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LOW INCOME HOUSEHOLD ENERGY ASSISTANCE PROGRAM: WORKING
TO ENSURE PROTECTION FOR THE FUTURE

*Benjamin P. Mayers**

I. INTRODUCTION

In 2009, 7.7 million households throughout the United States could not afford to heat or cool their homes.¹ In 2010, that number increased 15%, resulting in approximately nine million households unable to pay their energy bills.² Furthermore, the National Energy Assistance Directors' Association ("NEADA") predicts that this number will only continue to rise.³

In 1981, Congress first attempted to remedy this problem by enacting the Low Income Energy Assistance Act ("Act").⁴ The Act authorizes the Secretary of Health and Human Services ("Secretary") to issue block grants to states in order to provide energy assistance to low-income households.⁵ Originally, the Act was created to provide financial assistance to households in the Northeastern United States to heat their homes during frigid winters.⁶ After the initial success of the Act, coverage was expanded nationwide in 1984.⁷ Soon after, the Low Income Household Energy Assistance Program ("LIHEAP") was formed, and began providing funding to at-risk low-income families across the United States in response to rising energy costs.⁸

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¹ See Julie Schmit, *More People Apply for Energy Assistance to Help with Heating*, USA TODAY (Mar. 3, 2010, 5:58 PM), http://usatoday30.usatoday.com/money/industries/energy/2010-03-01-energyhelp01_ST_N.htm.

² *Id.*

³ *Id.*

⁴ 5 West's Fed. Admin. Prac. § 6165.

⁵ See 42 U.S.C. § 8621 (2005). *But see Illinois Facts*, LIHEAP: CAMPAIGN FOR HOME ENERGY ASSISTANCE (2015), <http://liheap.org/cms/assets/uploads/2014/05/Illinois-2015.pdf> (LIHEAP funding has been decreasing annually).

⁶ *About LIHEAP*, LIHEAP (2014), <http://liheap.org/campaign> [hereinafter *About LIHEAP*].

⁷ *Id.*

⁸ *Id.*

Over the past thirty-three years, LIHEAP has provided valuable services to families across the nation.⁹ Since 2009, however, the program's budget has been dramatically cut.¹⁰ The decreased budget has resulted in less state regulation and federal oversight, leading to rampant fraud and abuse.¹¹ Unless states implement more effective fraud-prevention measures, LIHEAP will continue to be defrauded by ineligible and illegitimate applicants, rendering the program unable to help households stay safe and healthy all year round.¹²

LIHEAP is especially important for low-income consumers, particularly at-risk groups such as the elderly and low-income families with young children.¹³ These groups are dependent on the relief LIHEAP provides and may require advocacy to ensure protection from fraud.¹⁴ Low-income families with young children are particularly reliant on LIHEAP, as children are more susceptible to illness due to extreme temperatures during the winter and summer months.¹⁵ Along with the extreme temperatures, affected families often have increased food and clothing expenses, and LIHEAP funds relieve parents from choosing between feeding their children and keeping them warm (or cool).¹⁶ Similarly, the elderly are often in need of LIHEAP benefits, especially those who are disabled or live on fixed-incomes.¹⁷ Like young children, the elderly are susceptible to illness during the winter and summer months if they are unable to heat and cool their homes.¹⁸ Moreover, elderly consumers are frequently the victims of fraud and utility company error, and thus may require additional oversight for fraud detection to ensure they receive LIHEAP benefits.¹⁹

Part I of this Note will address LIHEAP funding and the current

⁹ *Investing in LIHEAP: Why Energy Assistance is More Important Than Ever*, LIHEAP: CAMPAIGN FOR HOME ENERGY ASSISTANCE (Mar. 2014), http://liheap.org/cms/assets/uploads/2014/06/Investing_in_LIHEAP_2014.pdf [hereinafter CHEA].

¹⁰ *Id.*

¹¹ Tad DeHaven, *LIHEAP Fraud*, DOWNSIZING GOVERNMENT (July 8, 2010), <https://www.downsizinggovernment.org/liheap-fraud>.

¹² *Id.*

¹³ *Low-Income Home Energy Assistance Program (LIHEAP)*, NATIONAL CONSUMER LAW CENTER (NCLC): CONSUMER CONCERNS (Jan. 2012), https://www.nclc.org/images/pdf/older_consumers/consumer_concerns/cc_liheap.pdf [hereinafter NCLC].

