

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.**

IN THE MATTER OF

LIFELINE AND LINK-UP

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WC DOCKET No. 03-109

REFILED COMMENTS OF NATIONAL FUEL FUNDS NETWORK

COMES NOW, the National Fuel Funds Network (NFFN), 730 15th Street N.W., Suite 940, Washington D.C., 20005, by and through its undersigned counsel, and submits these Refiled Comments with respect to the Recommended Decision of the Federal-State Joint Board on Universal Service in the above-captioned docket:

INTRODUCTION

On or about August 15, 2003, the National Fuel Funds Network electronically filed comments in Docket 96-45 regarding the April 2, 2003 Recommended Decision of the Federal-State Joint Board on Universal Service regarding the Federal Communication Commission's Lifeline/Link-up program. NFFN believed it was submitting comments pursuant to the FCC's Notice of Proposed Rulemaking (released June 9, 2003), which stated in relevant part: "In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, which in this instance is CC Docket No. 96-45." (Notice of Proposed Rulemaking, at paragraph 24). The Notice of Proposed Rulemaking further stated that "all filings should refer to CC Docket No. 96-45." (Notice of Proposed Rulemaking, at paragraph 23). Counsel construed this as a direction to file the requested comments in Docket 96-45. Counsel has since been informed that comments should have instead referred to WC Docket No. 03-109. Because of this misunderstanding, because NFFN's comments were filed in a timely fashion (even if perhaps captioned with the wrong docket number), and because these Refiled Comments are identical to those previously filed (and thus no prejudice would exist to any party), NFFN requests the FCC to accept these Refiled Comments as though filed on or before August 18, 2003 in WC Docket No. 03-109.

I. INTEREST OF THE PARTY.

1. These comments are provided on behalf of the National Fuel Funds Network (NFFN). NFFN is the national association of charitable energy assistance providers. NFFN has more than 240 members nationwide. Its membership consists of nonprofit agencies, natural gas and electric utility companies, individuals, and state and local government agencies. NFFN submits these

comments on the Joint Federal-State Board Recommended Decision based on the experience of low-income households with gaining access to low-income energy assistance.

2. NFFN and its membership have a particular interest in the Lifeline telephone assistance program. The end of the winter heating season presents particular financial problems for low wage consumers. Many of these consumers simply cannot afford to pay their winter home heating bills. Protected by state restrictions on winter utility shutoffs, these consumers frequently accrue substantial dollars of arrears. When the shutoff restrictions end in March and April, these low-income consumers must either come up with hundreds of dollars of bill payments or risk losing their utility service altogether.¹
3. The problem is substantial. A June 2001 report by the National Fuel Funds Network, and other national organizations, found that at the end of the 2000/2001 winter heating season, at least 4.3 million low-income households were at risk of having their utility service cut off because of an inability to pay their winter home energy bills.² While natural gas prices moderated after the 2001/2002 winter heating season, recent increases in natural gas and fuel oil prices are again creating crisis situations for utility customers. These households are disproportionately low wage, low-income households.
4. That payment-troubled customers are disproportionately low wage households is commonly accepted. National data reported by the U.S. Census Bureau indicates that the proportion of households in arrears at any given point in time is substantially higher for the low-income population than for the population as a whole. One 1995 census study, for example, reported that while 9.8% of non-poor families could not pay their utility bills in full, 32.4% of poor families could not do so. According to the Census Bureau, while 1.8% of non-poor families had their electric and/or natural gas service disconnected for nonpayment, 8.5% of poor families suffered this same deprivation.³
5. Information from various states corroborates these findings as well. One 1998 Illinois report, for example, indicated that while 44.5% of LIHEAP-assisted natural gas customers were in arrears, only 28.9% of “general households” were. So, too, has an analysis by the staff of the New Hampshire Public Utilities Commission estimated that roughly 35% of the low-income *electric* customers entering the Electric Assistance Program (EAP) entered the program with arrears. As a general rule, estimates place the average number of customers in arrears at any given point in time at between 10% and 12% of the total customer base.

¹ While state shutoff restrictions focus on utility shutoffs, similar issues would arise from the loss of service from bulk fuel vendors. The loss of fuel oil service, for example, might arise from a refusal of a dealer to deliver additional oil when prior bills remain unpaid. There is no “disconnection of service” in the sense of a utility shutoff, but there is a loss of home heating nonetheless. Indeed, given the winter utility shutoff protections many states have adopted to prevent winter shutoffs—these are often referred to as a winter moratorium—customers of bulk fuels such as fuel oil and propane may be in *greater* danger than utility customers.

² National Fuel Funds Network, et al. (June 2001). *The Cold Facts*, at 1, National Fuel Funds Network: Washington D.C.

³ U.S. Census Bureau, *Extended Measures of Well-Being: 1992*, P70-50RV (November 1995).

6. According to one study in Maine, the lack of telephone service by low-income households can serve as a barrier to participation in low-income energy programs, as well as a barrier to accessing the customer service protections, essential to addressing these energy payment problems and preserving home energy service.
7. The state of Maine has adopted a unique approach to the winter payment problems of low-income customers. Rather than adopting a "pure" winter moratorium, whereby disconnections of service are absolutely prohibited for income-eligible customers from November through April, Maine has adopted a two-pronged approach to winter shutoffs. The first prong requires utilities to make a reasonable effort to make personal contact with customers who are \$50 or more in arrears. This "personal contact" may occur either by telephone or by a premise visit. The second prong is a system of payment plans. The Maine public utility commission (PUC) requires most utilities to offer eligible customers⁴ an opportunity to enter into a Special Payment Arrangement. Under this plan, a customer may pay less than the full amount of winter bills as they become due; the difference is then "made-up" in equal increments paid during the non-heating months. In the event that (1) no personal contact is made with the customer, or (2) personal contact is made and the customer and utility fail to agree on a payment plan, or (3) a payment plan is agreed to but is subsequently broken, a utility may seek to disconnect service even during the winter months so long as it first seeks and obtains approval from the Maine PUC's Consumer Assistance Division.
8. A report for the Maine PUC, prepared by the National Consumer Law Center, found that these rules operated, however unintentionally, to exclude a discrete population of low-income households.⁵ The report found that 70 percent of the households for whom a winter disconnection was sought, and 80 percent for whom a winter disconnection was granted, lacked *telephone* service in their home. The study found that the homes without telephones did not have greater arrears than the remaining population.⁶
9. The study found instead that the structure of the utility's collection procedures worked to exclude these households that lacked telephones. It found that a statistically significant difference existed in the number of "no-phone households" that arranged to make full or partial payments, that obtained public assistance, and that entered into payment plans. The study concluded:

It would appear that households that lack telephone service do not have the same ability to undertake the basic activities necessary to maintain home heating. They

⁴ An "eligible customer" is defined to be a customer who "is not able to pay for utility service in accordance with the terms of the bill without exposing the customer or other members of the customer's household to the probability of deprivation of food or other necessities for health or life." Chapter 81, sec. 17.A.5, Maine P.U.C. Rules.

⁵ National Consumer Law Center, *An Evaluation of Low-Income Utility Protections in Maine: Winter Requests for Disconnect Permission*, at 16 - 18 (July 1988).

⁶ Indeed, exactly the opposite was found. On average, the population without phones had \$158 in arrears at the time of the original disconnect notice issued by the utility while the population as a whole had \$170 in arrears. Similarly, at the time the utility sought permission to disconnect in the winter, the average arrears for the "no-phone" population was \$189 while the average arrears for the total population was \$210. *Id.*, at 17.

cannot contact social service agencies for public assistance; nor can they contact their utility to make payment plan arrangements.

Because of this direct relationship between telephone service and the ability to access necessary energy assistance and customer service protections, NFFN concludes that as an association of entities providing charitable energy assistance, it has a substantial interest in the universal provision of telephone service. NFFN's interests are directly implicated by the Lifeline/Link-Up proposals advanced by the Recommended Decision of the Federal-State Joint Board on Universal Service in this Docket.

II. PARAGRAPH 34.

10. Paragraph 34 of the Joint-Board's Recommended Decision –hereafter the April 2, 2003 Recommended Decision of the Joint Board will simply be referred to as the Recommended Decision-- provides that “the Joint Board. . .recommend(s). . .that consumers eligible for federal Lifeline/Link-Up support under an income-based criterion be required to present documentation of income eligibility before enrolling in Lifeline/Link-Up.” The Joint Board recommends that “states should be given the flexibility to determine the certification procedures. . .”
11. NFFN requests a clarifying decision indicating that the language “consumers. . .be required to present” does not imply that certification must *exclusively* be provided directly from individual consumers. Instead, NFFN recommends that carriers performing income verification accept a certification of income by an authoritative agency having reason to possess authoritative income documentation. Such agencies may include, for example, Legal Services Corporation (LSC) or Legal Aide offices (which require income verification under federal regulations), local fuel funds (which require income verification as a component of energy crisis fund distribution), Community Action Agencies (CAAs) (which require income verification for various federal programs under federal regulations),⁷ state and local housing agencies (which require income verification under state and federal law),⁸ local Community Development Corporations (CDCs) (which administer means-tested job training and housing programs), and similar agencies.
12. This proposal is *not* to create “automatic enrollment” for an entirely new set of public programs. The recommendation, instead, is merely that when there is a need for income verification, a certification of income eligibility provided by an entity having reason to have authoritative information, when that certification is made on behalf of an individual, should be accepted *as though* it came directly from the individual. Lifeline programs should, in other words, accept the income determination by professionals who routinely engage in applications involving income verification. Opening up verification to these authoritative entities does not place an administrative burden on a Lifeline program. It *does* provide an additional door through which low-income customers may enter the Lifeline program.

⁷ For example, the Community Services Block Grant (CSBG) programs.

⁸ For example, housing provided through the federal Home Investment Partnership Program (HOME).

