

**COMMENTS OF:**

**ACTION, INC. (Mass.)  
CITIZENS FOR CITIZENS (Mass.)  
COMMUNITY ACTION OF THE FRANKLIN, HAMPSHIRE,  
AND NORTH QUABBIN REGIONS (Mass.)  
LOW INCOME UTILITY ADVOCACY PROJECT (Ill.)  
MASSACHUSETTS ENERGY DIRECTORS ASSOCIATION  
NATIONAL CONSUMER LAW CENTER  
PENNSYLVANIA UTILITY LAW PROJECT  
TEXAS ROSE (RATEPAYERS' ORGANIZATION TO SAVE ENERGY)  
TRI-CITY COMMUNITY ACTION PROGRAM (Mass.)**

**RE: PROPOSED INFORMATION COLLECTION ACTIVITY, 79 FED. REG. 32550  
(June 5, 2014)**

**Submitted to Office of Management and Budget, Paperwork Reduction Project  
July 31, 2014**

**I. Introduction**

On June 5, 2014, the Administration for Children and Families of the Department of Health and Human Services (“Department”) published a “Submission for OMB Review; Comment Request” (“June 5 Notice”) regarding data to be collected in the operation of the Low Income Home Energy Assistance Program (“LIHEAP”), 79 Fed. Reg. 32550, noting that there is an opportunity for the public to comment. The Department asserts that it seeks to collect information that will assist in “ensur[ing] that benefits are targeted to those households where the greatest program impacts are expected, and to assure that timely resources are available to households experiencing home energy crises.” Notice, 79 Fed. Reg. 32550.

One year ago, the Department published a notice of “Proposed Information Collection Activity; Comment Request” regarding similar proposed data collection protocols. 78 Fed. Reg. 34105 (June 6, 2013). On August 2, 2013, the National Consumer Law Center, in conjunction with several other low-income organizations, submitted extensive comments which are being re-filed with these current comments, as many of the points raised in the August 2013 comments

are germane to the current June 5 Notice. In this response to June 5 Notice, NCLC and the eight other LIHEAP sub-grantees and low-income advocacy organizations described below again offer their comments.

**A. Description of the National Consumer Law Center and other commenters**

The nonprofit National Consumer Law Center® (“NCLC®”) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training. Since its founding in 1969, NCLC has worked on a broad range of low-income energy issues, particularly LIHEAP and WAP. For many years, NCLC staff attorney Charles Harak has sat on the Massachusetts LIHEAP Advisory Committee. He also serves as Treasurer of the Tri-CAP, a community action program in Malden, Massachusetts that serves several thousand LIHEAP households. Mr. Harak also regularly provides advice and assistance to Massachusetts Energy Directors Association (MEDA), the association of the 22 agencies that directly provide LIHEAP services to almost 200,000 Massachusetts households annually. This direct experience with front-line LIHEAP agencies helps inform these comments, particularly comments made below about the burden that the proposed data collection may place on agencies whose primary objective is to help low-income families from going cold during the winter.

Action, Inc. is a community action program based in Gloucester, Massachusetts. Its mission is to improve the lives of disadvantaged individuals and families in Cape Ann and beyond by minimizing the effects of poverty, promoting economic security, and advocating for social change. Action delivers energy programs including LIHEAP and the Weatherization Assistance Program (WAP) to low-income households in the greater Cape Ann area.

Citizens for Citizens is a community action program based in Fall River, Massachusetts. Its mission is to advocate on behalf of low-income residents and attack the causes and effects of poverty through the provision of direct and integrated services, the promotion of self-sufficiency, and the advancement of social change. CFC delivers energy programs including LIHEAP and WAP to low-income households in the cities of Fall River and Taunton and in several adjoining towns.

Community Action of the Franklin, Hampshire and North Quabbin Regions is a community action program based in Greenfield, Massachusetts. The agency is dedicated to promoting economic justice and improving the quality of life for people with lower incomes, and delivers energy programs including LIHEAP and WAP to low-income households in portions of western Massachusetts.

The Low Income Utility Advocacy Project engages in administrative and legislative advocacy in Illinois in the utility/energy area on behalf of low income households and not-for-profits. It is a project of the Shriver Poverty Law Center, Voices for Illinois Children and Heartland Alliance for Human Needs and Human Justice.