¹⁴ *Id.*

¹⁵ *About LIHEAP*, *supra* note 6.

¹⁶ *Id.*

¹⁷ NCLC, *supra* note 13.

¹⁸ *Id.*

¹⁹ *Id.*

issues the program is experiencing as a result of increased energy costs and fewer funds. Part II will discuss LIHEAP's implementation throughout Illinois and Illinois' requirements to qualify for aid. Part III will cover consumer groups that are vulnerable to fraud, while Part IV will identify the fraud that exists throughout LIHEAP at both federal and state levels. Finally, Part V will consider how states can better invest in LIHEAP as well as potential solutions to eliminate and prevent fraud; ensuring that consumers continue to be protected.

II. LESS MONEY, MORE PROBLEMS

According to the United States Census Bureau, 15% of Americans live below the poverty threshold, yet energy costs continue to rise.²⁰ Energy resources such as heating oil, natural gas, propane, and electricity have experienced price increases between 5-25% in the past four-years.²¹ Heating oil alone saw a massive 37.9% price increase from 2009 to 2014.²²

Despite rising consumer energy costs, LIHEAP's funding has declined more than 30% over the past few years; funding decreased from over \$5 billion in 2009 to roughly \$3.4 billion in 2015.²³ Because of these budget cuts, the total number of households receiving LIHEAP assistance dropped from about 8.1 million in 2010 to approximately 6.7 million in 2013.²⁴ With increases in both energy prices and the number of households living below the poverty line, plus a decrease in federal funding, the NCLC predicts that LIHEAP will be unable to sustain itself into the future.²⁵ To ensure the program's sustainability and protection for years to come, LIHEAP will require better state and federal regulation as well as increased funding.²⁶

Federal statute divides LIHEAP funding into three categories.²⁷ The majority of funds are distributed as "regular" funds, also referred to as formula or block grant funds.²⁸ A formula determines the amount of regular funds a state will receive and is based on factors such as the state's weather, average heating and cooling costs, and the

²⁰ CHEA, *supra* note 9.

²¹ *Id.* at 6.

²² *Id.*

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.* at 6.

²⁶ *Id.* at 11.

²⁷ § 8621, *supra* note 5.

²⁸ Libby Perl, *LIHEAP: Program and Funding*, CONG. RESEARCH SERV. (July 29, 2015), <http://neada.org/wp-content/uploads/2015/09/CRS-LIHEAP-Program-and-Funding.pdf>.

number of eligible recipients in the state.²⁹

The second category of LIHEAP funding is emergency contingency funds which are distributed at the discretion of the Department of Health and Human Services (“HHS”).³⁰ Emergency contingency funds are allocated “to meet the additional home energy assistance needs of one or more states arising from a natural disaster or other emergency.”³¹ Emergencies include: natural disasters, significant home energy supply shortages or disruptions, significant increases in the cost of home energy, or an “event meeting such criteria as the HHS Secretary may determine to be appropriate.”³² A “natural disaster” is defined as a weather event (relating to hot or cold weather), i.e., flood, earthquake, tornado, hurricane, ice storm, or other event as determined by the Secretary.³³ Federal statute maintains that when an energy crisis occurs, financial assistance must be offered within forty-eight hours after a qualifying household submits an application.³⁴

Finally, the third category of LIHEAP funding is dedicated to Leveraging Incentive grants.³⁵ These funds incentivize states to leverage non-federal funding for their LIHEAP programs.³⁶ Non-federal funding includes negotiating lower energy rates for low-income households or raising separate state funds for energy assistance.³⁷ Leveraging Incentive grants were authorized in 1990 when the LIHEAP statute was amended to include, on average, an additional \$50 million in grants to states that obtain additional non-federal funding.³⁸ Incentive grants are awarded each fiscal year according to a formula that distributes funds based on the amount of non-federal funding a state secures for its energy assistance program.³⁹

The current LIHEAP funding cycle imposes challenges for states to develop and maintain an efficient and accurate energy assistance program, particularly to ensure that there is enough funding to

²⁹ Libby Perl, *The LIHEAP Formula: Legislative History and Current Law*, CONG. RESEARCH SERV. (Feb. 14, 2012), <http://neada.org/wp-content/uploads/2013/03/RL332751.pdf>.