13. Adopting such a procedure is not a revolutionary idea. For example, one of the primary lessons to be learned through the considerable effort expended on improving the outreach for children's health insurance programs (both Medicaid and CHIP) is the benefit of expanding the number, and type, of entities that will be used to take enrollment information. Proposals to increase the enrollment of low-income children in both Medicaid and CHIP are equally applicable to the telephone Lifeline program. One common set of proposals, for example, includes expanding the types of entities that can determine a child to be presumptively eligible for Medicaid. States may use additional entities than those that are currently permitted, such as public schools, child care resource and referral centers, and child support enforcement agencies, to determine presumptive Medicaid eligibility for children.⁹
14. Adopting this procedure addresses multiple barriers that exist to individual enrollment in public assistance programs. Drawing on NFFN's expertise with outreach and intake in the energy assistance area, NFFN believes the above proposal will help to address the following barriers to participation in Lifeline.
- ***The lack of "effective knowledge"*** is the primary barrier to participation in Pennsylvania's Low-Income Home Energy Assistance Program (LIHEAP).¹⁰ In a study of LIHEAP participation in Pennsylvania, Penn State University's Drew Hyman found that the lack of information substantially impeded participation. The Penn State study found that "while most consumers indicate awareness of energy assistance, in general, their knowledge is not sufficient to allow them to act. Almost half of those who say they 'know about' energy assistance cannot name a single program." The Penn State study found that fifty-four percent (54%) of the respondents were aware of energy assistance but could not name a specific program or were unaware of any specific program. The Penn State report concluded: "While the level of awareness has improved considerably in recent years, these findings raise questions about the uninformed majority. People who are unaware of programs or cannot name an agency which they can contact for assistance most likely do not have effective access to help when they need it." "Effective knowledge" involves not only conveying information, but teaching consumers how to use that information as well. According to the Pennsylvania work, consumers must know how to act upon the information they are given. NFFN has concerns that low-income households do not have "effective knowledge" regarding how to access the telephone Lifeline program.
 - ***Reaching the new poor*** is a second barrier which the NFFN proposal addresses. Research on energy assistance in New York identified the "new poor" as a particular population vulnerable to nonparticipation. The new poor include those households who have, in the New York study terminology, "become poor." According to the New York study, most elderly poor in New York did not know of, and did not use, the existing

⁹ GAO (April 2000). *Medicaid and SCHIP: Comparisons of Outreach, Enrollment Practices, and Benefits*, Report No. GAO/HEHS-00-86, at n. 30, General Accounting Office: Washington D.C.

¹⁰ Drew Hyman, *Consumer Budget Priorities and Utility Payment Problems in Pennsylvania*, prepared by Consumer Services Information System Project (Penn State University) for the Pennsylvania Public Utility Commission (1988).

energy "intervention programs" designed for their benefit. Noting that "no intervention program can be effective unless it is known and used," the New York study sought to determine "the degree to which (the sample of elders studied) was aware of and utilized these programs."¹¹ The New York report found that "fewer than 20% of the sample were aware of the SCIP¹² or weatherization programs." On the one hand, the study explained the low SCIP participation, notwithstanding "intensive outreach and heavy media advertising," by noting the "brief time available for advertising and implementing the program." On the other hand, the study noted that "the CSA weatherization program also had relatively low visibility despite extensive advertising and outreach campaigns." The report concluded as to the elderly:

It is quite likely that both of these attitudes derive from the fact that the elderly poor have frequently *become poor* with age. (emphasis in original). The newly poor have a long history of self-reliance and independence and quite often take pains to distinguish themselves from the welfare population. Programs that appear to present 'something for nothing' are difficult for many of them to accept. It appears, too, that many elderly perceive these programs as 'welfare' and thus as inappropriate for them --despite acknowledged need.

NFFN has concern that many households that are eligible for Lifeline are not the chronically poor, but rather are households that have "become poor."¹³ Identifying households that have "become poor" as a population in need of special attention, and that needs particular effort in outreach and education, are two of the primary lessons to be learned from the New York energy assistance study. NFFN's concern is that households that have become poor are precisely those that qualify for Lifeline but that are least likely to know how to access such assistance.

- ***Reaching first time program applicants*** is the third concern which the NFFN proposal addresses. First time program applicants present unique problems of their own. Consider the lessons from Vermont's Food Stamp program. The application forms for the Food Stamp program in Vermont were a major barrier to participation.¹⁴ The participants, according to the Vermont researchers, "viewed the 12-page application form as complex and overwhelming." The report continued, however, to note that while the monthly income reporting forms were not major problems for most Food Stamp recipients, problems did exist. For example, the report found, "there were several participants who mentioned that the *first time* (emphasis in original) the monthly reporting form arrived in the mail, they had been confused about what was expected." We know from experience with fuel assistance that if households are found to be ineligible once, they are less likely to

¹¹ Charles Unseld, *The Impact of Rising Energy Costs on the Elderly Poor in New York State*, at 61, prepared by Welfare Research, Inc. for the New York State Energy Office (January 1978).

¹² SCIP was the special crisis intervention program.

¹³ See generally, National Fuel Funds Network (May 2002). *A Fragile Income: Deferred Payment Plans and the Ability to Pay of Working Poor Utility Customers*, National Fuel Funds Network: Washington D.C.

¹⁴ Sandage Advertising & Marketing, *Food Stamp Program: Focus Group Research Report*, at 6, prepared for Vermont Department of Social Welfare (1989).

apply for assistance again. Many eligible nonparticipants have misperceptions regarding their eligibility for a program. We know from fuel assistance research in Colorado, for example, that persons who have been found ineligible for one program (however unrelated to fuel assistance) are less likely to apply for fuel assistance. Similarly, persons who have been found ineligible in the past for fuel assistance are not likely to apply again, even if their circumstances have changed.¹⁵ The implication is that if households are denied access to Lifeline the first time they apply (even if the denial is due to their failure to comply with procedural requirements, however inadvertent), the chances are very high that those households will not seek to access Lifeline again, even if the household is eligible. Ensuring that Lifeline application procedures work for the first time applicant has substantial implications for long-term program participation levels.

III. PARAGRAPH 15.

15. Paragraph 15 of the Recommended Decision provides that “the Joint Board recommends that the Commission add an income-based standard to the current default federal eligibility criteria.” NFFN endorses this recommendation. NFFN endorses the observations made with respect to shrinking participation in public assistance programs. (Paragraph 16). Participation rates in public assistance programs often bear little, if any, relationship to the actual incidence of Poverty within a state. One analysis of the need for home energy assistance in Maryland, for example, reported that:

Low-income status in Maryland is not associated simply with the receipt of public assistance. Tracking public assistance participation rates does not provide an accurate picture of the number of low-income households in Maryland or of the trend in Poverty over time. The state’s Temporary Assistance to Needy Family (TANF) program, the program most commonly thought of as “welfare,” has seen substantial decreases in participation in the past five years. While in 1997, Maryland had more than 52,000 TANF recipient households, by 2000, the participation level was down to less than 30,000.

Similarly, the federal Food Stamp program is viewed as the most ubiquitous public assistance program in the nation. As with TANF, Food Stamp participation rates in Maryland have decreased substantially in recent years. While in 1997, Maryland had more than 150,000 households participating in the Food Stamp program, by 2001, that participation had fallen to less than 100,000. In the past five years, Food Stamp participation has decreased by nearly 55,000 households. *It is important to remember, however, that. . .despite these falling participation rates, Maryland had 130,000 more low-income residents in 2000 than it did in 1990.*¹⁶(emphasis added).

¹⁵ Roger Colton (1997). *Home Energy Assistance Review and Reform in Colorado*, at Chapter 10, Colorado Energy Assistance Foundation: Denver (CO).

¹⁶ Roger Colton (November 2002). *Low-Income Home Energy Affordability in Maryland*, at 4 – 5, Maryland Office of People’s Counsel: Baltimore (MD).

NFFN thus urges an even stronger statement than that in the Recommended Decision (“a few commenters state that individuals that are no longer eligible to receive welfare benefits are still too poor to afford the cost of local telephone.” [Paragraph 16]). NFFN urges that participation rates for public assistance programs are not an accurate indicator of the extent or depth of Poverty in a state. Accordingly, participation in Lifeline should not be limited exclusively to those households that participate in some sort of public assistance.

16. Even aside from this observation, there are other reasons to add an income-based criterion to the Lifeline program. Exclusive reliance on public assistance as an eligibility criterion has a substantial and adverse impact on lawful immigrants.¹⁷ In support of this conclusion, NFFN appends to this set of comments as Attachment 1 the analysis titled *Establishing Telecommunications Lifeline Eligibility: The Use of Public Benefits Programs and its Impact on Lawful Immigrants* (November 2000). By this reference thereto, NFFN incorporates that analysis herein as if fully set forth.
17. In sum, NFFN endorses the Joint Board recommendation in Paragraph 15 of the Recommended Decision regarding the use of an income-based eligibility criterion.

IV. PARAGRAPH 38.

18. Paragraph 38 provides that “the Joint Board also recommends that the Commission encourage all states, including states that use the federal default criteria, to adopt automatic enrollment as a means of certifying that consumers are eligible for Lifeline/Link-Up. . .”
19. NFFN endorses this recommendation.¹⁸ NFFN posits that at least three reasons support a categorical eligibility determination (i.e., automatic enrollment). First, there is no reason for telecommunications carriers to engage in the time and expense of certifying income for a population whose income is already certified by existing public benefits programs. Second, requiring low-income households to apply to their local utility, and lay out their household income to an institution that frequently stands in the role as a creditor, will make the program inherently self-limiting. Third, the very act of requiring a "sign-up process" limits program participation, irrespective of the type of program offered (and by whom). To the extent that such processes can be minimized, participation rates will be maximized.
20. Using what the Joint Board refers to as “automatic enrollment” is not a revolutionary concept. In other arenas of public benefits, the process is known as “adjunctive eligibility.” In lay parlance, the process of “adjunctive eligibility” is known as “express lane eligibility.” It is an accepted strategy for expanding enrollment in desired public assistance programs. For example, "Express Lane Eligibility" is one strategy advocated for expanding the number of low-income children enrolled in Medicaid and CHIP.

¹⁷ This observation differs from the observation that “many otherwise qualified individuals refuse to participate in public assistance programs because they wish to avoid the stigma associated with such programs.” (Paragraph 16).

¹⁸ For the reasons stated above with respect to lawful immigrants, NFFN would express concern about the use of automatic enrollment as the *exclusive* means of enrollment.

