

February 10, 2021

The Honorable Norris Cochran
Acting Secretary of Health & Human Services

The Honorable Ben Goldhaber
Acting Assistant Secretary, Administration for Children and Families

U.S. Department of Health and Human Services
Office of Community Services, Division of Energy Assistance
Mary E. Switzer Building, 5th Floor West
330 C Street, SW
Washington, D.C. 20201

Re: Implementation of the Low-Income Drinking Water and Wastewater Emergency Assistance Program (Consolidated Appropriations Act, 2021)

Dear Acting Secretary Cochran and Acting Assistant Secretary Goldhaber:

The National Consumer Law Center and Natural Resources Defense Council write to you to respectfully offer recommendations regarding the implementation of the Low-Income Drinking Water and Wastewater Emergency Assistance Program in the recently enacted Consolidated Appropriations Act, 2021, and to urge you to make these funds available to states and Tribes as soon as possible.¹

The program was established as part of the most recent COVID-19 relief package. As Congress recognized, low-income customers urgently need assistance with their water and wastewater arrears and current bill payment obligations, which threaten millions of people with disconnection of water service during the pandemic. Congress charged the Department of Health and Human Services (HHS or “the Department”) with administering this new program and, especially since there is no pre-existing federal low-income water assistance program, HHS must be pro-active in carrying out this critical responsibility.

As detailed further below, we recommend that HHS:

1. HHS should provide states and Tribes the flexibility to incorporate eligibility criteria from current assistance programs in the state (e.g. the state’s current LIHEAP eligibility criteria).
2. HHS should require states and Tribes to establish procedures for vendor (water and wastewater system) agreements that set forth how the federal benefit will flow to the systems on behalf of eligible low-income households.

¹ Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. (2020), P.L. 116-260, div. H, tit. V, §533, hereinafter “the Act.”

3. HHS should require states and Tribes to demonstrate that their programs will effectively reach customers of all water and wastewater systems, regardless of system size.
4. HHS should ensure that states maximize public health benefits by using program funds to protect access to essential water service.
5. HHS should provide states with adequate direction and support to ensure they can quickly set up high-functioning programs.
6. HHS should require states and Tribes to gather and report back to HHS basic metrics regarding their program implementation and the extent to which the level of need for low-income customer assistance exceeds available program funds.

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Since 1969, the nonprofit [National Consumer Law Center® \(NCLC®\)](#) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. NCLC has been an advocate for low-income households eligible for the Low Income Home Energy Assistance Program (LIHEAP) since the program's inception and annually submits testimony to Congress seeking adequate appropriations for this critical program.

Natural Resources Defense Council (NRDC) is an international nonprofit environmental organization with more than 3 million members and online activists. NRDC's mission is to safeguard the Earth – its people, its plants and animals, and the natural systems on which all life depends. In the United States, NRDC's lawyers, scientists, and other environmental specialists work to ensure clean, safe, sufficient, and affordable drinking water and sanitation for all.

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Congress's establishment of a federal Low-Income Drinking Water and Wastewater Emergency Assistance Program is critical to fighting the COVID-19 pandemic and a watershed moment in addressing the long-standing challenge of water and wastewater affordability. Until December 2020, Congress had never before provided funds for low-income water assistance.

As the COVID-19 pandemic continues, the need for this assistance is more urgent than ever – both to protect public health and promote economic recovery.

The Centers for Disease Control continues to emphasize that handwashing is essential to limit the spread of COVID-19. Safe and affordable drinking water and wastewater services are also required for habitable housing conditions, so loss of these services jeopardizes access to housing. A recent report by Duke University researcher found that, if utility disconnections had been barred nationwide from March through November 2020, COVID-19 infections rates could have been reduced by 8.7% and deaths by 14.8%.²

² <https://www.nber.org/papers/w28394>

For many low-income households, especially people of color, unaffordable water costs and the resulting threat of water service disconnections are not new. Today, as the pandemic continues, millions more risk losing running water because they cannot pay their water bills. Nationwide, the Department of Labor reports that at the end of December 2020, 10.7 million Americans were unemployed and the unemployment rate and the number of unemployed individuals was double those in February 2020.³ In California, a staggering \$1 billion in household water debt affects nearly five million people, with an average debt of \$500 dollars per household.⁴

The pandemic is far from over, with more than 460,000 lives lost as of February 9, 2021 and over 26.8 million active cases of COVID-19.⁵ People continue to shelter at home to protect themselves from and mitigate the spread of COVID-19, thereby increasing their household water usage and water bills. Having access to affordable water and wastewater service is tied to the very habitability of the home.