³⁰ Perl, *supra* note 28.

³¹ § 8621(e), *supra* note 5.

³² 42 U.S.C. § 8622(1).

³³ 42 U.S.C. § 8622(7).

³⁴ 42 U.S.C. § 8623(c)(1). *See also* 42 U.S.C. § 8623(c)(2) (for households with life-threatening situations, the energy crisis must be resolved within 18 hours of the household’s application for energy crisis intervention).

³⁵ Perl, *supra* note 28.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

handle potential energy emergencies.⁴⁰ In recent years, HHS has failed to provide a final appropriation amount of LIHEAP funding by the October 1 program start date.⁴¹ This forces states to determine how much funding their program will need well before funding is established.⁴² As a consequence, benefits are not set on-time and eligibility levels are unable to be determined.⁴³ In 1993, Congress adopted a “Forward Funding” structure for LIHEAP benefits that was much more accommodating to the challenges states face in anticipating their citizens’ future energy costs.⁴⁴ Under the Forward Funding structure, LIHEAP appropriations were made available in the fiscal year that the program started.⁴⁵ This funding method made it much easier for a state to plan its program because it knew how much funding was available.⁴⁶ Returning to the 1993 Forward Funding structure would allow states to know how much LIHEAP funding is available for that year, resulting in states building more efficient and effective programs around those numbers.⁴⁷

III. LIHEAP’S IMPLEMENTATION THROUGHOUT ILLINOIS

Title 47 § 100.200 of the Illinois Administrative Code authorizes LIHEAP to operate in Illinois.⁴⁸ Historically, Illinois has been extremely generous with regard to the amount of money apportioned to energy assistance for low-income households.⁴⁹ In addition to the federally funded LIHEAP, Illinois maintained a supplemental energy as-

⁴⁰ U.S. Congress, S. Comm. on Labor and Human Resources, *Human Services Reauthorization Act*, report to accompany H.R. 4151, 101st Cong., 2nd sess., Aug. 3, 1990, S.Rept. 101-421, p. 75.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Perl, *supra* note 28.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Ill. Admin. Code tit. 47, § 100.200 (this part of Title 47 institutes the state energy assistance program, known as LIHEAP, as mandated by the Energy Assistance Act. This part further allows the use of Low-Income Household Energy Assistance Block Grant funds to be used in LIHEAP).

⁴⁹ Erik Randolph, *Suspending State Energy Assistance Opens Door for Reform in Illinois*, ILLINOIS POLICY (Jun. 9, 2015), <https://www.illinoispolicy.org/suspending-state-energy-assistance-opens-door-for-reform-in-illinois> (“Data from LIHEAP Clearinghouse shows Illinois has one of the more generous programs when it comes [to] assistance in paying utility bills.”).

sistance program entitled the State Low Income Household Energy Assistance Program (“SLIHEAP”).⁵⁰

Created in 1998, SLIHEAP derived revenue from monthly surcharges assessed to public utility companies and then used those funds to supplement LIHEAP funding.⁵¹ Illinois is one of only eight states that provided a supplemental state energy assistance program in addition to the federally funded LIHEAP.⁵² While states such as Colorado, Florida, and Wyoming also have state supplemental programs, these programs, unlike Illinois’, are limited to seniors and those with disabilities.⁵³ Illinois is one of the few states that extended coverage under SLIHEAP to multiple at-risk consumer groups, including the elderly and low-income families with young children.⁵⁴ However, as of 2016, SLIHEAP has been suspended indefinitely in an attempt to free up more state resources and balance Illinois’ massive budget deficit.⁵⁵ SLIHEAP was extremely generous, compared to other states, in terms of the funding it generated.⁵⁶ In 2015, SLIHEAP generated approximately \$265 million in supplemental funding derived primarily from utility surcharges on Illinoisan utility bills.⁵⁷

While SLIHEAP may be suspended, LIHEAP still provides coverage to those who qualify. In general, states must submit an application to the HHS Secretary each fiscal year to receive a block grant for LIHEAP funding.⁵⁸ Additionally, every state has its own requirements that its citizens must meet to qualify for LIHEAP financial relief.⁵⁹ LIHEAP eligibility is often categorical or income-based.⁶⁰ Categorical eligibility means households are automatically eligible if at

⁵⁰ *State LIHEAP Resources*, LIHEAP: FIGHTING POVERTY IN ILLINOIS, <http://liheap.org/states/il/> (last visited Feb. 22, 2017).