“Express Lane Eligibility” . . . accelerates enrollment for the hundreds of thousands of uninsured children already enrolled in other income-comparable publicly funded programs such as Head Start or school lunch. The simple notion is that children who have met the income test for these income-comparable programs should have their eligibility expedited and do not need to provide duplicative income information to qualify for health care coverage. Express Lane Eligibility can cut administrative red tape while streamlining the application process. . . .¹⁹

21. Express Lane Eligibility can be operationalized by using the same application form for multiple programs (which effectively is what automatic enrollment accomplishes). With a single application, families are required to fill out and submit information only once. A number of states, including Illinois, Maryland, Michigan, California and Ohio, use joint applications for their TANF, Medicaid and Food Stamp programs. Other states use the same application for their WIC and Medicaid programs. It has been recommended, as part of the national push to enroll low-income children in health insurance programs, to "allow State Medicaid and SCHIP agencies to access information about children who participate in the Free and Reduced Price Lunch program to enhance efforts to enroll additional children, because many of the children who participate in the school lunch program also meet the eligibility criteria for Medicaid and SCHIP."²⁰
22. According to the Children's Partnership "the greatest potential for reaching large numbers of children most simply is to allow eligibility for one program to be used to fulfill some or all of the eligibility requirements for health care." This "full Express Lane Eligibility" has already been adopted to link SSI with Medicaid. Federal law now authorizes that enrollment in SSI will automatically establish a person's eligibility for Medicaid. In addition, the federal WIC program has long used "adjunctive eligibility." In 1989, Congress authorized WIC agencies to begin to accept an applicant's documented participation in Medicaid, Food Stamps and AFDC (now known as TANF) as evidence of income eligibility for WIC. By 1996, fully two-thirds of WIC participants were enrolled through the adjunctive eligibility process.²¹ According to the Children's Partnership, "today, the process is so fully incorporated into the WIC system that it is taken for granted."
23. The use of adjunctive eligibility—referred to as “automatic enrollment” by the Joint Board’s Recommended Decision—would also be a useful tool to address the enrollment barriers identified above in the discussion with respect to Paragraph 34 of the Recommended Decision. By this reference thereto, that discussion is incorporated herein as if fully set forth in support of the Joint Board recommendation for automatic enrollment.

¹⁹ The Children's Partnership, *Express Lane Eligibility: How to Enroll Large Groups of Uninsured Children in Medicaid and CHIP*, Children's Partnership: Washington D.C.

²⁰ General Accounting Office (April 2000). *Medicaid and SCHIP: Comparisons of Outreach, Enrollment Practices, and Benefits*, Report No. GAO/HEHS-00-86, at n. 10, General Accounting Office: Washington D.C.

²¹ U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis and Evaluation, *Study of WIC Participant and Program Characteristics 1996: Final Report*, at 47.

V. PARAGRAPH 32.

24. Paragraph 32 of the Recommended Decision provides in relevant part that “consumers eligible for federal or state Lifeline/Link-Up support under an income-based criterion should be required to present documentation of income-eligibility prior to being enrolled in the program.” NFFN endorses this recommendation with one caveat. NFFN requests clarifying language that ensures that individuals enrolling under an income-based criterion be required to provide income verification of no greater stringency than that required for the least restrictive public assistance program. More specifically, NFFN requests clarifying language ensuring that households enrolling under an income-based criterion need not present *annual* income if other public assistance programs rely on *annualized* income. The Low-Income Home Energy Assistance Program (LIHEAP), for example, will accept 30-day or 90-day income as an appropriate income documentation.
25. NFFN submits two documents in support of this proposal to accept annualized 30-day or 90-day income as a basis for Lifeline eligibility. Attachment 2 is an NFFN publication titled *A Fragile Income* (2002). This publication documents the volatility (i.e., the “fragility”) of income for low wage workers. Attachment 3 is an NFFN publication titled *Local Layoffs as National Emergencies* (2002). This publication documents the disproportionate impact of economic displacement on low wage workers. By this reference thereto, both documents are incorporated herein as if fully set forth. Both documents support the conclusion that requiring annual income, rather than annualized income, is likely to have a disproportionate and adverse impact on the ability of low wage workers to access necessary Lifeline benefits.
26. In sum, NFFN requests clarifying language that the Recommended Decision’s reference to “documentation of income eligibility” be no stricter than the least restrictive public assistance program used as a Lifeline qualifying program. NFFN further requests clarifying language that the Recommended Decision’s reference to “documentation of income eligibility” refers to annualized income, not to annual income.

SUMMARY OF NFFN RECOMMENDATIONS

27. Based on the information and analysis presented above, the National Fuel Funds Network (NFFN) recommends as follows:
 - a. That the Joint Board recommendation in Paragraph 15 of the Recommended Decision be adopted.
 - b. That clarifying language be adopted with respect to Paragraph 34 of the Recommended Decision indicating that eligibility certification provided on behalf of a Lifeline applicant by an agency having reason to have authoritative information be accepted as if such certification was provided directly by the individual.

- c. That the Joint Board recommendation in Paragraph 38 of the Recommended Decision be adopted.
- d. That clarifying language be adopted with respect to Paragraph 32 of the Recommended Decision indicating that that the Recommended Decision's reference to "documentation of income eligibility" be no stricter than the least restrictive public assistance program used as a Lifeline qualifying program.
- e. That further clarifying language be adopted with respect to Paragraph 32 of the Recommended Decision indicating that the Recommended Decision's reference to "documentation of income eligibility" refers to annualized income, not to annual income.
- f. That the Commission grant such other and further relief as may seem just in the premises.

Respectfully submitted,

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**ESTABLISHING TELECOMMUNICATIONS LIFELINE ELIGIBILITY:
THE USE OF PUBLIC BENEFIT PROGRAMS
AND ITS IMPACT ON LAWFUL IMMIGRANTS**

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November 2000

One mechanism increasingly relied on today to enroll low-income households in multiple public assistance programs, while avoiding the need for multiple application processes, involves the use of participation in one program to establish eligibility for another.¹ An *exclusive* reliance on participation in public benefit programs as a means to establish eligibility for low-income telephone lifeline assistance programs, however, without providing an additional alternative entrée to lifeline benefits based on a determination of income, may systematically exclude lawful immigrants from program participation. The exclusion will first occur because of “public charge” concerns that prevent many immigrant families from applying for public assistance for which they are eligible. The exclusion will also occur because of statutory limitations that have been placed on the right of legal immigrants to participate in either federal or state public assistance programs.

Public Charge Limitations

The “public charge” concerns of legal immigrants stem from aspects of federal law that may disallow a resident from gaining status as a “legal permanent resident” (LPR) if certain financial conditions are met. A determination that an immigrant is likely to become “primarily dependent on the government for subsistence” can have “serious immigration consequences.”² While LPRs are not generally subject to the public charge test, it is “aliens who are seeking to become LPRs (through a visa application or an application for admission or adjustment in status) who have to convince an INS or consular officer that they are not likely to become a public charge.”³

The application of public charge requirements today results in very few adverse actions taken against immigrants in the United States. According to the Center on Budget and Policy Priorities, new “guidance” from the Immigration and Naturalization Service (INS) “very narrowly limits the situations in which receipt of public benefits is relevant to a ‘public charge’

¹ See e.g., Roger Colton (October 2000). *Innovations in Outreach and Enrollment for the Low-Income Home Energy Assistance Program*, Iowa Department of Human Rights: Des Moines (IA) (discussing the advantages of “adjunctive eligibility” for LHIEAP outreach).

² Shawn Fremstad (January 2000). *The INS Public Charge Guidance: What Does it Mean for Immigrants who Need Public Assistance?*, at 1, Center on Budget and Policy Priorities: Washington D.C.

³ *Id.*, at 2.

finding.”⁴ CBPP states that the “vast majority of immigrants who have already entered the United States --especially immigrants who are legal permanent residents-- will never be subject to a public charge determination.”⁵

Despite this current state of the law, the *practical* effect of public charge laws and regulations is to serve as a chilling mechanism for immigrant participation in public assistance programs. Little question exists but that “many legal immigrants fear that if they receive various public benefits, the Immigration and Naturalization Service (INS) or State Department will decide they are likely to become a public charge. . . . Recent research suggests that public charge concerns, along with the ‘chilling effects’ related to welfare reform and confusion about eligibility rules for benefits, have kept many legal immigrants from accessing benefits for which they are eligible.”⁶

This problem was recognized as substantial in the promulgation of regulations that formally clarified what the meaning of the term “public charge” is and what considerations go into making a public charge determination. According to the INS Notice of Proposed Rulemaking:

Although Congress has determined that certain aliens remain eligible for some forms of medical, nutrition, and child care services, and other public assistance, numerous legal immigrants and other aliens are choosing not to apply for these benefits because they fear the negative immigration consequences of potentially being deemed a ‘public charge.’⁷

The INS continued:

Concern over the public charge issue is further preventing aliens from applying for available supplemental benefits, such as child care and transportation vouchers, that are designed to aid individuals in gaining and maintaining employment.⁸

U.S. Department of Health and Human Services (HHS) officials agree. In a letter to the INS, HHS Deputy Secretary Kevin Thoren reported:

Over the past several years, there has been a significant decline in the receipt of welfare, health, and nutrition benefits by immigrant families and their citizen children, even though many of these families (or individuals within these families) are eligible for such benefits. HHS has received numerous reports from state and local government officials, program administrators, and community leaders around the country that a significant factor contributing to this decline in

⁴ Id., at 7.

⁵ Id., at 1.

⁶ Id., at 1; see e.g., Michael Fix and Jeffrey Passel (March 1999). *Trends in Noncitizens’ and Citizens Use of Public Benefits Following Welfare Reform: 1994 – 1997*, The Urban Institute: Washington D.C.

⁷ Department of Justice, Immigration and Naturalization Service, Proposed Rule, “Inadmissibility and Deportability on Public Charge Grounds,” Docket No. RIN-1115-AF45, 64 Federal Register 28675, 28676 (May 26, 1999).

⁸ 64 Federal Register, at 28676 – 28677.

participation is the confusion and fear that immigrant families have in relation to public charge policies.⁹

In sum, creating a lifeline enrollment process through which current participation in public assistance programs is the exclusive means of also obtaining lifeline benefits will have the effect of systematically excluding low-income legal immigrants on public charge grounds. Requiring current participation erects an entry barrier that is recognized to exclude substantial numbers of legal permanent alien residents.

THE IMPACT OF WELFARE REFORM.

