

[Affordable Broadband Service is a Racial Equity and Public Health Priority During COVID-19](#)

Cross-posted with the [United Church of Christ, OC, Inc.](#) and the [Leadership Conference for Civil and Human Rights](#)

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If you are reading this on your smartphone or laptop, you are fortunate to have access to internet service. More than [20 million households](#) in the United States do not have internet service at home. The main barrier? [Cost](#).

Racial disparities with broadband service: [According to census data](#), about 10 percent each of Black and Hispanic Americans and 13 percent of American Indians and Alaska Natives have no internet subscription compared to 6 percent of White households. And not all broadband access is equal: a disproportionate number of Black and Latino households rely on a [smartphone](#) (small screen) for their broadband connectivity. It is clear during this pandemic that working and learning via a smartphone with limited data and throttling is second-class access compared with using a laptop via wi-fi and an unlimited wired broadband connection. However, with the public health risks of COVID-19, internet access strategies that may have worked in the past for students, adults, and elders (through schools, libraries, the workplace, community centers, and free wi-fi at fast food restaurants) are no longer safe.

COVID-19 exacerbates broadband service as a public health issue: COVID-19 has ravaged [communities of color](#). Older adults and those with chronic health conditions of all races and ethnicities are particularly at risk from coronavirus and must self-isolate. Telemedicine minimizes the transmission of the virus, but patients must have broadband to take advantage of remote health care services. Broadband in the home enables families to stay at home.

COVID-19 exacerbates broadband as an economic issue: The risk of job loss during the pandemic also falls more heavily on [workers of color](#). Access to work opportunities, services, and benefits for recently unemployed workers requires broadband. Physical distancing is still the safest way to limit the spread of COVID-19 and broadband is needed to access commerce and banking.

COVID-19 exacerbates broadband as an education issue: During surges of coronavirus infection, the bedroom has become the classroom for students of all ages. Students without broadband can't access classroom instruction. Even if COVID-19 infection rates continue to fall, in September many schools will likely [blend at-home and in-class learning](#) to maximize spacing among students. This means that broadband access will be important well into 2021 and beyond.

Opportunity to bring broadband to the home: The most economically distressed households must have access to affordable technology. Our health, our economy, and our educational competitiveness will not fully recover in the United States without it. Fortunately, Senators Wyden and Blumenthal have introduced the Emergency Broadband Connections Act of 2020, the Senate counterpart to Representative Veasey's bill (H.R. 6881), which passed the House as part of the [HEROES Act](#) (H.R. 6800) on May 15. The Emergency Broadband Connections Act guarantees a \$50

emergency broadband benefit — \$75 in tribal areas — to every eligible low-income household in the country that makes a request to their Internet Service Provider (ISP) and provides a one-time discount for ISP-provided devices. The bill also expands the existing Federal Communications Commission low-income [Lifeline](#) program to offer unlimited voice minutes and texting. This is the Senate's opportunity to address racial equity and, at the same time, enable telemedicine, distance learning, and online access to the workplace and marketplace from the home while also protecting public health.

[FDIC to Repeal 36% Rate Cap and Bank Payday Loan Guidance, but Banks Should Not Take the Bait](#)

FOR IMMEDIATE RELEASE: May 20, 2020

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New bank regulator guidance could permit balloon-payment loans but emphasizes responsible lending

WASHINGTON, D.C. - As our nation grapples with the economic fallout of the COVID-19 pandemic, the Federal Deposit Insurance Corp. (FDIC) announced plans today to [repeal two guidances](#) that protect consumers against high-cost bank payday loans over 36%, and four federal bank regulators [issued small-dollar loan guidance](#) that could open a crack to permit balloon-payment bank payday loans. By failing to warn against triple-digit interest rates and suggesting that banks may offer single-payment loans, new guidance from the FDIC, Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB) and National Credit Union Administration (NCUA) might encourage some banks to make unaffordable loans that trap borrowers in a cycle of debt, advocates warned, though other parts of the guidance emphasize that loans must be affordable and not lead to repeat reborrowing.

“The [evidence is clear](#) that bank payday loans, like traditional payday loans, put consumers in a debt trap,” **said Lauren Saunders, deputy director of the National Consumer Law Center.** “The American public [strongly supports](#) limiting interest rates to 36%, so it’s shocking that in the middle of an economic crisis the FDIC would repeal its 36% rate guidance and its letter warning of the dangers of bank payday loans. Congress should pass a 36% rate cap for banks and other lenders, and banks should decline to take the bait and not risk their reputations by making high-cost loans.”