⁵¹ Randolph, *supra* note 49.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Democratic Budget Forces Major Cuts by Governor Rauner*, WIFR (Jan. 2, 2015, 4:30 PM), <http://www.wifr.com/home/headlines/Democratic-Budget-Forces-Major-Cuts-by-Governor-Rauner-305898491.html>.

⁵⁶ *Id.*

⁵⁷ *Illinois Governor Wants to Seize LIHEAP Funds to Help Balance Budget*, U.S. DEP’T OF HEALTH AND HUMAN SERV.: LIHEAP CLEARINGHOUSE (Mar. 13, 2015), <https://liheapch.acf.hhs.gov/news/mar15/illinoisbudget.htm>.

⁵⁸ Office of Community Services, *LIHEAP Statute and Regulations*, OFFICE OF THE ADMINISTRATION FOR CHILDREN & FAMILIES (May 8, 2012), <http://www.acf.hhs.gov/ocs/resource/liheap-statute-and-regulations#Section2605>.

⁵⁹ *Id.*

⁶⁰ NCLC, *supra* note 13, at 2.

least one resident is the recipient of another government assistance program, such as food stamps or Supplemental Security Income (“SSI”).⁶¹ Income-based eligibility means households can automatically become eligible for LIHEAP funds if its incomes do not exceed either 150% of the HHS federal poverty level or 60% of the state median income, whichever is greater.⁶²

Illinois uses an income-based eligibility method, whereby residents whose household income, before taxes, is not greater than 150% of the HHS federal poverty level are eligible to apply for LIHEAP benefits.⁶³ Each year, Illinois, through LIHEAP, provides relief to a large majority of its eligible residents. In 2014, Illinois received \$167.5 million in LIHEAP grants and provided heating assistance to 334,191 households and cooling assistance to 58,172 households.⁶⁴ Furthermore, of the Illinois households that were served, 23% were elderly, 21% were disabled, and 23% had children under the age of five.⁶⁵ LIHEAP, on both the federal and state levels, strives to ensure that some of the most at-risk consumers in the United States receive the assistance they require.

IV. AT-RISK CONSUMERS

Although many low-income households rely on LIHEAP’s assistance, there are underserved consumer groups who are particularly dependent on the aid LIHEAP provides and who are most negatively impacted by energy assistance fraud.⁶⁶ In 2008, more than 75% of all households receiving LIHEAP assistance had at least one member who

⁶¹ *Id.*

⁶² *Id.*

⁶³ See § 100.200(c), *supra* note 48. See also *Prior HHS Poverty Guidelines and Federal Register References*, U.S. DEP’T OF HEALTH AND HUMAN SERV.: OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION (Sep. 9, 2015), <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> (the 2016 HHS poverty level for a one-person household is \$11,880; therefore Illinois residents must have a household income that is not greater than 150% of \$11,880 per LIHEAP applicant. In order for an individual Illinois resident to qualify for LIHEAP benefits their household income cannot exceed \$17,820 before taxes, i.e., for a two-person household the household income could not exceed \$24,300. Also, for households with more than eight residents, add \$6,240 per additional resident to determine if the household income qualifies for coverage).

⁶⁴ *Illinois Facts*, LIHEAP: CAMPAIGN FOR HOME ENERGY ASSISTANCE (2015), <http://liheap.org/cms/assets/uploads/2014/05/Illinois-2015.pdf>.

⁶⁵ *Id.*

⁶⁶ NCLC, *supra* note 13.

was elderly, disabled, or a child under the age of eighteen.⁶⁷ Households such as these are often the most at-risk and may require advocacy for a number of reasons.⁶⁸

With regard to LIHEAP benefits, elderly individuals, particularly those who are disabled or living on a fixed-income, are frequently victims of utility company oversight.⁶⁹ These errors often result in mistakes that go unnoticed and thus, elderly consumers may require a skilled advocate to help identify utility company mistakes before elderly consumers in need are denied benefits.⁷⁰ For example, many states offer protections such as moratoriums on assistance revocation of LIHEAP recipients during the winter months, but it is not uncommon for utility companies to incorrectly categorize eligible applicants as ineligible, forcing them to forego these state protections.⁷¹ Moreover, in the event that a utility company is unresponsive, an elderly individual may require an advocate to contact the state agency responsible for administering LIHEAP benefits.⁷² In some cases, formal action against the state's Public Utility Commission is warranted.⁷³