In addition to the impacts which public charge considerations have on immigrant participation in public assistance programs, one further factor that keeps low-income immigrants, even legal permanent residents, out of public assistance programs involves the changing federal statutes regarding immigrant eligibility.¹⁰ Historically, legal aliens who settled in the United States were eligible for public assistance on the same basis as citizens. In 1996, however, the welfare reform law enacted by Congress barred most legal aliens from receiving Supplemental Security Income (SSI) and Food Stamps. In addition, this federal statute authorized states to limit access to Medicaid and to Temporary Aid to Needy Families (TANF) (the cash assistance program replacing the Aid to Families with Needy Children, AFDC). While subsequent legislation restored (or continued) SSI, Medicaid and Food Stamps for a portion of previous beneficiaries, the federal restrictions largely remain.

Eligibility Restrictions

While there is no question but that public assistance has always been restricted for *undocumented* aliens in the United States, the Welfare Reform Act substantially restricted the availability of public assistance to *legal* immigrants as well. The restrictions arose through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the “welfare reform” statute).¹¹ Shortly thereafter, Congress also enacted the Illegal Immigration Reform and Immigration Responsibility Act of 1996¹² which amended the Welfare Act. It is commonly held that while the Welfare Act reduced benefits to all recipients, the impact of this series of legislation was to impose on legal aliens the greatest burden of the cuts.¹³

Under the Welfare Act as originally enacted, “qualified aliens”¹⁴ were denied eligibility for two specified federally-funded programs: SSI and Food Stamps.¹⁵ While the Act did not directly

⁹ 64 Federal Register, at 28686.

¹⁰ See generally, Richard Boswell, “Restrictions on Non-citizens Access to Public Benefits: Flawed Premise, Unnecessary Response,” 42 *UCLA L.Rev.* 1475 (1995).

¹¹ Pub. L. No. 104-193, 110 Stat. 2105.

¹² Pub. L. No. 104-208, 110 Stat. 3009-546.

¹³ See e.g., Brendan Maturen, “The U.S. and Them: Cutting Federal Benefits to Legal Immigrants,” 48 *Washington U. J. Urb. & Contemp. L.* 319, 331 (1995).

¹⁴ “Qualified aliens” were defined to include aliens who are lawfully admitted for permanent residence in the United States, granted asylum or refugee status, paroled into the U.S. for at least one year, qualify for withholding of deportation or secure a grant of conditional entry into the U.S.

¹⁵ Welfare Act, Section 402(a)(3).

affect other means-tested programs, it would result in the loss of benefits such as Medicaid, since many states link Medicaid eligibility to the receipt of SSI.

In addition to establishing the class of “qualified aliens,” the Welfare Reform Act created a distinction between aliens legally residing in the United States at the time the Act was enacted and aliens who entered the country after that date. Aliens entering the United States after the date of the Welfare Reform Act’s enactment (August 22, 1996) are prohibited from receiving *any* benefits from a federal means-tested program for five years after entering the U.S.

The five-year ban applies to any form of federal means-tested program apart from SSI or food stamp programs, such as Medicaid, Temporary Assistance to Needy Families (TANF), block grants, and social service block grants. The only benefits for which a post-act alien is eligible during the ban are federal non-means tested benefits and emergency programs such as child nutrition, Head Start, federal higher education assistance, job training, and foster care. After this five-year ban, post-act aliens are eligible for federal means-tested benefits, but are subject to “deeming” by the federal government.¹⁶

The Balanced Budget Act of 1997 restored some of the benefits lost by aliens through the Welfare Reform Act. This statute restored SSI benefits to aliens who had been receiving benefits prior to the date of the Welfare Reform Act.¹⁷ It made benefits available to those pre-Act aliens who may become blind or disabled in the future, although aliens who become 65 without becoming blind or disabled remain ineligible.¹⁸ It also maintained SSI and Medicaid benefits for those immigrants who applied for the program prior to 1979, which was the year that the Social Security Administration first began asking for proof of immigration status.¹⁹ In addition, in June 1997, Congress enacted a law that allowed states to use their own funds to purchase federal food stamp benefits for legal immigrants made ineligible by the Welfare Act.

In sum, the series of federal statutes affecting the access of legal aliens to public assistance resulted in the following changes:

The welfare law imposes restrictions on three different categories of federal means-tested benefits. . .The first form of restricted benefits include the specified federal programs of food stamps and Supplemental Security Income, which are funded exclusively by the federal government. The second form of restrictions includes benefits which are jointly funded by both the federal and state governments (TANF, Social Service block grants, and Medicaid). The Welfare Act places a mandatory five-year bar on these programs for new immigrants, and allows the states to

¹⁶ Laruen Moynihan, “Welfare Reform and the Meaning of Membership: Constitutional Challenges and State Reactions,” 12 *Geo. Immig. L.J.* 657, 660 (1998).

¹⁷ However, while the Balanced Budget Act restored SSI benefits to legal aliens who legally resided in the United States before the date of the Welfare Reform Act, legal aliens arriving after that date are still restricted from receiving SSI benefits.

¹⁸ Balanced Budget at Section 5301.

¹⁹ Balanced Budget, at Section 5304.

determine eligibility for immigrants residing in the United States before August 22, 1996 and after the five year restriction. The final category of restrictions requires states to deny benefits, although solely provided through state funds, to all unqualified aliens absent affirmative legislation that the state intends to authorize such eligibility.²⁰

The restrictions on the receipt of public assistance will, of course, by definition, adversely affect the ability of legal immigrants to access telephone lifeline assistance programs to the extent that such telephone programs are made dependent on receipt of public benefits. These restrictions will have a substantial effect on the immigrant community.²¹

Disproportionate Impacts on Older Persons and Women

Two groups of immigrants are particularly likely to be low-income and not assisted through public benefits under the new federal statutes.²² In particular, the welfare restrictions will exclude older persons²³ and women²⁴ from receiving public assistance. The first group of immigrants to be disproportionately affected involves older immigrants. As one commentator explains:

. . . noncitizens are less likely than citizens to qualify for Social Security, which is based on U.S. employment history. As originally contemplated by Congress and the Commission on Economic Security, Social Security is the primary income source for most older adults in the United States, and in many cases, Social Security alone provides income sufficient to preclude SSI eligibility. Elderly immigrants are less likely than citizens to receive Social Security because they often have not been in the United States long enough to compile the requisite work history before retirement. Because they are less likely to receive Social Security, such noncitizens are more likely to be eligible for need-based SSI.²⁵

The second group of immigrants that are particularly likely to be low-income and without access to public assistance involves women. Lawful immigrants become eligible for public assistance through one of three primary mechanisms: (1) naturalization; (2) formal sector employment for forty qualifying quarters; or (3) service in the armed forces.²⁶ As one commentator notes, while seemingly facially neutral, the employment requirement is a particular problem from the perspective of women:

²⁰ Meaning of Membership, at 663.

²¹ Michael O'Grady, *Native and Naturalized Citizens and Non-Citizens: An Analysis of Poverty Status, Welfare Benefits, and Other Factors*, CRS Report for Congress (Feb. 14, 1995), Congressional Research Service: Washington D.C..

²² Kevin Johnson, "Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class," 42 *UCLA L.Rev.* 1509 (1995).

²³ Leslie Pickering Francis, "Elderly Immigrants: What Should they Expect of the Social Safety Net?," 5 *Elder L.J.* 229 (1997).

²⁴ Jean Fitzpatrick, "The Gender Dimension of U.S. Immigration Policy," 9 *Yale J. L. and Feminism* 23 (1997).

²⁵ *Salvaging a Safety Net*, at 1464

²⁶ PRWORA, at section 412(b)(1) - (3).

Immigrant women will be penalized for having dedicated their lives to the unpaid care of their families. Even those who have labored in domestic service for other families may be unable to qualify for the work exception, given extensive noncompliance with Social Security obligations for domestic workers.

* * *

. . . caregiving has been unrecognized and devalued in a society that defines work in terms of measurable output and wages rather than nurturance and maintenance. . . What this means for women's roles and status is that women are expected to perform unpaid work in the home that is regarded as nonwork. As a result, assumptions underlying current public policies arise from a social system in which women as a class are at an economic disadvantage.²⁷

The Process of Deeming

Aside from the outright prohibition on the receipt of public benefits, the “deeming” provisions of the welfare reform law make it less likely that immigrants will receive benefits, irrespective of their needs. As the Department of Justice notes:

Under new ‘deeming’ rules, some aliens who might otherwise have been able to obtain certain Federal, state or local means-tested public benefits can no longer do so because their sponsors’ resources may now count as resources available to the aliens (i.e., the sponsor’s sources are ‘deemed’ available to the alien), which would normally raise the alien’s income over the benefit eligibility threshold.²⁸

One commentator explains the process of “deeming” as follows:

Deeming refers to adding the income or resources of the sponsor to the income and resources of the sponsored alien for purposes of determining the eligibility of the alien for need-based federal assistance programs. The income of the sponsor and his or her spouse are considered available to the immigrant in determining eligibility for benefits. Deeming, therefore, makes it harder for sponsored aliens to qualify for and receive means-tested benefits. Deeming usually prevents an alien from receiving benefits during the deeming period. Deeming applies with respect to AFDC, SSI and food stamps.²⁹

²⁷ *Gender Dimensions*, at 40, 42, citing Raymond Coward, et al., *Demographic Perspectives on Gender and Family Caregiving*, in *Gender, Families and Elder Care*, at 4, 26, 28 (1991).

²⁸ 64 Federal Register, at 28686, citing 8 USC secs 1631 and 1632.

²⁹ Steven Dawson, “The Promise of Opportunity – and Very Little More: An Analysis of the New Welfare Law’s

Unlike prior determinations, under the new deeming law, *all* of the sponsor's income is attributable to the legal immigrant without consideration of the sponsor's other obligations.³⁰

SUMMARY AND CONCLUSIONS

The process of enrolling low-income households in lifeline assistance programs for telephone service if they participate in other public benefit programs addresses many of the formidable barriers that prevent eligible and needy customers from receiving such assistance. There is a danger, however, in relying upon such a process as the exclusive means of enrollment. Many low-income persons do not participate in the safety net of public assistance programs. Some of these persons do not participate by choice. Others do not participate because they are, by public policy if not by specific statutory directive, excluded from such programs.