Around the time of the last recession, a handful of banks were making balloon-payment bank payday loans - so-called “deposit advance products” - that put borrowers in an [average of 19 loans a year at over 200% annual interest](#). Most banks stopped making bank payday loans in 2013 after the OCC and FDIC issued guidance warning about the problems the loans cause. But the OCC repealed its guidance in 2017 and the FDIC announced today that it would repeal its deposit advance product guidance, along with its 2007 small dollar loan guidance that encouraged banks to limit interest rates on small dollar loans to 36%.

The new joint guidance encourages banks and credit unions to make “responsible” small dollar loans with appropriate underwriting and terms that support successful repayment rather than reborrowing, rollovers, or immediate collectability in the event of default. But the guidance offers few specifics, explicitly permits “shorter-term single payment structures,” and is vague on appropriate interest rates, though it does say that pricing should be reasonably related to the institution’s risks and costs.

“Banks should not read this guidance as an opening to return to bank payday loans, which cannot be made responsibly and lead to a cycle of debt. Any hint that bank payday loans or loans over 36% may be appropriate is especially dangerous coupled with the CFPB’s expected gutting of the payday loan rule and the FDIC and OCC’s separate proposal that will encourage [“rent-a-bank” schemes](#) where banks help non-bank lenders make triple-digit interest loans that are illegal under state law,”

Saunders explained.

“The continued assault by this Administration on protections against high-cost loans makes clear why Congress must step up and cap rates at no more than 36%. Bank small dollar loans must be fair and affordable - at annual rates no higher than 36% for small loans and lower for larger loans,” **said Saunders.** “We will monitor whether banks offer loans that help or loans that hurt families, especially low-income households and communities of color.”

PART 1: Department's 2019 Rules Go Into Effect Today, Putting Relief Out of Reach For Many Borrowers Taking Out New Loans After July 1

[S studentloanborrowerassistance.org/part-1-departments-2019-rules-go-into-effect-today-putting-relief-out-of-reach-for-many-borrowers-taking-out-new-loans-after-july-1](https://studentloanborrowerassistance.org/part-1-departments-2019-rules-go-into-effect-today-putting-relief-out-of-reach-for-many-borrowers-taking-out-new-loans-after-july-1)

July 1, 2020

Today, new U.S. Department of Education (the Department) regulations will go into effect, erasing many of the protections students had against school fraud. These regulatory changes could not have come at a worse time. As students are trying to weather the economic instability caused by the coronavirus, the Department has given predatory schools the green light to mislead and deceive them by making it harder for students to cancel debt taken on as a result of school deceit.

The most notable changes pertain to Borrower Defense to Repayment (also called borrower defense). This set of regulations, established by the Obama administration in 2016, created a process for borrowers to request that the Department discharge their federal student loans when their school behaves illegally or misleads them about the educational programs they offer or the loans the student can borrow to attend the school's program. The rules that go into effect today (the 2019 Rules) replace the 2016 version. Overall, the changes to the Department's regulations make it much more difficult for students to get any loan relief, even if they were impacted by a school's predatory practices.

This post is the first in a three-part series on the regulation changes. This blog post focuses on how the 2019 Rules affect borrowers with new loans. A later blog post will explain how these regulations will impact borrowers who took out loans *before* July 1, 2020.

What the 2019 Rules provide is a far cry from what *would* be a fair process for borrowers. These regulations impose new elements and evidentiary requirements borrowers must satisfy before they are eligible to have even a fraction of their federal student loan debts discharged. Additionally, the regulations permit schools to keep students out of court without facing any consequences. And, the regulatory changes make it harder for students to get loan relief after their school unexpectedly closes.

Congress acknowledged that the 2019 Rules essentially give predatory schools the green light to mislead and scam students with impunity. It approved a bipartisan measure that would have prevented these regulations from going into effect, but President Trump vetoed the measure. Student loan advocates have challenged the rule in court, but that case is still being decided. Until the court or Congress intervenes, these regulations will be in effect and students will struggle to get relief if they are ripped off by their schools.

What Do the 2019 Rules Mean For Borrowers with New Loans?

The new regulations establish a new standard for anyone with a federal student loan issued after July 1, 2020.

Under the 2019 Rules, to receive a borrower defense discharge, a borrower must:

(1) apply **within 3 years** of attending their school;

(2) demonstrate that they **relied** upon a “statement, act, or omission by an eligible school to a borrower that is **false, misleading, or deceptive**” and that “**directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made**”;

(3) demonstrate that the **school knew it was misleading students**; and

(4) submit evidence to show they suffered “financial harm” in the form of “monetary loss” caused by the school’s misrepresentation. *The Department will not accept the act of borrowing a loan to show financial harm (unlike what it has done previously). Additionally, if the borrower relies on a period of unemployment to demonstrate financial harm, they must submit documentation to prove that they (a) were involuntarily unemployed and (b) their unemployment was not due to local, regional, or national economic downturns.*

The Department’s final rules also state that the borrower’s sworn statement within their application, on its own, will no longer be enough to demonstrate that their school misled them. Now, borrowers must submit both a complete written application and **additional written evidence** of the school’s misconduct and the financial harm the student suffered as a result of the school’s misconduct for the Department to grant their claim. It is unclear whether the Department will apply its new evidentiary standard to applications submitted before July 1, 2020.