The Massachusetts Energy Directors Association includes representatives of each of the approximately two dozen agencies that deliver LIHEAP and WAP in Massachusetts. Its purpose is to provide a forum for these agencies to meet with the Department of Housing and Community Development – the state LIHEAP agency – and discuss issues of common concern, with the goal of providing excellent service to the households LIHEAP and WAP serve.

The Pennsylvania Utility Law Project, as the designated statewide specialized project of the nonprofit Pennsylvania Legal Aid Network, provides representation, advice, and support in energy and utility matters on behalf of low-income, residential utility customers.

Texas ROSE (Ratepayers' Organization to Save Energy) is a non-profit membership organization dedicated to affordable electricity and a healthy environment. Texas ROSE has been involved in helping to create utility programs to provide lower rates for low-income consumers and weatherization programs to permanently lower energy use and utility bills.

Tri-City Community Action Program (Tri-CAP) is the anti-poverty agency for Malden, Medford, Everett and surrounding Massachusetts towns. Tri-CAP's goal is to build strong communities where everyone can meet their basic needs, advance economically, and fulfill their potential. Tri-CAP is a state sub-grantee agency both the LIHEAP and WAP programs.

Hereafter, these nine parties will be referred to as "NCLC et al."

**B. Overview of the Comments**

NCLC et al. support the general policy goal of the Department to obtain better data on the role LIHEAP plays in reducing energy burdens and preventing home energy crises – provided that meaningful, useful data can be collected without unduly burdening the state LIHEAP grantees and their subgrantees which actually process applications and deliver critically needed assistance to clients. Thus, NCLC et al. greatly appreciate that "some previously required data elements" that were included in the June 6, 2013 Federal Register notice "are now being proposed as optional" in order "to address concerns about the burden of reporting." 79 Fed. Reg. 32551, col. 2. NCLC et al. had previously raised very serious concerns about the reporting burdens.<sup>1</sup>

These comments address the following points:

► The "Annual Burden Estimates," which have increased from 5,100 hours in the June 6, 2013 notice to 84,300 hours in the June 5, 2014 Notice, are much more reasonable but still may be too low.

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<sup>1</sup> See previous August 2, 2013 Comments being filed with these comments.

- ▶ State reporting of “Annual cost of main heating fuel” (79 Fed. Reg. 32551, col. 1) will likely be low for delivered fuels due to systematic bias in how these data are collected and reported.
- ▶ We strongly support the proposal to use “sampling procedures” to reduce the reporting burden states would otherwise face and also support making “previously required data elements optional” (79 Fed. Reg. 32551, col. 2).

## **II. The Department Had Significantly Underestimated The Annual Reporting Burden; The New Estimate Is Likely Still Too Low**

In its June 6, 2013 notice, the Department included an “Estimated Total Annual Energy Burden” of 5,100 hours. 78 Fed. Reg. 34106. NCLC et al. had submitted the comment that “those estimates are significantly lower than the workloads that state grantees, their subgrantees and energy companies will likely incur, perhaps by a factor of as much as 100.”<sup>2</sup> The Department has since increased its estimate by more than 15-fold, to 84,300. Even if this estimate does not understate the true reporting burden, it represents between \$5 million and \$10 million in administrative costs that would be better devoted to LIHEAP agencies processing applications and making payments on behalf of low-income households and energy vendors processing those payments to avoid termination of service to low-income households.

In connection with the August 2, 2103 comments NCLC et al. filed, we asked sub-grantee agencies in Massachusetts to estimate how much time they spend annually collecting and reporting to the state LIHEAP grantee agency<sup>3</sup> the data they already collect within the categories contained in the June 6, 2013 notice. Massachusetts has been considered a leader by the Department in collecting LIHEAP data, and its experience provides useful information.

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<sup>2</sup> See August 2, 2013 Comments, p. 11.

<sup>3</sup> The state grantee is the Department of Housing and Community Development.

Three Massachusetts agencies responded, including one of the largest in the state and two smaller agencies. Their estimates ranged from 40 to over 200 hours per agency. The agency with the highest percentage of oil heat households had the highest estimate of reporting burden, since gathering data from deliverable vendors is by far the most burdensome.

There are 22 LIHEAP sub-grantees in Massachusetts. It is therefore likely that the current reporting burden for the state grantee and its sub-grantees is in the range of 900 hours to 4,000 hours (or roughly 2,000 hours, assuming the mid-point), not counting the time that it will take utility companies and vendors of deliverable fuels to gather data. Other states will likely have to spend even more time to meet the Department's new requirements, since all of the Massachusetts sub-grantees have spent years implementing a uniform, state-wide data collection and reporting system. In the absence of such a uniform system, compliance with the Department's requirements could well be much more burdensome.