In particular, using participation in public assistance programs as the exclusive door through which low-income persons may enter a telephone lifeline assistance program will exclude lawful immigrants from such programs. The remedy for such exclusion is not to move away from the use of such programs as a means to establish eligibility. The remedy is simply to allow additional alternative means through which applications and income certification may be made based upon income rather than upon program participation.

Denial of Federal Public Benefits to Most Legal Immigrants," 41 *St. Louis L.J.* 1053, 1059 (1997); see generally, Michael Sheridan, "The New Affidavit of Support and Other 1996 Amendments to Immigration and Welfare Provisions Designed to Prevent Aliens from Becoming Public Charges," 31 *Creighton L.Rev.* 741 (1998).

³⁰ Lanelle Polen, "Salvaging a Safety Net: Modifying The Bar to Supplemental Security Income for Legal Aliens," 76 *Wash. Univ. L.Q.* 1455, 1463 (1998).



Energy Safety Net Toolkit

TOOL #4

A FRAGILE INCOME: DEFERRED PAYMENT PLANS AND THE ABILITY TO PAY OF WORKING POOR UTILITY CUSTOMERS

An Energy Safety Net Tool from:

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March 2002

Natural gas and electric utilities provide varying types and degrees of protections against the termination of winter utility service due to nonpayment.¹ Some protections prevent shutoffs during a specified time period,² while others prohibit shutoffs only when temperatures fall below a designated level.³ Some protections prevent shutoffs only for “low-income” customers,⁴ while others apply to all customers irrespective of income. Some protections impose a complete prohibition on winter service terminations, while others simply require utility commission approval prior to effecting a winter service termination.

Whatever the form of the winter protections, when those protections end with the arrival of spring, a multitude of customers face the prospect of paying off accrued arrears or losing their utility service altogether.⁵ When this happens, customers frequently end up seeking financial assistance from local fuel funds to help prevent the termination of service.

¹ The 1990 *Annual LIHEAP Report to Congress* presented a national survey of the type, and the extent, of winter utility shutoff restrictions. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance (September 1991). *Low Income Home Energy Assistance Program, Report to Congress for Fiscal Year 1990*, at 153 – 162, Department of Health and Human Services: Washington D.C.

² For example, shutoffs may be prohibited between November 15th and April 1st.

³ For example, shutoffs may be prohibited on any day when the temperature is forecast to fall below 32° F.

⁴ For example, shutoffs may be prohibited only for households qualifying for the Low-Income Home Energy Assistance Program (LIHEAP).

⁵ A study by the National Fuel Funds Network, and other national energy groups, found that at the end of the 2000/2001 winter heating season, at least 4.3 million low-income households were at risk of having their utility service cutoff because of an inability to pay their winter home energy bills. National Fuel Fund Network, et al. (June 2001). *The Cold Facts*, at 1, National Fuel Fund Network: Washington D.C.

With high natural gas bills and a sagging economy, it is more critical than ever to develop appropriate policies to allow winter arrears to be paid. A failure to do so not only places the dollars of arrears in jeopardy of non-collection, but it places the payment of future bills in jeopardy as well. One alternative to the springtime disconnection of service is for a customer to make a downpayment on his or her arrears and enter into a reasonable deferred payment plan.

Standard regulations adopted by utility regulators around the country provide that a utility shall take into account designated factors in deciding what payment plans are “reasonable.” These factors include, but are not limited to, “ability to pay.”⁶

The phrase “ability to pay” is often treated as being synonymous with “level of income.” If a household’s income is sufficiently high,⁷ the reasoning goes, the household is deemed to have an ability to pay its home energy bills. Taking into account the “ability to pay” of the working poor, however, should involve *more* than simply taking into account income level. The *stability* of income is one additional aspect of the ability to pay of the working poor. The discussion below considers how this facet of ability to pay might affect the administration of a deferred payment plan for utility arrears.

Income Stability and Ability to Pay

The negotiation of a deferred payment plan for utility arrears should take into account the potential instability of income amongst the working poor as one aspect of ability to pay. Income for the working poor, in particular, can be erratic and unpredictable. A working poor customer may not *know* in April what his or her income is going to be in July or August, let alone in the following December or January. Periods of unstable wages may make payments that were reasonable in April unreasonable at a later date.

This income attribute of working poor households has been recognized in a variety of contexts. The instability of income has been found to be a barrier to effective budget counseling. The evaluation of one asset-building program, for example, reported that “staff and participants thought the budgeting worksheet. . .became obsolete almost immediately because participants’ incomes were very unstable.”⁸ One major barrier to savings and asset accumulation by working poor

⁶ See e.g., IDAPA 31.21.01.313 (2001) (Idaho); 83 Ill. Adm. Code 280 Appx. D (2001) (Illinois); CMR 65-407-860 (2001) (Maine); 4 CSR 240-13.060 (2001) (Missouri); MONT. ADMIN. R. 38.5.1415 (2001) (Montana); 52 Pa. Code § 56.97 (2001) (Pennsylvania); 16 TAC § 7.45 (2001) (Texas); Wis. Adm. Code PSC 113.0404 (2001) (Wisconsin).

⁷ While the question of what income is “sufficiently high” is explicitly set aside for purposes of this discussion, the reader can gain guidance from the determination of what constitutes a “livable wage.” *Working Hard—Earning Less*, National Priorities Project: Northampton: MA.

(<http://www.natprior.org/grassrootsfactbook/jobgrowth/jobgrowth.html>). Further guidance can be gained from a review of self-sufficiency budgets. A calculation of self-sufficiency standards for about 20 states can be found at the World Wide Web site of Wider Opportunities for Women. <http://www.sixstrategies.org/resources/resources.cfm>

⁸ Dianne Lazear (September 1999). *Implementation and Outcomes of an Individual Development Account Project*,

households involves their “irregular incomes.”⁹ One barrier to the long-term accumulation of assets has been found to be the “recurring crises,” such as unemployment, which force working poor households to deplete their savings.¹⁰ Individuals have been found to view saving and systematic budget planning as not worthwhile because of the inability to predict income and labor-market conditions.¹¹

Reductions in Hours

Working poor families tend to find themselves in lower quality hourly wage jobs, often marked by considerable income fluctuations due to the number of hours they are called upon to work. The Urban Institute quantified the types of occupations which characterize the working poor. The table below shows the difference in occupations between working poor families and non-poor families in 1996.¹² Even aside from the level of wages,¹³ the presence of hourly wages and unpredictable hours mark occupations that are the province of the working poor. Three times as many working poor families (as compared to non-poor families) are in service occupations (11.5% vs. 4.1%) and laborer occupations (11.5% vs. 4.1%), while nearly twice as many working poor (compared to non-poor) families have workers who are in operator/transportation occupations (18.9% vs. 11.1%).

Percent of Non-Elderly Persons by Occupation of Primary Earner		
	All Families: Poor	All Families: Non-Poor
Professional/managerial/technical	15.1%	43.3%
Sales	8.6%	10.2%
Clerical/administrative support	9.9%	8.5%
Service	20.1%	7.4%
Craft/repair	15.8%	15.4%
Operators/transportation	18.9%	11.1%
Laborers	11.5%	4.1%

Persons working in these occupations often face periods of lost wages. The U.S. Department of Labor refers to periods of lost wages caused by a reduction in hours as “involuntary part time employment.”¹⁴ “Involuntary part time workers are persons who in at least one week of the year worked fewer than 35 hours because they could not find full-time work.”¹⁵ In 1999, 3.9 million

at 12, Center for Social Development, Washington University: Saint Louis (MO).

⁹ See e.g., David Smyth (1993). *Toward a Theory of Savings*, in James Gapinski (ed.). *The Economics of Savings*, at 47 – 92, Kluwer Academic Publishers: Boston; Franco Modigliani (1986). “Life cycle, individual thrift, and the wealth of nations,” *American Economic Review*, 76(3): 297-313.

¹⁰ Cathleen Finn, et al. (1994). “Assets and Financial Management Among Poor Households in Extreme Poverty Neighborhoods,” *Journal of Sociology and Social Welfare*, 21(4):75-94.

¹¹ Arthur Kennickell, Martha Starr-McCluer, and Annika Sunden (1997). “Saving and Financial Planning: Some Findings from a Focus Group,” *Financial Counseling and Planning*, 8(1):1-8.

¹² Acs, Gregory, Katherin Ross Phillips and Daniel McKenzie (May 2000). *Playing by the Rules but Losing the Game*, at 10 – 11, Urban Institute: Washington D.C.

¹³ The median hourly wage of primary earners in working poor families (\$7.55) is less than half the median wage of primary earners in families with incomes above 200% of poverty (\$16.67).

¹⁴ This is sometimes known, also, as “part time employment for economic reasons.”

¹⁵ Bureau of Labor Statistics (February 2001). *A Profile of the Working Poor, 1999*, Report No. 947, at 3, U.S.

workers experienced involuntary part time employment.¹⁶ In 2000, 3.045 million non-agricultural workers experienced involuntary part time employment. A full 60% of these workers (1.835 of the 3.045 million) faced their cutbacks in hours due to slack work or business conditions.¹⁷

The number of lost hours, and thus the amount of lost wages, is substantial. Persons who usually worked fulltime in non-agricultural industries, but did not do so in 2000 because of economic reasons, worked on average only 24.0 hours a week in 2000.

This fact of unstable income presents no commentary on the working poor individuals themselves. Rather it reflects the nature of work in which the working poor find themselves. Given the nature of that work, to simply *assume* that the income of a working poor household at any given point in time will continue unabated to support payment plan payments is to ignore one major attribute of the working poor's ability to pay.

The Impact of Paid Leave Benefits

A second factor contributing to the instability of income of the working poor involves the paid leave benefits provided. The absence of paid vacation and sick leave can directly affect the ability of a household to maintain a deferred payment arrangement over time. One researcher for the Institute for Women's Policy Research (IWPR) reports:¹⁸

Low-income workers often have few or no workforce benefits, like paid leave or flexible schedules that are essential if workers are to meet the needs of their family members. Paid leave would make it economically possible for workers to spend time away from work in order to address their family's needs. Flexibility would allow workers to meet with teachers, care for sick or disabled family members, and deal with emergencies without having to miss work or go without wages. . . Without flexibility in their work schedules or access to paid leave, workers have no choice but to take unpaid leave when family or medical emergencies occur.¹⁹

The IWPR found that:

Families in the bottom quartile of income are significantly less likely to have access to paid sick leave, paid vacation leave, or flexible work schedules than families with higher incomes. More than three fourths (76 percent) of workers in

Department of Labor: Washington D.C.