Low-income families with young children are also particularly vulnerable.⁷⁴ There are approximately fifteen million children in the United States living in households with incomes below the federal poverty threshold.⁷⁵ In 2014, families with young children constituted 70% of the 4.9 million households that received LIHEAP funds to help heat their homes.⁷⁶ Children are more likely to suffer adverse health effects when exposed to temperature extremes.⁷⁷ As such, children are more

⁶⁷ CHEA, *supra* note 9, at 9.

⁶⁸ *About LIHEAP*, *supra* note 6 (“LIHEAP is an essential resource for the country’s most underserved populations, including the working poor, those making the difficult transition from welfare to work, disabled persons, elderly and families with young children.”).

⁶⁹ NCLC, *supra* note 13, at 3.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* (often “formal action” consists of filing a formal complaint with the state’s Public Utility Commission, which is a way to combat systematic injustice as the complaint will be one of many and evidence that the utility company is operating improperly).

⁷⁴ *About LIHEAP*, *supra* note 6.

⁷⁵ *Child Poverty*, COLUMBIA UNIVERSITY: NAT’L CENT. FOR CHILDREN IN POVERTY (2016), <http://www.nccp.org/topics/childpoverty.html>.

⁷⁶ CHEA, *supra* note 9, at 8.

⁷⁷ *Extreme Temperatures: Heat and Cold*, AAP, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Children-and-Disasters/Pages/Extreme-Temperatures-Heat-and-Cold.aspx> (last visited Feb. 22, 2017).

susceptible to health effects such as hypothermia if their home is inadequately heated or dehydration and heat stroke if it is inadequately cooled.⁷⁸ In addition to adverse health effects, high energy costs also impact children of low-income households because families are forced to make household trade-offs.⁷⁹ These trade-offs can include skipping meals or not providing children with medical or dental care.⁸⁰

Additionally, during winter months, rising energy costs can result in low-income families trying to cut costs by using alternative heating sources, such as portable heaters or kitchen stoves, both of which can be harmful to young children.⁸¹ Finally, high-energy costs coupled with unaffordable housing can force low-income families to live in dangerous housing conditions, such as housing with pest infestations, or structures containing mold or lead.⁸² These unsafe conditions can lead to increases of child asthma, lead poisoning, or other injuries.⁸³

V. FRAUD

In 2007, 429 applicants in Pennsylvania collectively received more than \$162,000 in LIHEAP funds using the Social Security numbers of deceased individuals.⁸⁴ In 2010, in response to this fraud scheme, the United States Government Accountability Office (“GAO”) conducted a forensic audit of the risk of fraud and abuse of LIHEAP benefits in seven different states including Illinois, Maryland, Michigan, New Jersey, New York, Ohio, and Virginia.⁸⁵ The audit identified specific weaknesses of LIHEAP’s internal control structure for each of the seven states.⁸⁶ The GAO found that LIHEAP had been defrauded in all of the states it audited and that approximately \$116 million in LIHEAP benefits were allocated to these states on the basis

⁷⁸ *Id.*

⁷⁹ Child Health Impact Working Group, *Unhealthy Consequences: Energy Costs and Child Health*, UCLA HEALTH IMPACT ASSESSMENT CLEARINGHOUSE, (Apr. 2007), <http://www.hiaguide.org/hia/child-health-impact-assessment-energy-costs-and-low-income-home-energy-assistance-program-liheap> (last visited Feb. 22, 2017).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-621, LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM: GREATER FRAUD PREVENTION CONTROLS ARE NEEDED (2010) [hereinafter GAO-10-621].

⁸⁵ *Id.* at 3.