Assuming that the Department moves forward with its proposal to sample data from the "largest ten fuel oil vendors" (and/or ten largest propane vendors, if applicable)<sup>4</sup>, the burden on vendors of deliverable fuels will also be great, although it will still be much lighter than if states had to collect data from all deliverable fuel vendors. At a July 22, 2013 hearing on the draft Massachusetts "Low Income Home Energy Assistance Detailed State Plan," Patti Wright, the Fuel Assistance Supervisor for Petro Heating Oil, testified that her company, which has 1,100 low-income/LIHEAP accounts, spends between 90 and 180 hours annually on data collection requested by the state LIHEAP grantee, the Department of Housing and Community Development. Petro is one of the larger companies serving low-income households in Massachusetts, so they are likely more efficient than smaller companies in collecting and reporting data. If the Department requires 10 fuel oil vendors in total to provide data, those

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<sup>4</sup> 79 Fed. Reg. 32551, col. 2.

vendors could spend an additional 1,000 hours or more in the aggregate to assist the Commonwealth of Massachusetts in meeting the Department's reporting requirements. Between the burden on the 22 local LIHEAP agencies (perhaps 2,000 hours) and the burden on oil dealers (1,000 hours), and not counting the burden on large electric and natural gas companies, NCLC et al. estimate that the reporting burden in Massachusetts alone could be 3,000 hours for this one state alone. This suggests that while the June 5, 2014 estimate now appears to be somewhat in the right ballpark, it still may be significantly on the low side.

**III. State Reporting Of “Annual Cost Of Main Heating Fuel” (79 Fed. Reg. 32551, col. 1) Will Likely Be Systematically Biased Low For Delivered Fuels.**

The Department is proposing that states report the “annual cost of main heating fuel”. NCLC et al. suggest that any such reports will almost certainly be biased systematically on the low side. Households purchase these fuels in discrete deliveries, perhaps 2 to 6 times over a winter heating season. A household heating with oil is relatively free to switch dealers at any time. Low-income customers in particular may switch over the course of the winter either because they are shopping for the cheapest, cash-on-delivery price every time the tank is low, or because the customer's prior dealer will no longer deliver due to an overdue balance. Local sub-grantee agencies have no ability to track down all of the purchases that may be made in these circumstances. At a Massachusetts LIHEAP state plan hearing on July 22, 2013, the Fuel Assistance Supervisor for Petro Heating Oil testified that any consumption data her company could collect would not be complete or accurate, precisely because so many of her clients switch dealers over the course of the heating season.

Second, in some states there are programs run by non-profit organizations or charities which arrange for free deliveries of oil. In Massachusetts, the LIHEAP sub-grantee agencies report that these one-time purchases are often made through dealers which are different than the

dealer the customer normally uses and which is known to the sub-grantee.<sup>5</sup> The sub-grantee cannot capture the associated consumption and expenditure information.

These two concerns are not speculative. Peter Wingate, the energy director at Community Action of the Franklin, Hampshire and North Quabbin Regions, which serves much of western Massachusetts, stated that “it’s extremely common for clients to use one vendor for LIHEAP deliveries then use whomever has the lowest cost per gallon for any additional deliveries.” He added that during the past two years, an average of 750 LIHEAP clients in his area separately received a delivery of oil paid for by “Joe4Oil” (a charitable program, see footnote 5), “often not with the client’s LIHEAP vendor” so that he would have no ability to track total consumption for those clients. Moreover, a survey his agency conducted showed that “50% of households augmented delivered fuels with wood heat” or electric space heaters so that data he collects from oil or propane vendors significantly understate true energy consumption and expenditures. Similarly, Liz Berube, the assistant agency director for Citizens for Citizens in Fall River, Massachusetts states that “many of our clients use other vendors” over the course of the winter and the agency has no way to track this usage. Because LIHEAP benefits rarely cover the full cost of heating with oil – generally the most expensive of the primary heating sources – the local LIHEAP sub-grantee agency simply cannot know all of the vendors from whom clients purchase their heating fuel, unless the client uses only one dealer for the entire year.