¹⁶ **1999 Profile**, *supra*, at Table 8, page 11.

¹⁷ U.S. Department of Labor, Bureau of Labor Statistics, **January 2001 Employment and Earnings**, at Table 20, Department of Labor: Washington D.C.

¹⁸ The principal data sources for the IWPR research include primary and secondary data from the U.S. Department of Labor's National Longitudinal Survey of Youth (NLSY), the Survey of Midlife in the United States, the Urban Working Families Study, and the National Daily Diaries Study.

¹⁹ Jody Heymann (October 2001). ***The Widening Gap: A New Book on the Struggle to Balance Work and Caregiving***, at 3, Institute for Women's Policy Research: Washington D.C.

the bottom quartile of family income lack regular sick leave; more than half (58 percent) do not have consistent vacation leave. Families in the bottom income quartile are more likely than other workers to lack *both* sick leave *and* vacation leave. (emphasis in original).

Low-income families are also less likely to have flexible work schedules. Among low-income parents, 78 percent have jobs that offer no flexibility at all. The majority of workers beneath the median income level say they cannot choose or change their starting and quitting times, or take days off to care for their sick children.²⁰

The lack of paid leave time may directly affect the ability of a working poor customer to maintain payments on a deferred payment arrangement. A person working 35 hours a week on hourly wages may lose three days of work simply due to a sick child missing school and requiring care. If no leave time exists for that employee, the sick child translates into permanently lost wages. Personal illness, too, results in permanently lost wages, whether illness keeps a worker away from his or her job for a day, for two days, or for a week.

The lost wages attributable to the lack of paid leave for the working poor is not theoretical. Data from the U.S. Department of Labor shows that absence rates in occupations where the working poor tend to work are from 50% to 60% higher than the absence rates in occupations populated by their higher income counterparts.²¹ Absence rates for higher income occupations are lower because time missed from work covered by paid leave is not counted as an "absence."

IMPLICATIONS FOR UTILITY DEFERRED PAYMENT ARRANGEMENTS

The instability of income for the working poor has multiple implications with respect to the negotiation of deferred payment arrangements for utility arrears. These implications exist both for the initial negotiation of payment plans and for the ongoing administration of payment plans.

Building Success: On the front-end, utilities may want to build check-points into the deferred payment plans of the working poor. Such a process could be implemented in one of two ways. On the one hand, a utility may simply break-up arrears into multiple component parts. A deferred payment arrangement for a \$400 arrears, for example, might be made subject to a payment plan for the first \$200 over a 3-month period. Upon successful completion of that plan, the utility would develop a payment plan for the next increment of arrears.

Such a process builds on the "learning" about savings amongst low-income households. One researcher at Washington University's Center for Social Development reports with respect to household savings:

²⁰ *Id.*

²¹ *Employment and Earnings, supra*, at Table 27.

... aspirations and expectations of success are likely to affect saving. Those who do not expect their saving attempts to be ‘successful’ are unlikely to try to save. In a study of saving in Britain, Furnham found that beliefs about the pointlessness of saving were negatively associated with income, even though lower-income individuals recognized the benefits of saving. . . . Since the possibility of accumulating even a fairly small amount of savings probably seems remote to many low-income individuals, some poor individuals may not even attempt to save. In fact, Furnham suggests that ‘these feelings of helplessness may. . . serve to maintain low levels of saving even when ability to save increases.’²²

The same statements made above could easily be made by substituting references to the retirement of utility arrears for references to saving. An individual who makes progress toward a goal of retiring his or her arrears is more likely to raise that goal, while those whose attempts are unsuccessful are likely to lower their aspirations. Those who do not expect their efforts to maintain utility bill payments to be successful are unlikely to try as hard to do so.

To enter into a deferred payment plan, with no chance to “revisit” the payments at regular intervals, fails to recognize the income variability that is inherent in much of the employment that is available to the working poor. To operate in such a fashion creates the risk of raising the “feelings of helplessness” among working poor families with utility arrears. In contrast, to address each part of the arrears through a successful short-term plan will help to build the “expectation of success.”

One-Strike-You’re-Out Policies: In addition to the structure of payment plans on the front-end, utilities should revise their “one-strike-you’re-out” policy on payment plans. Many utilities have a policy providing that once a customer negotiates a deferred payment plan, the customer is not entitled to a second or renegotiated plan if the first one is breached. What this policy implicitly assumes is a constant, predictable, stream of income over time, some portion of which can be earmarked for the repayment of utility arrears. If, however, a customer is an hourly wage employee without leave, something as commonplace as a sick child requiring parental care can compromise the customer’s ability to make agreed-upon payments. In such a case, the one-strike policy fails to take into account the fragility of the working poor customer’s income stream.

Moreover, something as common as short-term periods of involuntary part time employment may threaten the ability of a customer to maintain agreed-upon payments. As the above discussion

²² Sondra Beverly (1997). *How Can the Poor Save? Theory and Evidence on Saving in Low-Income Households* at 26 – 27, Center for Social Development, Washington University: Saint Louis (MO), *quoting*, Adrian Furnham (1985). “Why do people save? Attitudes to, and habits of, saving money in Britain,” *Journal of Applied Social Psychology*, 15(4): 354-373. Beverly continues: “In part, individual saving-related aspirations and expectations will be determined by past experiences, including past asset accumulation experiences. According to aspiration theory (citation omitted), an individual’s aspirations are raised (lowered) according to her success (failure) in achieving them. Applying this proposition to economic behavior, Katona (1975) suggests that an individual who makes progress toward a savings goal is more likely to raise that goal. Conversely, those whose attempts to save money are unsuccessful are likely to lower their saving aspirations.” *Id.*, at 27, *citing*, George Katona (1975). *Psychological Economics*, at 369, Elsevier Press: New York.

shows, these situations –lost wages due to family care responsibilities or involuntary part time employment—not only “may” happen to the working poor, but can reasonably be expected to happen. Strict application of a one-strike-you’re-out policy may be unreasonable in light of this aspect of ability to pay.

Unquestionably, a change in the structure and operation of payment plan processes to account for the fragile income of the working poor must accommodate the capabilities of the customer information systems of the affected utility. Some utility information systems, for example, are structured so that if payments on deferred arrangements are missed, the arrangement is automatically canceled. A utility need not avoid such a cancellation. However, in deciding upon the utility’s credit action subsequent to such a cancellation, regulatory policy that would refuse to allow a revised payment arrangement to account for any changes in income that might have led to the initial default, as well as any policy that would fail to account for the fragility of income in considering the “why” behind a prior arrangement default,²³ should be modified.

SUMMARY AND CONCLUSIONS

In applying payment plan policies, utilities and their regulators should take into account the income fragility of hourly wage employees who face unstable incomes and who lack paid leave time and flexible work schedules. The failure to comply with agreed-upon deferred payment arrangements may frequently be due to this fragility rather than due to an unwillingness to maintain agreed-upon payments. As utilities face another round of winter-end arrears this spring, utilities and their regulators should adopt policies and procedures that will reasonably allow working poor families to communicate, and have considered, *all* aspects of their ability to pay in an effort to negotiate and successfully maintain deferred payment arrangements.

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March 2002

²³ Some utilities, for example, use decision trees to determine if a new arrangement will be granted. Such decision trees take into account previous credit behaviors in deciding whether to grant a new arrangement. These decisions should consider not only the *fact* of prior credit behavior, but the reasons for such behavior as well.



Energy Safety Net Toolkit

TOOL #7

LOCAL LAYOFFS AS NATIONAL EMERGENCIES: USING THE NATIONAL EMERGENCY GRANT PROGRAM TO RESPOND TO THE UNMET HOME ENERGY NEEDS OF DISPLACED LOW-WAGE WORKERS

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October 2002

INTRODUCTION

As the current recession puts more and more workers out of a job, the impact on fuel funds grows deeper. Not only are an increasing number of households facing payment problems with their home energy suppliers, but the slack economy has the added impact of reducing corporate and individual giving, and reducing returns on the investments of charitable foundations that traditionally support fuel funds. The economic situation will be compounded by the steep increase in home heating bills anticipated for the winter heating season of 2002/2003.¹ This combined impact of increasing needs and decreasing resources creates an imperative for fuel funds to seek to access those resources that *are* available.

The purpose of the discussion below is to assess the impact of the current recession on low-wage workers in particular, and to consider one mechanism –the U.S. Department of Labor’s National Emergency Grants program-- that might allow fuel funds to partner with organizations serving displaced workers to help unemployed, low-wage workers pay their utility bills. More specifically, the discussion will examine the impacts of the recession on:

- Recently hired individuals moving into the workforce off of welfare, and
- Part-time employees.

The discussion below identifies how and why fuel funds might work with local Workforce Investment Boards, which are the local agencies that administer the Emergency Grants Program, to

¹ U.S. Department of Energy, Energy Information Administration. “Higher Heating Fuel Bills Expected This Winter” (October 7, 2002). “This winter is expected to bring with it higher heating bills than those seen last winter. . .Under normal weather assumptions, winter heating bills for residential consumers could average from \$100 to \$300 higher than last winter..” Expenditures for household heating are projected to be 19 percent higher for natural gas, 45 percent higher for heating oil, and 22 percent higher for propane.

respond to the energy payment problems of low-wage workers in times of significant economic dislocation. To the extent that public resources can be identified for workers put out of work due to emergency events, fuel funds can not only serve the substantial influx of unemployed workers, but can retain their other resources for traditional needs as well.

IMPACTS ON VULNERABLE POPULATIONS

The recession now facing the United States imposes hardships not simply on workers generally, but on specific sub-classes of workers in particular. The current recession has now displaced more workers than did the recession of the early 1990s. Based on a three-month average, 2.5 million more workers were out of work in June-August 2002 than were out of work in the three months prior to the start of the recession in March 2001.² In May 2002, the most recent month for which data is available, there were 2.4 unemployed workers for every job opening in the economy.³

Unfortunately, looking at unemployment as a whole does not capture the full impacts of the recession on *low-wage* employees in particular. These employees, which disproportionately include workers seeking to move off of welfare, as well as part-time employees, not only experience a higher rate of unemployment, but they are unemployed for longer periods of time as well. To make matters worse, these low-wage employees frequently do not have access to unemployment insurance benefits to help them through their time of unemployment. As a result, low-wage employees must frequently look to the private charitable sector for assistance when crisis situations arise.

