There is a legal problem as well. When a person is a tenant, the person does not have what is called the "dominion interest" over the major systems in a home that would generate substantial energy efficiency (and thus bill reductions). The "dominion interest" refers to the authority to make decisions. Even if the tenant had the desire to make energy efficiency investments, and the financial wherewithal to fund such investments, as a non-owner of the home, the tenant would not have the authorization to make such changes to the major systems and appliances, (whether it be heating, hot water, refrigeration or something else) resulting in the energy efficiency improvements.

In Wisconsin, we found that low-income households in Wisconsin are predominantly renters. On the one hand, Wisconsin had 1,580,945 occupied units occupied by homeowners in 2019, of which roughly 36,192 (2%) had income at below $10,000; of all owner occupied units, 111,821 (7%) were occupied by households with annual income below $20,000. On the other hand, Wisconsin had 777,217 occupied housing units in 2019 occupied by renters, of which

203,171 (26%) were occupied by renters with an annual income at or below $20,000.[13] If you are is poor in Wisconsin, you are most likely to be a renter as well (65% of all households with income below $20,000 are renters).

Frequent Mobility: In addition to their tenure, a second housing-related attribute of low-income tenants that impedes their ability to use energy efficiency as a mechanism to reduce home energy consumption is their tendency to be more mobile. Census data demonstrates quite clearly that, compared to the proportion of the total population that changes residences each year, nearly twice as many low-income households move. As a result, even in those instances where a tenant may have the authority to invest in an energy efficiency measure, and assuming a financial ability to do so, the payback period required to justify such an investment would need to match the household's tenure. A low-income household, in other words, will not invest in a measure with a two-year payback if that household intends to move to a different dwelling in 12 months. A low-income household will not invest in a measure with a three-year payback if that household does not anticipate remaining in the home for more than two years.

An examination of the mobility of low-income households compared to the mobility of households as a whole shows the increased frequency of mobility within the low-income population in Wisconsin. This data can be used as a surrogate for households that do not have a sufficient length of residence to be able to justify energy efficiency investments. Few energy efficiency investments provide a one-year payback. In addition to excluding many low-income households completely from the efficiency market, restricting investments exclusively to measures that would generate a one-year payback would result in substantial cream-skimming of usage reduction, with the bulk of cost-effective usage reduction missed.

The mobility of households in Wisconsin can be measured by the extent to which they lived in their same home at the same time the previous year ("12 months ago"). The Wisconsin data indicates that mobility is much more prevalent in the low-income population than it is within the non-low-income population. In 2019, while 21% of all persons with household income less than $10,000 had moved within the last year, and 16% of all persons with household income between $10,000 and $35,000 had, only 9% of all households with income greater than $75,000 had moved relative to their residence one-year.[14]

Energy Efficiency Summary Within the context of this discussion regarding where programs should draw the maximum income eligibility for various low-income assistance programs, it is clear that, if the objective of energy efficiency assistance is to address the market barriers that impede low-income investment in energy efficiency in the absence of external assistance, the program income eligibility can (and should) reasonably extend above 150% to 200% of Poverty Level. The line to be drawn has historically referenced income limits associated with housing affordability. Programs directed toward stabilized housing (i.e., reduced mobility), increasing homeownership, and reducing shelter burdens, look to maximum income levels of up to 80% of Area Median Income (AMI) rather than the much lower income associated with

[13] Table B25118, American Community Survey, 5-year data, 2019.

[14] Table B07010, American Community Survey, 5-year data, 2019.

the problem being addressed by the ratepayer-funded affordability program.

Summary

The basic thesis of the discussion above is that many deliberations over where to set the maximum income eligibility for different low-income utility programs today ask the wrong question. The current discussion tends to focus primarily on defining the characteristics of the program participant:. The question frequently posed is: how should we define "being poor"

The more appropriate approach to considering maximum eligibility decisions is to focus on the purpose of the program. Each program is established to accomplish particular purposes by addressing (and redressing) particular problems.

If, and to the extent, that the decisionmaker decides to focus on the objective sought to be accomplished by the program, it becomes evident that it is entirely appropriate to have different definitions of "low-income" for different utility assistance programs. The problem sought to be alleviated by a rate affordability program, for example, is very different from the problem sought to be alleviated by a low-income weatherization program.

Moreover, the problem to which a program is responding may well be perspective-dependent. A bill assistance program funded through government funds may well be responding to the general economic difficulties of a "low-income" household, while a bill affordability program may well be responding to the payment difficulties associated with bills that are an unaffordable percentage of income. The social-purpose served by the government program, and the business-purpose served by the utility program, may, in turn, reasonably lead to different definitions of the maximum income that a household may have and still qualify for the program.

Persons interested in more information about how to address related questions such as how to define "affordability" and how to define "household income" can write for more information at:

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