The regulations change other borrower protections for loans issued after July 1, 2020, too.

In addition to changes to borrower defense, the regulations change other types of protections students rely on when things go south with their school.

- *False Certification*: the 2019 Rules make it more difficult for a borrower to get loan relief when their school lies about the student’s eligibility for a federal student loan (called a False Certification Discharge). The Department made it significantly harder for students to get a loan discharge, even if the school lied to the student about their eligibility to receive federal student loans without a high school diploma or GED. The Department’s regulatory change ignores the fact that many predatory schools bury critical information in small print and force students to sign documents without allowing them to review them. Now a student will be ineligible for loan relief (for loans issued after July 1, 2020) if their school employs that same predatory practice.
- *School Warnings Regarding Financial Instability or Low Loan Repayment Rates*: the 2019 Rules remove warnings that a school had to provide to prospective and current students if the school became financially unstable or if graduates were unable to repay their loans.
- *Automatic Closed School Discharges*: A student who attends any school that closes after July 1, 2020, will be able to take advantage of the right to a closed school discharge only by submitting an individual application. A closed school loan discharge is available to a student whose school closed before he or she was able to complete their educational program if they did not enroll in the same program at another school. Previously, the Department *automatically* discharged the debt of students who did not complete their educational program and did not complete their program at another school within three years of the school closure. Information on closed school discharges [appears here](#).
- *Arbitration*: the 2019 Rule rolled back protections ensuring that students could hold schools accountable in court by limiting schools’ use of arbitration agreements (more information on arbitration is [here](#) and [here](#)). Now, as long as schools warn students that they have an arbitration agreement in their enrollment contracts, students may not be able to hold schools accountable for illegal conduct in court.

As the Department itself said in its final rules, “Under these final regulations, a school engaging in misrepresentation alone will not be sufficient for a successful claim.” By accepting that schools will lie and students will have no recourse, the Department tacitly acknowledged that these regulations protect predatory schools and not students. Congress admirably provided [COVID-related protections](#) for many federal student loan borrowers, and it should continue to intervene to rein in the Department’s refusal to provide meaningful relief for defrauded students. Students are at risk to fall victim to predatory school practices now more than ever.

In the next few days, we will post tips for what steps student loan borrowers should do to protect themselves against predatory school practices.

Massachusetts Advisory Committee to the United States Commission on Civil Rights

**Water Briefing
Tuesday, May 19, 2020**

**Written Statement of Olivia Wein
Staff Attorney at the National Consumer Law Center**

Good afternoon, Massachusetts Advisory Committee to the United States Commission on Civil Rights and members of the public. Thank you for holding this important and timely water briefing. The current COVID-19 pandemic has amplified the urgent need to ensure that all members of our society have access to safe and affordable water and waste water service.

Safe and affordable drinking water and waste water service (referred to as “water service” in my statement) are essential utility services. The human body needs water to survive, and clean water is necessary for cooking, cleaning and sanitation. Water service is also essential for a dwelling to be considered habitable. The United Nations General Assembly has recognized water as a human right.¹ One state, California, has passed legislation explicitly stating that: “It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”²

COVID-19 adds a heightened importance to ensuring access to safe and affordable water service. For individuals, households and communities, public health steps to prevent and slow the rate of disease transmission require water for handwashing and cleaning.³ Until there is a vaccine or effective treatment for COVID-19, staying at home as much as possible will be critical to slowing the spread of the virus. Water service is required for a home to be habitable.

During the height of the pandemic, 14 states (including two New England states, New Hampshire and Maine), the District of Columbia and Puerto Rico issued protective water shut-off moratoria that covered all public water systems.⁴ Unfortunately, the Massachusetts utility

¹ Resolution A/RES/64/292, U.N. General Assembly (Jul. 2010).

² California Assembly Bill (AB) 685, Human Right to Water Act (2012).