Recent Welfare Hires

The deepening recession has caused employment losses in the very industries where recent public assistance recipients had found jobs to move off of welfare. According to the Economic Policy Institute: “the economy’s slide into recession and the fallout from the September terrorist attacks have led to considerable job losses in the very industries in which many welfare recipients had found employment. It will now be difficult for these workers to maintain their tenuous foothold in the labor market. . .”⁴

While four of the top nine industries hiring former welfare recipients⁵ grew faster than total employment from August 1996 through October 2001, the recession has reversed these figures. As unemployment rose throughout 2001, it was precisely these industries that were hit the hardest. Growth in employment in these industries has not only slowed, but has actually begun to drop. During the five months June 2001 through October 2001, for example, employment in personnel supply services dropped by nearly 5% and employment in hotels and lodging dropped by nearly

² Wendell Primus and Jessica Goldberg (September 2002). *The August Unemployment Rate Masks the Severity of the Downturn and the Problems of those Exhausting their Unemployment Benefits*, Center on Budget and Policy Priorities: Washington D.C.

³ Rick McHugh (September 1, 2002). *Not Gone, but Forgotten: America’s Laid Off Workers*, United Auto Workers (<http://www.uaw.org/atissue/02/090102mchugh.html>).

⁴ Heather Boushey (December 2001). *Last Hired, First Fired: Job losses plague former TANF recipients*, Issue Brief 171, Economic Policy Institute: Washington D.C.

⁵ Personnel supply, childcare, education, and hotels and lodging.

3%.⁶ The General Accounting Office (GAO) reports that almost two third of low-wage unemployed workers had been previously engaged in jobs from retail trade and services,⁷ sectors of the economy seeing dramatic job losses in particular.

Unfortunately, former welfare recipients frequently do not have the skills and/or education that allows them to move into other sectors of the economy in order to both *obtain* and *retain* long-term employment. One 1995 analysis found that:

75 percent of jobs that do not require a college diploma do require a high school diploma, 70 percent require general work experience, 60 percent require specific work experience, 73 percent require references. These requirements do not correspond with the experiences of most welfare recipients: 46 percent of welfare recipients have not completed high school, and only 43 percent have earned a high school diploma.⁸

As a result of the particular downturn in the sectors of the economy where they work, and because of their inability to move into other jobs, low-wage workers are nearly twice as likely to be out of work as higher-wage workers. Low-wage workers make up about 50 percent of unemployed former workers, even though they are only 30 percent of the total labor force.⁹

This loss of jobs presents a severe problem to households with low-wage employees. It is difficult for these former welfare recipients to replace the income formerly earned from the lost job. Because low-wage employees are often “former welfare recipients, who are often single mothers with intermittent employment histories,”¹⁰ these workers generally have fewer public resources to financially assist them during their periods of unemployment. For example, while low-wage workers are twice as likely to be out of work, they are only half as likely to receive unemployment benefits after their loss of a job.¹¹

As with the unemployment, itself, this inability to access unemployment benefits can be traced to the sectors of the economy in which low-wage employees work. As GAO reports: “wide variation exists among industry sectors in the rates at which unemployed workers collect UI [unemployment insurance] benefits. . . [For example], 16 percent of former retail employees and 13 percent of former services employees collected UI benefits, while 39 percent of unemployed manufacturing workers and 58 percent of unemployed construction and mining workers collected benefits.”¹²

⁶ Id.

⁷ General Accounting Office (December 2000). *Unemployment Insurance: Role as Safety Net for Low-Wage Workers is Limited*, at 13. GAO-01-181, Government Printing Office: Washington D.C.

⁸ U.S. Department of Health and Human Services. *Characteristics and Financial Circumstances of TANF Recipients*, [http:// www.acf.dhhs.gov/programs/opre/characteristics/fy98/sum.htm](http://www.acf.dhhs.gov/programs/opre/characteristics/fy98/sum.htm).

⁹ *Safety Net for Low-Wage Workers*, *supra*, at 13. While GAO examined data from the period 1992 – 1995, it explicitly noted that the conclusions held for the remainder of the decade as well.

¹⁰ Id., at 5.

¹¹ Id., at 13.

¹² Id., at 18.

Attachment 3

The circumstances that give rise to this inability of former welfare recipients to obtain public assistance are not hypothetical or theoretical. Two types of prerequisites exist for the receipt of unemployment benefits: (1) monetary requirements; and (2) nonmonetary requirements.¹³ Monetary requirements provide that workers must be employed for a minimum period of time and for a minimum number of hours. In addition, workers must receive a minimum level of wages in order to be eligible for unemployment benefits. Nonmonetary requirements provide that, among other things, the job separation must be involuntary (precluding claims for voluntary quits), that the unemployed worker must be actively seeking work, and that the job search must be for permanent full-time work (even if the lost job was part-time).

It is the nonmonetary eligibility requirements that exclude a majority of workers from the receipt of unemployment benefits, with women harder hit than men. The National Bureau of Economic Research (NBER) reports that: “over the entire age range, men are considerably more likely to satisfy nonmonetary eligibility, meeting the requirements 35 – 40 percent of the time, compared to only about 25 percent for women. . . The gender differential could potentially be explained by the difficulties of arranging child care and meeting other family responsibilities that may require more women than men to quit a job.”¹⁴ Twenty-five percent of women leave their jobs for care-giving responsibilities.¹⁵ This is particularly true for women moving into the workforce off of welfare.

Voluntarily quitting a job for personal financial problems often disqualifies claimants from UI benefits, but some limitations can be especially hard for low-income single parents. For example, if a worker currently available for work had quit his or her job because childcare was temporarily unavailable, the worker would not qualify for benefits in 32 states. If the same worker had quit his or her last job to care for a sick child, 26 states would disqualify the worker from benefits.¹⁶

The inability to obtain unemployment insurance benefits, however, can also be traced back to the types of jobs that former welfare recipients tend to hold as well. GAO reports that:

State earnings requirements are more difficult to meet for low-wage workers than for higher-wage workers, even when the low- and higher-wage workers were employed for the same period of time. For example, a worker who was laid off from a job in 2000 after 20 weeks of work for 20 hours each week at the federal minimum wage of \$5.15 per hour would not be eligible for UI in 13 states. . .¹⁷

¹³ For an excellent discussion of the monetary and non-monetary prerequisites to the receipt of unemployment insurance, see generally, Maurice Emsellem, et al. (March 2002). *Failing the Unemployed: A State-by-State Examination of Unemployment Insurance Systems*, at 4 – 5, Center on Budget and Policy Priorities: Washington D.C.

¹⁴ Cynthia Gustafson and Phillip Levine (1998). *Less-Skilled Workers, Welfare Reform, and the Unemployment Insurance System*, National Bureau of Economic Research: Cambridge (MA).

¹⁵ Annisah Um'rani and Vicky Lovell (November 1999). *Women and Unemployment Insurance*, at 1, IWPR Publication #A122, Institute for Women's Policy Research: Washington D.C.

¹⁶ *Safety Net for Low-wage Workers*, supra, at 6.

¹⁷ Id., at 5 - 6

In sum, the current recession has most severely affected households that are seeking to move out of welfare and into jobs. The loss of jobs in this recession has been greatest in the very sectors of the economy where former welfare recipients have turned to find work. In addition, these former welfare recipients have neither the education nor the experience to move into other better paying jobs. Moreover, for reasons largely not of their doing, these workers cannot qualify for the same unemployment benefits that are available as an income support to help higher wage workers during their period of unemployment.

Part-time Employees

Part-time workers represent a second class of low-wage workers that disproportionately have lost their jobs in the current recession and who, at the same time, cannot access unemployment benefits to provide financial assistance when they lose their wages.¹⁸ Indeed, the exclusion of part-time workers is the primary non-monetary reason why workers do not receive unemployment benefits.

The exclusion of part-time workers from unemployment hits women the hardest. One-fourth of all unemployed women are looking for part-time jobs and, as a result, may be ineligible for unemployment.¹⁹ While women comprise 44 percent of the full-time workforce, they account for 70 percent of all part-timers.²⁰ Two out of three mothers work less than 40 hours a week during the key years of career advancement.²¹

For low-wage households, the part-time work is often a critical component to household income. In households with a part-time worker, the part-time worker earns an average of 24.1% of all household income.²² With female-headed households living in poverty, part-time full-year earnings represent 91 percent of the family's income.²³

It is not simply their family care responsibilities that impede the receipt of unemployment benefits for part-time employees. It is often the very type of job that low-wage women hold that pushes them into part-time work. The Institute for Women's Policy Research (IWPR) reports:

Contrary to a misperception, most part-time workers are not young adults still in school: sixty percent are over the age of 25, with an average age of 35 (compared to an average age of 39 among full-time workers).. Part-time workers are concentrated

¹⁸ In addition to "regular part-time" work—defined to include workers who are in relatively permanent jobs, but who work fewer than 35 hours per week—there are workers in "non-standard" employment (such as through a contract company, temporary help, self-employed, independent contractors, on-call/day laborers). One-in-eight employed women work in these jobs. Workers in these nonstandard jobs are also excluded from receiving unemployment benefits. Ken Hudson (2000). *No Shortage of Nonstandard Jobs*, Economic Policy Institute: Washington D.C.

¹⁹ U.S. Department of Labor (2000). *Employment and Earnings*, U.S. Department of Labor: Washington D.C.

²⁰ National Employment Law Project (Feb. 2002). *Part-Time Workers and Unemployment Insurance: Expanding UI for Low-Wage and Part-Time Workers*, at 1, National Employment Law Project: New York.

²¹ Rick McHugh, Nancy Segal and Jeffrey Wenger (Feb. 2002). *Laid Off and Left Out: Part-time Workers and Unemployment Insurance Eligibility: How States Treat Part-time Workers and Why UI Programs Should Include Them*, at 3, National Employment Law Project: New York.

²² *Id.*, at 2.