In order to facilitate the rapid, effective, and equitable implementation of the Low-Income Drinking Water and Wastewater Emergency Assistance Program, we urge HHS to reach out now to states and Tribes to inform them of their funding allocations and the Department's target date for the release of program rules and availability of funds.

We respectfully recommend that the program rules allow states to be flexible within the following program parameters:

1. **HHS should provide states and Tribes the flexibility to incorporate eligibility criteria from current assistance programs in the state (e.g. the state's current LIHEAP eligibility criteria).** The Act is silent on the definition of eligible low-income household, but does direct the use of "existing processes, procedures, policies, and systems in place" to the extent practicable. In the LIHEAP program, states have the flexibility to set their income eligibility criteria over 110% of FPL and equal to or less than 150% FPL or 60% state median income and states are permitted to use participation in certain federal assistance programs (e.g., SSI or SNAP) to automatically qualify a household for LIHEAP assistance.⁶ Allowing states to mirror the criteria from their LIHEAP program would align the new water program with a well-established low-income home energy assistance program and facilitate use of the LIHEAP program delivery network as an option for the states.
2. **HHS should require states and Tribes to establish procedures for vendor (water and wastewater system) agreements that set forth how the federal benefit will flow to the systems on behalf of eligible low-income households.** The Act directs assistance payments be made to the owners and operators of drinking water and wastewater systems specifically to benefit low-income customers. Water and

³ See <https://www.bls.gov/news.release/pdf/empsit.pdf>

⁴ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/covid-19watersystemsurvey.html

⁵ See https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days

⁶ See 42 U.S.C. §8624(b)(2).

wastewater system vendor agreements should include requirements similar to the LIHEAP program, which are essential to track the flow of the funding to ensure that it is being used towards low-income customer arrearages and current bill payment obligations. This includes, among other things, requirements for vendors to provide outreach on the assistance program, charge only the difference between the normal billing minus the benefit, and notify households of their benefit amount.⁷ A model vendor agreement would help states and Tribes to fulfill this important administrative requirement more quickly.

3. **HHS should require states and Tribes to demonstrate that their programs will effectively reach customers of all water and wastewater systems, regardless of system size.** HHS should make clear that Congress’s direction in the Act that states and Tribes use the funds to assist low-income households “by providing funds to owners or operators of public water systems or treatment works to reduce arrearages of and rates charged to such households for such services” does not require that states and Tribes simply regrant funds to water and wastewater utilities and leave it to the utilities to determine which customers will receive assistance. That approach would effectively place the onus on each utility to administer its own low-income assistance program, likely preventing many smaller utilities with limited capacity from participating at all.

Instead, HHS should make clear that the legislation allows states and Tribes to take responsibility, either directly or through sub-grantees such as the local agencies that administer LIHEAP, for enrolling eligible customers of all water and wastewater utilities and determining each customer’s benefit level, prior to transferring funds to utilities to be credited to the enrolled customers’ accounts. In other words, states and Tribes or their sub-grantees should be able to make payments to the utilities on behalf of specific eligible households, to be credited towards those customers’ arrears or current bill obligations. HHS should strongly encourage this approach. It would help ensure that the funds are used for the purposes specified by Congress. This approach would also implement Congress’s direction that “the Secretary, States, and Indian Tribes, as applicable, shall, as appropriate and to the extent practicable, use existing processes, procedures, policies, and systems in place to provide assistance to low-income households, including by using existing programs and program announcements, application and approval processes.” Relatedly, HHS should also make clear to States and Tribes that, as a condition of their receipt of funds, they must perform outreach to water and wastewater customers concerning the availability of this new program.

4. **HHS should ensure that states maximize public health benefits by using program funds to protect access to essential water service.** To meet the core public health objectives of Congress, the Department, and the Administration, HHS should incorporate the following safeguards into the program:
 - a. **States and Tribes must use the funds in ways that will best promote the goals of restoring service to anyone previously disconnected and preventing future**

⁷ See 42 U.S.C. §8624 (b)(7).

disconnections. Within the flexibilities afforded to states and Tribes, HHS should ensure that state and Tribal programs are designed to the greatest extent possible to ensure that vulnerable households have access to water.