³ CDC Coronavirus Disease 2019 (COVID-19), *How to Protect Yourself and Others* available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁴ Larry Levine Governors: *Safe, Clean Water is Essential in COVID-19 Crisis*, NRDC (April 8, 2020) available at <https://www.nrdc.org/experts/larry-levine/governors-safe-clean-water-essential-covid-19-crisis>. (States with statewide water shut-off protections and DC and PR: Michigan, California, North Carolina, Ohio, Wisconsin, Maine, New Hampshire, Indiana, Kansas, Mississippi, Delaware, Washington, Maryland, Montana, District of Columbia and Puerto Rico).

shut-off moratorium only covered investor-owned utilities.⁵ This covers only a very small number of suppliers in the Commonwealth.⁶ Residential customers in Massachusetts served by municipal and other non-investor-owned water utilities must rely on a utility-by-utility approach for disconnection protections.

Consumers under the protection of a shut-off moratorium are still responsible for their water usage. One recent industry analysis estimates an annualized impact on drinking water utilities of \$5.4 billion due to COVID-19 shut-off moratoria (non-shut offs for non-payment) and revenue loss due to increased residential delinquencies (e.g., due to job loss).⁷ As COVID-19 shut-off protections are lifted for water,⁸ energy,⁹ and telecommunication¹⁰ services, consumers will face a sudden increase in payment obligations at the same time there is record unemployment and underemployment. This will be a period where consumers are particularly vulnerable to losing water service and will require extra protections and assistance to protect connection to essential utility services.

The COVID-19 public health and economic crisis has disproportionate racial impacts. Communities of color have been hardest hit. The Federal Reserve reports that that 39% of people who were working in February 2020 and had a household income below \$40,000 had lost their

⁵ *Baker-Polito Administration Temporarily Prohibits Utility Shutoffs to Protect Massachusetts Ratepayers* (Mar. 24, 2020). Available at <https://www.mass.gov/news/baker-polito-administration-temporarily-prohibits-utility-shutoffs-to-protect-massachusetts>.

⁶ Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities* (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019) at 2 (noting that there are only 19 privatized water suppliers in Massachusetts). Available at <https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf>.

⁷ Raftelis, *The Financial Impact of the COVID-19 Crisis on U.S. Drinking Water Utilities, AWWA and AMWA* (April 14, 2020) at Executive Summary (Table shows annualized marginal cost of non-shut offs of \$.57 billion and annualized revenue loss due to increased delinquencies of \$4.92 billion). Available at https://www.awwa.org/Portals/0/AWWA/Communications/AWWA-AMWA-COVID-Report_2020-04.pdf.

⁸ Alexandra Campbell-Ferrari and Luke Wilson, *The COVID-Water Disconnect: How Statewide Moratoriums Are Leaving People Behind*, The Center for Water Security and Cooperation, Blue Paper available at https://drive.google.com/file/d/1A1Ba1b8-BQH6k-cmEOGMtJw9yJrQ_Ax-/view. See also, National Association of Regulatory Utility Commissioners (NARUC) State Response Tracker Available at <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

⁹ National Association of Regulatory Utility Commissioners (NARUC) State Response Tracker Available at <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

¹⁰ The list of communications companies that have taken a voluntary pledge to not disconnect customers available at <https://www.fcc.gov/keep-americans-connected>.

jobs and another 6% of all adults reported reduced hours or took unpaid leave.¹¹ There is also a greater risk to low-income workers of color from the economic fallout due to COVID-19. We have glimpses of the racial disparity with utility disconnection when we look at Massachusetts energy data. Pre-COVID-19, data on electricity shut-offs showed that for households at or below 150% of the federal poverty level, African American households in Massachusetts experienced disconnections over five times more than their Caucasian counterparts.¹² The Federal Reserve Bank of Philadelphia performed an analysis of workers most likely at risk of job loss from the pandemic. The analysis looked at which occupations were most at risk due to requiring close proximity to customers or co-workers and would be difficult to do from home. The analysis found that “at risk” workers “are between 7 and 12 percentage points more likely than lower-risk workers to be male, non-white or Latino, and to rent their homes.”¹³

Analysis of COVID-19 deaths by race and ethnicity find that nationally, the mortality rate for Black Americans is 2.6 times higher than the rate for Whites.¹⁴ These disparities are apparent in Boston, where, of the total COVID-19 cases with known race or ethnicity, 40.3% of the individuals are Black or African American, 14.2% are Hispanic or Latino and 28.4% are White.¹⁵ The Mayor of Boston has established a Health Inequities Task Force to provide guidance on data analysis, testing sites and health care services.¹⁶ Access to safe and affordable water during the COVID-19 crisis and the economic recovery will require deliberate consideration of the racial equity.