⁸⁶ *Id.* at 2.

of fraudulent identity information.⁸⁷

The GAO report lists three types of invalid identity information which are commonly used on fraudulent LIHEAP applications: deceased individuals, incarcerated persons, and federal employees who exceed income thresholds.⁸⁸ The GAO found that more than 11,000 applicants had used the identities of deceased individuals to obtain LIHEAP benefits totaling \$3.9 million in 2010.⁸⁹ Also, the identities of more than 700 incarcerated persons were used as applicants, which resulted in the fraudulent distribution of \$370,000 of LIHEAP funds.⁹⁰ Finally, there was \$671,000 of LIHEAP benefits that were misappropriated by more than 1,100 federal employees whose salaries were greater than the maximum income threshold.⁹¹

In Illinois alone, of twenty cases investigated by the GAO, four cases yielded more than \$3,000 in energy assistance funds that had been provided to applicants who had used the identities of deceased or incarcerated individuals or were federal employees with salaries exceeding Illinois' income qualification requirements.⁹² Furthermore, in Illinois and Maryland, applicants' household assets are not considered in determining LIHEAP eligibility, which means owning high-value assets cannot disqualify an individual from receiving LIHEAP benefits.⁹³ This allows individuals such as an applicant from a Chicago suburb, whose house was valued at \$2 million, to receive LIHEAP funds that could have helped low-income households that actually need LIHEAP assistance.⁹⁴

More stringent HHS regulations could have deterred a majority of the LIHEAP fraud that states encountered.⁹⁵ The GAO found that the HHS failed to provide specific guidance to states and only issued broad regulations to abide by in establishing a basic fraud prevention system.⁹⁶ According to the GAO, an effective fraud prevention system has three important elements: "preventive controls, detection and monitoring, and investigations and prosecutions."⁹⁷ The states' failure to

⁸⁷ *Id.* at 5. Fraudulent identity information includes invalid Social Security numbers, names, or dates of birth.

⁸⁸ *Id.* at 5-6.

⁸⁹ *Id.*

⁹⁰ *Id.* at 6.

⁹¹ *Id.*

⁹² *Id.* at 7-8.

⁹³ *Id.* at 9.

⁹⁴ *Id.*

⁹⁵ GAO-10-621, *supra* note 84, at 2.

⁹⁶ *Id.* at 11.

⁹⁷ *Id.*

implement an effective fraud prevention system was a major contributing factor of LIHEAP fraud.⁹⁸

With regard to the elements of an effective fraud prevention system, most of the states that were audited lacked preventive controls such as verification of applicant identities or income.⁹⁹ When designing a fraud prevention system, states should incorporate prevention control measures such as: “validating applicant and household member information with the Social Security Administration, checking death and incarceration record files, verifying reported income using outside sources such as the National Directory of New Hires,¹⁰⁰ checking for long-term care patients, and checking data to prevent duplicate benefits.”¹⁰¹

In addition, the GAO found that many states lack detection and monitoring procedures, which can lead to the automatic enrollment of ineligible applicants to receive LIHEAP benefits.¹⁰² Some states automatically enroll applicants based on their eligibility for other government assistance programs.¹⁰³ While this practice may be effective in reaching similarly targeted recipients, it relies on the accuracy of those other government assistance programs’ qualification requirements and can lead to ineligible applicants receiving LIHEAP benefits.¹⁰⁴

Finally, states can work to deter fraudulent activities by making a commitment to investigate and prosecute LIHEAP fraud.¹⁰⁵ After interviewing several state officials, the GAO found that LIHEAP fraud is generally not investigated or prosecuted due to the benefit amounts being relatively insignificant.¹⁰⁶ While the investigation and prosecution of individuals who defraud the government are essential elements of an effective fraud prevention model, it is also costly.¹⁰⁷ Therefore, states must implement strong preventive controls to deter applicant fraud.¹⁰⁸

Because LIHEAP is a block grant system, fraud can have an

⁹⁸ *Id.*

⁹⁹ *Id.* at 12.

¹⁰⁰ See *Overview of National Directory of New Hires*, U.S. DEP’T OF HEALTH AND HUMAN SERV.: Office of Child Support Enf’t (July 1, 2015), <https://www.acf.hhs.gov/css/resource/overview-of-national-directory-of-new-hires> (for an overview of the NDNH).

¹⁰¹ GAO-10-621, *supra* note 84, at 13.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 14.