While the June 5, 2014 Notice is a significant improvement over the June 6, 2013 notice by focusing data collection efforts on the “largest 10 fuel oil vendors,” NCLC et al. wishes to

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<sup>5</sup> For example, in Massachusetts the “Joe4Oil” program often provides vouchers allowing a household to purchase 100 gallons of heating oil. <http://www.citizensenergy.com/english/pages/OilHeatProgram>. The Good Neighbor Fund also may provide assistance that the local LIHEAP sub-grantee agency would not be able to track. <http://www.magoodneighbor.org/assistance.html>.

underscore the inherent unreliability of consumption data for low-income households who are likely to switch vendors somewhat frequently.

#### **IV. NCLC Et Al. Strongly Support The Use of “Sampling Procedures,” Limiting The Number Of Vendors Sampled, And Making “Previously Required Data Elements Optional”**

The Department notes that it is “working collaboratively with state grantees that already collect the required data to develop an effective vendor and client sampling procedure that will furnish performance indicators within the targeted precision guidelines.” More specifically, the Department is planning to require that states will only need to obtain data from “the largest five electric and natural gas companies . . . and the largest ten fuel oil vendors. . . .” 79 Fed. Reg. 32551, col. 2. In our previous August 2, 2013 comments on the Department’s data collection proposal, we proposed that “a state could work with vendors of delivered fuels to choose a statistically-significant sample of customers who are served by those vendors year-round which would provide higher-quality, more reliable data than the approach [then] proposed by the Department while again significantly reducing the reporting burden.”<sup>6</sup>

We commend the Department for deciding to use a sampling approach and limiting the number of companies that will be sampled. We suggest that in some states sampling even five electric and natural gas companies might prove unnecessary and unduly burdensome. For example, it makes little sense to collect data from five utilities in a state in which two investor-owned electric companies serve 90% of all LIHEAP households and the next three largest companies are small municipally-owned entities with weak data collection systems. We urge the Department to be flexible in allowing states some discretion in determining how many companies to include in their sampling, based on the facts in each state.

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<sup>6</sup> Aug. 2, 2013 Comments, p. 24.

We similarly commend the Department for making the collection of “household utility consumption data and supplemental fuel and air conditioning data” optional (79 Fed. Reg. 32551, col. 2). In its August 2, 2013 comments, NCLC et al. had raised serious concerns about the burden this would create for states and local LIHEAP agencies.<sup>7</sup> However, it appears that the Department has not made optional the reporting of “Annual electricity cost” even when the household does not heat with electricity.<sup>8</sup> As NCLC et al. noted in earlier comments, states have an extremely limited ability to obtain either electricity cost or consumption data from a utility relative to electricity accounts for which the utility is not receiving LIHEAP payments. The utility has no contractual reporting obligations to the state if it is not receiving LIHEAP payments for a particular account, nor is there any general legal obligation of a utility to turn over to the state confidential customer cost or consumption data. While the Department has wisely decided to make reporting of “Annual consumption of electricity” optional, it appears to have left “Annual electricity cost” a mandatory reporting element. In large measure, the practical barriers to obtaining electricity cost data for a LIHEAP household that does not heat with electricity are as formidable as the barriers to obtaining electric consumption data. Both should be made optional reporting requirements.

## **V. CONCLUSION**

The Department is proposing to add significant, additional reporting requirements on state LIHEAP grantees, sub-grantees, and energy vendors at a time when LIHEAP funding is much lower than its peak funding level of \$5.1 billion. State and local LIHEAP agencies thus have smaller administrative budgets to process applications and serve needy households, and

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<sup>7</sup> August 2, 2013 Comments, pp. 8-10, 13-18.

<sup>8</sup> 79 Fed. Reg. 32551, col. 1.

additional reporting requirements will make it even harder to serve those households on a timely basis.

NCLC et al. welcome the Department's proposals to adopt sampling procedures and to limit the number of utilities or vendors that must be sampled, as well as its decision to make certain reporting elements optional.

However, we urge the Office of Management and Budget to make the reporting of electricity cost data optional. We also urge that the Department apply its sampling thresholds (e.g., "the largest five electric and natural gas companies/largest ten fuel oil vendors) flexibly, allowing for lower thresholds based on the size and distribution of these energy providers in a particular state (see IV., above).

We urge OMB not to overburden the program with reporting requirements that do not lead to providing better assistance to eligible households.

Respectfully submitted,

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on behalf of all commenters listed above