Tools for Water Equity

Traditional utility credit and collections tools are blunt and harsh, particularly where there are not an array of consumer protections and programs to address affordability. These utility credit and collection tools include disconnection of water service for non-payment, which deprives a

¹¹ Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020* (May 2020) at p.53. Available at <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

¹² Analysis of John Howat, senior policy analyst, National Consumer Law Center, based on 2009 Energy Information Administration’s Residential Energy Consumption Survey for Massachusetts (26.2% of African American households were disconnected from electricity service due to an inability to pay compared to 4.6% of White households).

¹³ Keith Wardrip and Anna Tranfaglia, *COVID-19: Which Workers Will be Most Impacted?*, Federal Reserve Bank of Philadelphia (April 2020) at 3. Available at <https://philadelphiafed.org/-/media/covid/covid-19-impacted-workers.pdf?la=en>.

¹⁴ APM Research Lab Staff, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM Research Lab (May 12, 2020) Available at <https://www.apmresearchlab.org/covid/deaths-by-race>.

¹⁵ City of Boston, *COVID-19 Health Inequities Task Force Created* (May 17, 2020). Available at <https://www.boston.gov/news/covid-19-health-inequities-task-force-created>.

¹⁶ *Id.*

household of water service, liens which jeopardize a household's property interest, imposition of charges, fees and interest which only make an unaffordable water debt even more unaffordable, and negative credit reporting which increases the cost of credit for a struggling household.

Water utilities should make a distinction between those households that cannot afford to pay their water bills without sacrificing other necessities of life and those households that can afford to pay, but chose not to pay. This next section is a description of tools and strategies for the former, while the traditional collection tools described above are appropriate for the latter.

Disconnection moratoria: Unlike the 14 states along with the District of Columbia and Puerto Rico noted *supra*, Massachusetts does not have clear and uniform water shut-off protections in place during the COVID-19 emergency. Shut-off moratoria serve several functions. For the household, it ensures water service, even if the household is no longer able to pay their water bills. For the water utility and the community it serves, the shut-off moratorium provides time to prepare for how to build a safe off-ramp or grace period once the moratorium is lifted so that household can still stay connected to service. Without this planning, there is the risk of a great number of households losing water service in the same period of time due to an inability to pay the current bill and any accumulated arrearages.

Safe reconnections: Because water service is essential for households to protect themselves from COVID-19 and to shelter-at-home safely, any households that have been disconnected must be safely reconnected. Water reconnections, particularly after prolonged shut-off, can increase the risk of contaminants and must be done properly.¹⁷

Special Protections for Vulnerable Populations: Water is essential for life and a habitable home and is a basic human need for all households. That said, there are special termination protections for customers of regulated water service in Massachusetts that should be applied for all water service customers. Regulated utilities are prohibited from disconnecting customers experiencing financial hardship under certain circumstances:

- Someone in the home is seriously ill; or
- There is a child under 12 months living in the home; or
- Between November 15th and March 15th (and this is often extended a few weeks); or
- All the adults in the home are 65 or older and a minor also resides in the home.¹⁸

¹⁷ See e.g., Michigan Department of the Environment, Great Lakes, and Energy, *Flushing Your House Plumbing System When Water Services are Restored*. Available at https://www.michigan.gov/documents/egle/egle-tou-dweh-WaterReconnectionActions_683801_7.pdf.

¹⁸ 220 Code Mass Reg §25.03.

Water Affordability Programs: Water utilities lag behind their energy industry counterparts when it comes to design and implementation of affordability programs. Below is a sample of low-income water assistance programs from around the country and energy affordability program designs:

Percentage of Income Payment Plans: The Percentage of Income Payment Plan (PIPP) is a rate design that is based on a percentage of a household's income deemed to be affordable. For example, if a household's income is \$12,000 annually and the affordable percentage of income is determined to be 5%, then the household would be required to pay \$600/year (or \$50/month).¹⁹

Tiered Rates Tied to Income: In 2017, the Philadelphia Water Department established a Tiered Assistance Program (TAP) to help low-income consumers (150% of the federal poverty level (FPL)) afford their water bills. The tiered rates are based on the household's FPL starting with bills capped at 2% of income for households at 0 - 50% FPL; 2.5% of income for households at 51% - 100% FPL; 3% of income for household at 101% - 150% of FPL, and 4% of income for households with special hardships above 150% of poverty.²⁰ Baltimore recently passed a law to establish a similar water affordability program, called "Water for All." Water bills for low-income customers with incomes at 0 - 50% of the FPL would be capped at 1% of income; customers with incomes at 51% - 100% of FPL would have their water bills capped at 2% of income and customers between 101% - 150% FPL would have their bills capped at 3% of income.²¹ Baltimore's program has not yet been implemented and advocates await the publication of the regulations for the assistance program.²²

¹⁹ Example of energy PIPPs include the Illinois PIPP for low-income energy customers eligible for the Low Income Home Energy Assistance Program (See <https://www2.illinois.gov/dceo/communityservices/utilitybillassistance/pages/default.aspx>) and the Ohio PIPP for energy services (See https://development.ohio.gov/is/is_pipp.htm).