- b. **Customers receiving benefits must have service restored (if previously disconnected) and must not be disconnected or subject to other collections actions, including loss of housing through sale or enforcement of property liens, even if the benefit amount does not fully cover the customer’s water or wastewater arrears.** The current level of program funding is insufficient to meet the full nationwide need for assistance. But Congress surely did not intend that any portion of these funds should benefit water and wastewater utilities—*i.e.*, by offsetting decreased customer revenues—without *also* securing participating households’ most basic need for running water. Yet, that would be the result if utilities accept funds on behalf of struggling families and still deny water service to those families or threaten them with foreclosure. This protection for participating customers could be included in the vendor agreements.
5. **HHS should provide states with adequate direction and support to ensure they can quickly set up high-functioning programs.** Because no state or Tribe had an established low-income water or wastewater assistance program before COVID-19 and the need for emergency assistance to customers is urgent, HHS should help states and Tribes quickly ramp up all aspects of program implementation. In particular, HHS should:
- a. **Require states and Tribes to establish streamlined application procedures that minimize the burden on customers seeking assistance.** The COVID-19 pandemic makes it very challenging for financially distressed customers to obtain and submit copies of detailed financial information. And, as Congress recognized, there is an emergency need for low-income customers to receive assistance. Therefore, HHS should ensure that states and Tribes minimize the paperwork and other logistical burdens on customers who wish to apply for assistance. In addition to a streamlined paper applications, HHS must ensure that states and Tribes create user-friendly online application processes and minimize barriers for consumers with limited digital literacy skills or internet access. Further, HHS should provide states and Tribes with examples of how they can streamline application and enrollment processes, such as automatically deeming participants in other assistance programs (such LIHEAP, SNAP, SSI, Medicaid and low-income Veterans’ programs) to be eligible for the water and wastewater assistance program.
 - b. **Allow states and Tribes to use a reasonable amount of the funds that cover the establishment and administration of this new water assistance program.** Customer benefit determinations will require administrative time for intake and review of relevant documentation. Since there are no pre-existing federal or state low-income water and wastewater assistance programs, states will also incur administrative “start-up” costs to launch this new program. However, HHS should ensure that administrative expenses are no greater than necessary; with limited

funds available, it is critical to direct as much as possible to benefit low-income households directly, consistent with meeting all other program goals and requirements.

- c. **Provide recommendations to states and Tribes concerning how to administer the program through “existing processes, procedures, policies, and systems in place to provide assistance to low-income households.”** Congress provided that “the Secretary, States, and Indian Tribes, as applicable, shall, as appropriate and to the extent practicable, use existing processes, procedures, policies, and systems in place to provide assistance to low-income households, including by using existing programs and program announcements, application and approval processes.” We encourage HHS to provide recommendations to states on how they could do this most effectively, and to develop and refine those recommendations in consultation with other agencies (e.g., the Environmental Protection Agency) and stakeholders that have expertise concerning the water and wastewater utility sector. (HHS should not slow down the process of releasing funds in order to develop detailed technical guidance on this point, but rather should offer basic recommendations initially and refine them further after the program is launched.)
6. **HHS should require states and Tribes to gather and report back to HHS basic metrics regarding their program implementation and the extent to which the level of need for low-income customer assistance exceeds available program funds.** Policymakers need data to evaluate the effectiveness of the program and determine how to improve upon it, especially since this is the first time ever that Congress has provided funding for low-income water and wastewater assistance. HHS should ensure that states and Tribes gather and report the following information.
- a. **Subgrantees or entities administering the benefit should report on:**
 - Customer eligibility criteria to qualify for assistance
 - Number of households that applied for assistance and the number receiving assistance, broken out by owners and renters
 - Average amount of the household support and provision of the benefit matrix, if applicable
 - Number and type of system operators or owners receiving program funds
 - Total and average amount of funds directed to low-income customer arrears (broken out by drinking water or wastewater and owner versus tenant)
 - Total and average amount directed to current bills (broken out by drinking water or wastewater and owner versus tenant)
 - b. **Vendors (water and wastewater systems) receiving funds should report on:**
 - The number of residential customers disconnected for non-payment, the number of residential customers eligible for disconnection for non-payment but not yet disconnected (e.g., because of a temporary shutoff moratorium), the total dollar amount of residential customer arrears that are at least 60 days overdue, and the amount of funding for arrearage forgiveness available from other sources.

- Whether the state, Tribe, and/or water and wastewater systems receiving funds have adopted complementary policies to assist low-income customers, such as the following (check the box):
 - Disconnection moratorium
 - No late fees, interest, or penalty charges
 - Ability to enter into payment plan of 6 months or longer
 - Reconnection of service for disconnected customers
 - Enrollment in a discounted rate

We would appreciate the opportunity for a meeting to discuss our recommendations and we look forward to working with HHS to ensure prompt, effective, and equitable implementation of a robust Low-Income Drinking Water and Wastewater Emergency Assistance Program, which will help struggling households secure access to vital water and wastewater service. Please contact Olivia Wein (owein@nclc.org) and Larry Levine (llevine@nrdc.org) if you have any questions about our recommendations.

Respectfully,



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