²³ *Id.*, at 3.

in the retail and service sectors, which represent 39 percent and 43 percent of part-time jobs respectively.²⁴

Moreover, “while women are more likely to choose part-time work, they are also more likely to be *stuck* in part-time jobs against their will. The female rate of involuntary part-time work is 44 percent greater than that for men” (3.0% vs. 5.6%).²⁵

Despite the disproportionate impact on low-wage employees (and on women), the part-time status of employees will generally disqualify workers from receiving unemployment insurance benefits if they lose their jobs. “An otherwise qualified claimant may be disqualified if the claimant is looking only for part-time work, even if the person’s job history (like many former welfare recipients) includes only part-time employment. An unemployed retail worker, previously in a part-time job, looking for a job with the same 30-hour work week, would be ineligible for UI in 30 states.”²⁶

THE NATIONAL EMERGENCY GRANT PROGRAM FOR DISLOCATED WORKERS

The federal government provides specific dollars that are available to help states respond to “unexpected dislocation events, such as mass layoffs, plant closures, natural disasters, and dislocations resulting from federal actions such as defense downsizing.”²⁷ The program is known as the National Emergency Grant (NEG) program. These grants are made, upon application by a state, out of a reserve the Secretary of Labor can maintain from Workforce Investment Act (WIA) appropriations. One national group describes the NEG program as follows:

To receive a grant, a state must apply to the Secretary of Labor and demonstrate that the state’s existing federal dislocated worker funds, which are allocated to all states by formula, are insufficient to meet the unexpected need for assistance. Grants are administered by local Workforce Investment Boards and currently may be used for job training, reemployment services, income support, and supportive services.²⁸

Under federal regulations, the purpose of the National Emergency Grant program is to provide supplemental dislocated worker funds to States, Local Boards and other eligible entities in order to respond to the needs of dislocated workers and communities affected by major economic dislocations and other worker dislocation events that cannot be met with formula allotments.²⁹

²⁴ Vicky Lovell and Catherine Hill (May 2001). *Today’s Women Workers: Shut Out of Yesterday’s Unemployment Insurance System*, at 1, IWPR Publication A127, Institute for Women’s Policy Research: Washington D.C., citing General Accounting Office, *Contingent Workers: Incomes and Benefits Lag Behind Those of the Rest of Workforce*, GAO/HEHS-00-76, Government Printing Office: Washington D.C.

²⁵ Chris Tully (1990). *Short Hours, Short Shift: Causes and Consequences of Part-Time Work*, at 6, Economic Policy Institute: Washington D.C. (emphasis in original).

²⁶ Safety Net for Low-wage Workers, *supra*, at 5 – 6.

²⁷ Sandra Clark (November 2001). *Do Proposals to Increase Funding for National Emergency Grants Provide an Effective Way to Meet the Health Insurance and Other Needs of Laid-Off Workers?*, Center on Budget and Policy Priorities: Washington D.C. (hereafter National Emergency Grants). This CBPP report can be accessed at the following WWW site: <http://www.cbpp.org/11-16-01health.htm>

²⁸ *Id.*, at 4.

²⁹ 20 CFR §671.100 (2002).

Major economic dislocations that qualify for NEG funds include: (a) plant closures; (b) mass layoffs affecting 50 or more workers at a single site of employment; (c) closures and realignments of military installations; and (d) multiple layoffs in a single local community that have significantly increased the total number of unemployed individuals in a community.³⁰

One category of assistance that is available through the NEG program involves “needs-based payments.” Needs-based payments are restricted to unemployed persons who have exhausted, or do not qualify for, unemployment compensation and who need the payments to participate in training.³¹ In addition, adults receiving needs-based payments must be enrolled in a program of employment training³² within certain time constraints.³³ Needs-based payments may not be made to employed persons.³⁴ Restrictions also exist on the *level* of needs-based payments that may be made.³⁵

“Work-Related” Payments”

The biggest constraint on needs-based payments is the requirement that the payments be work-related. Federal regulations do not list what constitutes a work-related payment. The requirement is that a needs-based payment must provide assistance for the purpose of “enabling individuals to participate” in job training and/or one of the supportive services authorized by the Workforce Investment Act.³⁶ Typical work-related payments include payments to offset the expense of transportation and child care expenses.

A fuel fund would appear to have two alternative ways in which to access NEG grants to assist displaced workers with their home energy bills:

- A fuel fund would need to convince its local Workforce Investment Board that the provision of home services such as space heating and hot water is as essential to enabling a person to work as are services such as child care and transportation. or
- In the alternative, a fuel fund would need to convince its local Workforce Investment Board that a household unable to pay for work-related expenses such as child care and transportation is likely to need utility assistance as well. Conversely, a household facing a utility shutoff is likely to be having trouble paying child care and transportation expenses.³⁷

A close tie exists between resolving unaffordable home energy bills and being able to participate in employment training. Home energy crises contribute to cutbacks on basic needs, such as hot

³⁰ 20 CFR §671.110 (2002). Other events may qualify as “emergencies.”

³¹ 29 U.S.C. §2864(e)(3)(A).

³² 20 CFR §663.820 (2002).

³³ 20 CFR §671.140(c) (2002).

³⁴ 20 CFR §663.815 (2002).

³⁵ 20 CFR §663.840 (2002).

³⁶ 29 U.S.C. §2864(e)(3).

³⁷ Under this alternative, even if direct utility assistance is not considered to be work related, providing a fuel fund the funds to make child care and/or transportation grants to eligible individuals would free-up household resources for utility bill payments.

water for clothes washing and personal hygiene, thus contributing to the inability to meet workforce training requirements. Moreover, home energy crises contribute to lower nutrition for children³⁸ and high rates of illness that contribute to the conflict between work and family care. One of the most significant causes of employee absenteeism and turnover is the inability to find child care.³⁹ Aside from family illness, unaffordable home energy contributes to the frequency, severity and duration of personal illness,⁴⁰ which imperils successful completion of workforce training requirements.

Despite these impacts of unaffordable home energy on the ability to participate in workforce training, concerns have been raised that local Workforce Investment Boards will not use the National Emergency Grant funds for the full range of allowable uses. The Center on Budget and Policy Priorities cautioned in late 2001:

Local Workforce Investment Boards have a fair amount of discretion in determining how [National Emergency Grant] funds will be used, depending on the nature of the dislocation event (and affected workers) and the priorities of the local Workforce Investment Board. States and local areas currently decide how to use National Emergency Grants. As a result, services vary across localities. . . Some states and some local Workforce Investment Boards are much more familiar with employment and training programs and have an existing infrastructure of staff and vendors to provide for these purposes.⁴¹

The Center thus cautioned that National Emergency Grants could either go unused, or could be devoted exclusively to the job training and reemployment services rather than also being used for the allowable uses of “income support” and “supportive services.” It will be incumbent upon the local fuel fund to design specific projects,⁴² and to garner the substantive and political support, to allow the fuel fund to tap into NEG funds to assist displaced workers.

Finding NEG Partners

Fuel funds wanting to work with their local Workforce Investment Boards should contact their state Department of Labor to obtain a listing of the local Board locations as well their members.⁴³ Fuel funds seeking more information and case studies about successful

³⁸ Jayanta Bhattacharya, et al. (June 2002). *Heat or Eat: Cold Weather Shocks and Nutrition in Poor American Families*, National Bureau of Economic Research: Cambridge (MA).

³⁹ Research and Policy Committee (1993). *Why Child Care Matters: Preparing Young Children for a More Productive America, A Statement by the Research and Policy Committee of the Committee for Economic Development*, at 1, Committee for Economic Development: New York.

⁴⁰ Energy Cents Coalition (January 1998). *Minnesota's Energy Gap: Unaffordable Energy and Low Income Minnesotans*, Energy Cents Coalition: St. Paul (MN).

⁴¹ *National Emergency Grants*, at 4.

⁴² NEG grants should not be seen as general support grants. Rather, it would allow a fuel fund to respond to the specific needs created by mass layoffs, or other significant economic dislocation of workers without adversely affecting the fuel fund's ability to continue to serve its traditional client base as well.

⁴³ A listing of state Labor Departments can be found at the U.S. Department of Labor site on the World Wide Web at the following address: http://www.dol.gov/esa/contacts/state_of.htm. Readers may also want to access the web site of the National Association of State Workforce Agencies: <http://www.icesa.org/index.cfm>.

implementation of Workforce Investment Boards should contact the Institute for Community Inclusion,⁴⁴ an organization devoted to improving employment opportunities for the disabled. WomenWork, an organization devoted to workplace issues for women,⁴⁵ also has state affiliates that might be useful partners in reaching the low-wage and part-time populations described above.

Agencies that may apply for NEG funds for projects within any given state include the state itself, a Local Board, or another entity determined to be appropriate by the Governor of the State in which the project will be located. In addition, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations which are recipients of funds under section 166 of the Workforce Investment Act (Indian and Native American Programs) may apply for a national emergency grant.⁴⁶

SUMMARY AND CONCLUSIONS

The recession now facing the United States does not affect all workers equally. In particular, two types of workers that face lost jobs, longer periods of unemployment, and less access to unemployment insurance benefits to help them financially during their unemployment, are former welfare recipients and part-time workers. Low-wage, low-income households often fall into one of these two categories.

State and local Workforce Investment Boards may apply for National Emergency Grant (NEG) funds when faced with substantial local economic displacement. The NEG program can be used to provide “needs-based payments” to workers who are both unemployed and have either exhausted their unemployment benefits or have been found ineligible for such. Workforce Investment Boards have considerable discretion in deciding what constitutes appropriate needs-based assistance. While needs-based payments must be used to provide work-related assistance, fuel funds have the opportunity, alone or in tandem with partners, to make the case that avoidance of home energy disconnections represent such assistance. Tapping into NEG funds to use in serving displaced workers may be an important way to let fuel funds respond to the energy needs created by substantial economic displacement in their community.

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⁴⁴ The Institute for Community Inclusion supports the rights of children and adults with disabilities to participate in all aspects of the community. The Institute has a special project devoted to workforce development issues. It has published case studies on the successful implementation of the Workforce Investment Act in Kentucky, Minnesota and Maine. <http://www.communityinclusion.org> (click on “new publications”).

⁴⁵ <http://www.womenwork.org/>

⁴⁶ 20 CFR §671.120(a) (2002).