²⁰ See *Managing Public Water Infrastructure With Resource Constraints, Water Affordability Based on Income: The Tiered Assistance Program in Philadelphia*. Available at http://graham.umich.edu/media/pubs/Water-CS-Philidelphia-Tiered-Assistant-Program_0.pdf.

²¹ Brett Walton, Circle of Blue Water News, *Baltimore Council Approves Income-Based Water Bills* (Nov. 21, 2019) available at <https://www.circleofblue.org/2019/world/baltimore-council-approves-income-based-water-bills/>; Food & Water Watch, *Baltimore Committee to Hold Online Hearing on Water Accountability & Equity Act Implementation* (Apr. 29, 2020) available at <https://www.foodandwaterwatch.org/news/baltimore-committee-to-hold-online-hearing-water-accountability-equity-act-implementation>.

²² Food & Water Watch, *Baltimore DPW Asks to Extend Implementation Deadline on Water Affordability Legislation Despite Greater Need* (Apr. 30, 2020) available at <https://www.foodandwaterwatch.org/print/news/baltimore-DPW-extends-implementation-of-water-affordability-bill>.

Discounts Off of a Full Bill or a Portion of the Bill: Another means of lowering the amount of the water bill due is to provide a low-income discount off of the whole bill, or portion of the bill. San Jose Water Company offers a 15% discount off the total bill for low-income customers through its Water Rate Assistance Program (WRAP).²³ San Jose Water Company customers who are enrolled in the electric or natural gas low-income utility discount California Alternate Rate for Energy (CARE) program are automatically enrolled in San Jose's WRAP program. The Washington Suburban Sanitary Commission (WSSC) has a Customer Assistance Program (CAP) that provides a credit for fixed water and sewer fees of up to \$28/quarter for low-income customers enrolled in Maryland's low-income Office of Home Energy Programs.²⁴

Charitable Funds: Like Energy Fuel Assistance Funds, some water companies make it possible for other customers and the company to contribute to a charitable fund to help payment-troubled customers. One example of an emergency water fund is Missouri American H2O Help to Others, which is an emergency assistance program that is run by community action agencies.²⁵ Charitable funds, while helpful and potentially more flexible than traditional bill payment assistance programs, are often small in size and do not have a steady funding stream.

Arrearage Management Programs/Arrearage Forgiveness: Low-income households and households that have experienced a sudden drop in income and/or increase in expenses can fall behind on their regular bills. Massachusetts has an innovative approach to help customers who have fallen behind achieve a fresh start through Arrearage Management Programs (AMPs).²⁶ Since 2008, all regulated Massachusetts electric and gas utilities offer AMPs. With an AMP, customers can earn forgiveness of 1/12 of their arrearage with each on-time monthly payment. Thus, in a period of a year, it is possible for a household to have all of its arrears forgiven. Water AMPs should be given particular consideration as the economy recovers from COVID-19 and households who had lost work or wages are once again earning a steady income.

Low-income Conservation/Leak Detection and Repair: Subsidized water conservation measures such as low-flow aerators and appliances such as water efficient toilets can help lower water bills for struggling households. Traditional rebate programs are cost-

²³ See <https://www.sjwater.com/customer-care/help-information/water-rate-assistance-program>.

²⁴ See <https://www.wsscwater.com/assistance#cap>.

²⁵ See <https://amwater.com/moaw/customer-service-billing/payment-assistance-program>.

²⁶ For an in depth explanation of the Massachusetts AMPs, see Charlie Harak, *Helping Low-Income Utility Customers Manage Overdue Bills through Arrearage Management Programs (AMP)*, National Consumer Law Center (Sep. 2013) available at https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/amp_report_final_sept13.pdf.

prohibitive for low-income households without the discretionary income to pay for the upfront costs. Seattle Public Utilities offers low-income customers free water-saving toilets.²⁷ Leaks can also be a costly problem for low-income households because the cost of a plumber and possible new parts for fixtures is cost-prohibitive. Programs that target high-volume users that are low-income for leak detection and repair services can help make bills more affordable. The City of Sacramento Department of Utilities has a “Leak Free Sacramento” program for low-income customers and provides leak repairs and water efficient fixtures for eligible customers.²⁸

Water Consumer Protections

Water service rules, procedures and practices can pose barriers for payment-troubled customers. In order to lower these barriers to water service, utilities should consider:

- Not requiring deposits to start service or restart service²⁹
- Not imposing late fees, particularly during the COVID-19 crisis and economic recovery
- Providing reasonable payment plan terms with customers that do not require down payments and provide for an extended payment period (e.g., 12 months)
- Providing clear materials to customers about their rights to utility service and obligations
- Providing a fair dispute resolution process
- Providing clear notice requirements before termination of water service
- Allowing customers to pay field agents to stop a disconnection and authorizing and requiring field agents to stop a termination if there is danger to the health and safety of the households (e.g., resident is seriously ill)

Tenant protections: Water affordability programs, in general, are targeted to customers of record. Without any additional action, this leaves out tenants in master-metered properties³⁰ from being able to participate in water affordability programs. This is an added racial equity issue for tenants in Massachusetts because the state has one of the highest racial homeownership gaps in the

²⁷ See <http://www.seattle.gov/utilities/services/water/reduce-water-use/low-income-toilet-offer>.

²⁸ See <https://www.cityofsacramento.org/Utilities/Water/Conservation/Residents/Residential-Water-Wise-Services/Leak-Free-Sacramento>.

²⁹ Regulated gas and electric utilities in Massachusetts are prohibited from requiring a security deposit for new or continued service. See 220 Code Mass Reg §27.00.

³⁰ Submetering in Massachusetts was prohibited until 2005, so tenants with their own meters would likely be tenants in newer units. See Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities* (Northeastern University School of Law: Program on Human Rights and the Global Economy, Boston 2019) at 5. Available at <https://www.northeastern.edu/law/pdfs/academics/phrge/water-report-2019.pdf>.

country with white ownership in some communities at 68% compared to black homeownership in those same communities at 32%; statewide, for Hispanic residents the rate of homeownership is 26%.³¹ Tenants are highly vulnerable to the high cost of water as it affects their rent. In addition, landlords are the ones who have control over whether fixtures are water efficient and when leaks are repaired. One city, Baltimore, switched from disconnecting multi-family properties over unpaid water bills and instead sues the landlord for nonpayment and continues the water service.³² California is exploring a renter's water credit that would be delivered to the renter through the state income tax system.³³

Data Collection: Assessing the effectiveness of water affordability programs and protections requires regular data collection and reporting. The lack of data collection and reporting on key metrics will also serve to hide the problem. Below are suggested data points that would provide the ability to track a utility's success in keeping vulnerable customers connected to essential water service and would also allow for comparisons across water utilities:

Data Points for Water Data Collection and Reports

1. Monthly collection (reporting could be quarterly, bi-annual or yearly)
2. Number of residential customers
 - 2.1 Same for low-income customers (payment assistance customers)
 - 2.2 Same for multifamily dwellings
3. Residential Arrearages (number, vintage (e.g., 90-day) and dollar amount)
 - 3.1 Same for low-income customers (payment assistance customers)
 - 3.2 Same for multifamily dwellings
4. Number of Residential Disconnection Notices
 - 4.1 Same for low-income customers (payment assistance customers)
 - 4.2 Same for multifamily dwellings
5. Number of Residential Disconnections
 - 5.1 Same for low-income customers (payment assistance customers)
 - 5.2 Same for multifamily dwellings
6. Number of Residential Reconnections
 - 6.1 Same for low-income customers (payment assistance customers)
 - 6.2 Same for multifamily dwellings

³¹ *Id* at 3.

³² Joan Jacobson, *Keeping the Water On: Strategies for addressing high increases in water and sewer rates for Baltimore's most vulnerable customers*, The Abell Foundation (Nov. 2016) at pp. 10-11. Available at <https://www.abell.org/publications/keeping-water>.

³³ *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program* (Feb 2020) at Chapter 3. Available at https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf.

7. Number of customers disconnected more than 1 time in a year
 - 7.1 Same for low-income customers (payment assistance customers)
 - 7.2 Same for multifamily dwellings
8. Number of payment plans
 - 8.1 Same for low-income customers (payment assistance customers)
9. Average dollar amount of payment plans and timeframe
 - 9.1 Same for low-income customers (payment assistance customers)
10. Number of successful payment plans (and total collected)
 - 10.1 Same for low-income customers (payment assistance customers)
11. Number of liens
 - 11.1 Same for low-income customers (payment assistance customers)
 - 11.2 Same for multifamily dwellings

Conclusion: Program design and consumer protection rules can help keep vulnerable households connected to water service. In addition to utility and statewide tools, the creation of a federal low-income water assistance program similar to the Low Income Home Energy Assistance Program would help low-income consumers afford their water service.

State courts across the nation have begun holding remote hearings. This issue brief considers what steps courts should take to protect consumers before holding remote hearings in debt collection cases. Studies show that between [91% to 99% of consumers in debt collection cases are unrepresented](#) so this brief focuses on protecting people who do not have an attorney.

HOW COURTS SHOULD PROTECT CONSUMERS APPEARING REMOTELY IN DEBT COLLECTION CASES

- **Postpone Hearings and Stay Enforcement of Judgments until a Safe Reopening Plan Is Implemented** – Courts should postpone hearings on collection lawsuits until they have: (1) a plan to protect the health of those who use the courts, and (2) a plan to protect the rights of those who appear remotely. Courts should also stay the enforcement of new and existing judgments in collection cases until they can quickly and safely process remote and in-person emergency hearings to assert exemptions, vacate judgments, or modify garnishments of wages or bank accounts.
- **Make Remote Appearance Optional** – Remote hearings should be optional, especially for unrepresented consumers who may face challenges, such as lack of broadband, ability to use required technology, etc. Those who do not opt in to remote hearings should be allowed to appear in person, *if safe options currently exist*, or have the hearing delayed until safe in-person hearings are possible.
- **Give Clear Notice** – Courts should: (1) provide clear information, in multiple languages, about the consumer’s options to participate remotely or appear in person; (2) explain if in-person hearings are currently delayed due to COVID-19, and (3) ensure such notice is received.
- **Provide Details** – Courts should provide clear and detailed instructions about: (1) how the remote hearing will occur, including the date and time of the hearing; (2) how to attend the hearing; (3) how evidence may be presented at the hearing; (4) how defenses may be raised; (4) a summary of exemptions and how to assert them; (5) information about free legal services that may be available; and (6) specific contact information for court personnel if the consumer has questions.
- **Require Party with Burden of Proof to Provide Evidence in Advance** – Courts should require the party with the burden of proof to provide the evidence that it intends to use at the remote hearing to the other party in advance.
- **Inquire about Reasons for Remote Default** – When unrepresented consumers fail to appear, courts should: (1) contact them to ask about the reason for the failure to appear; (2) provide a simple process for the consumer to explain the reason (e.g. technology failure, loss of internet or telephone connection, illness, etc.) that the consumer can use to move to vacate default (if necessary), and (3) make it easy to reschedule the hearing.
- **Do Not Issue Civil Arrest Warrants** – Courts should not issue civil arrest warrants (also known as *capias* or bench warrants) for failure to appear remotely.

- **Coordinate with Legal Services** – Courts should discuss potential changes to court procedures in advance with legal services organizations and work with them to ensure that unrepresented consumers have access to the same information or representation in remote hearings that they would have had if the hearings were held in person.
- **Use Free Technology** – Appearing remotely should not be a financial burden for consumers. Avoid services that charge parties to participate.
- **Use Accessible Technology** – Make sure that technology used for remote proceedings is compatible with mobile phones and accessible for those with disabilities.
- **Provide a Telephonic Alternative** – Courts should always offer the option of appearing by phone since this technology is more likely to be accessible to a wider number of unrepresented consumers. If one party needs to appear by phone, the entire hearing should take place by phone rather than having one party appear by video conferencing and one party appear by phone.
- **Avoid Bias by Creating a Uniform Appearance** – Courts should work with video conferencing providers to develop standard backgrounds for litigants appearing by video conferencing and provide suggestions about how to improve sound and video quality.
- **Allow, But Don't Require, Use of E-Filing** – Unrepresented consumers who affirmatively opt in to using e-filing systems should be allowed to do so. However, courts should provide alternative methods of communication and filing for unrepresented consumers since they may face barriers accessing or using e-filing.
- **Reform Notarization Requirements** – Courts that have notarization requirements to file documents like answers or affidavits should adapt these requirements to ensure that they are not a barrier to remote participation by unrepresented consumers.
- **Language Access** – Courts should provide language access services to consumers appearing remotely rather than relying on informal interpretation by friends or family of the consumer.
- **Stream Proceedings, But Don't Publish Recordings** – Court sessions must be open to the public, and audio should either be streamed live or shortly after the proceeding is recorded. Recordings should also be available to the parties. However, to prevent misuse, recordings should not be published permanently online.
- **Reaffirm the Consumer's Right to a Hearing** – If courts use video conferencing technology to allow parties to communicate directly before a hearing (such as by using breakout rooms in Zoom), they should clarify that such negotiations are optional and clearly inform consumers that they have a right to a hearing about the alleged debts.
- **Protect Consumers in Dispute Resolution** – Courts considering adopting alternative dispute resolution (ADR) or online dispute resolution (ODR) should consult with legal services organizations and review [Consumer Protection and Court-Sponsored Online Dispute Resolution in Collection Lawsuits](#).

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