¹⁰⁸ *Id.*

especially detrimental impact for households that actually need energy assistance.¹⁰⁹ Fraud has the potential to reduce the amount of funding that is provided to eligible recipients, or even prevent legitimate applicants from receiving LIHEAP funds because they have already been distributed to ineligible or illegitimate applicants.¹¹⁰

VI. INVESTING IN LIHEAP AND ELIMINATING FRAUD

Since 2010, Congress has cut LIHEAP funding by almost \$2.5 billion.¹¹¹ Its rationale for such drastic budget cuts is to return LIHEAP's funding to "normal" levels.¹¹² According to Congress, LIHEAP's funding was dramatically increased in 2009 to offset energy price spikes in 2008.¹¹³ The \$2.5 billion decrease in LIHEAP funds was part of an effort by Congress to return program funds to "historic levels."¹¹⁴ However, due to the national recession of 2007-2009 as well as the rise in poverty and unemployment, the number of low-income households in need of LIHEAP funds – nine million households in 2010¹¹⁵ – has been much larger for the past-six years than it was in 2008.¹¹⁶

Also, while the number of households receiving LIHEAP benefits decreased by 1.4 million between 2010 and 2013, the number of households living below the federal poverty threshold remained roughly the same.¹¹⁷ This means that there are households with incomes below LIHEAP's maximum income threshold that are either not applying for benefits, or are being denied assistance because the program is not adequately funded. As a result, states must find solutions to ensure that their at-risk populations can get the services they need. For example, states that develop working relationships with their utility companies could improve LIHEAP's reach and make the program more effective.

As stated previously, LIHEAP fraud can lead to fewer funds

¹⁰⁹ *Id.* at 6.

¹¹⁰ *Id.*

¹¹¹ CHEA, *supra* note 9.

¹¹² Chad Stone, *Administration's Rationale for Severe Cut in Low-Income Home Energy Assistance Is Weak*, CTR. ON BUDGET AND POLICY PRIORITIES (Feb. 18, 2011), <http://www.cbpp.org/research/administrations-rationale-for-severe-cut-in-low-income-home-energy-assistance-is-weak>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Schmit, *supra* note 1.

¹¹⁶ Stone, *supra* note 112.

¹¹⁷ *Id.*

for qualified applicants or decreased annual block grant amounts.¹¹⁸ One way states can help at-risk consumers who are dependent on LIHEAP while also decreasing LIHEAP fraud is to partner with community based organizations (“CBOs”).¹¹⁹ CBOs can help identify households that are in need of LIHEAP benefits and work to uncover possible fraudulent activities regarding LIHEAP assistance.¹²⁰ In addition, CBOs such as the State Public Utility Commission or the Utility Consumer Advocates often recognize additional energy assistance initiatives and work with state utility companies to supplement LIHEAP funds for their customers.¹²¹ For example, Illinois has a number of utility providers such as Nicor Gas, ComEd, Northshore Gas, and Peoples Gas that accommodate energy assistance services in addition to LIHEAP.¹²² One such energy assistance service often accommodated by utility providers is Percentage of Income Payment Plans (“PIPP”).¹²³ Several Illinois utility providers participate in PIPP as Illinois’ PIPP program is a state-mandated initiative that is authorized by the Illinois Energy Assistance Act.¹²⁴ These PIPP programs allow eligible clients to pay a percentage of their income and receive monthly benefits which are used to offset their utility bills.¹²⁵ Additionally, eligible customers can receive a reduction in overdue payments for every payment made before their bill is due.¹²⁶

Furthermore, because Illinois indefinitely suspended SLIHEAP during its recent budget cuts, working in tandem with CBOs and utility providers like Nicor Gas, ComEd, and Northshore Gas – all of which accommodate PIPP programs – will help ensure families that need LIHEAP benefits will have access to funding.¹²⁷

Despite a decrease of approximately \$2 billion in funding since 2010,¹²⁸ one way the federal government can counter such a loss is to incentivize states to raise additional finances.¹²⁹ In 2014, the Leveraging Incentive Program allocated roughly \$30 million in funding to reward states that instituted programs that provide supplemental funding

¹¹⁸ GAO-10-621, *supra* note 84, at 13.

¹¹⁹ NCLC, *supra* note 13.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *See State LIHEAP Resources, supra* note 50.

¹²³ *Id.*

¹²⁴ 305 ILCS 20/18.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *See Democratic Budget Forces Major Cuts by Governor Rauner, supra* note

¹²⁸ CHEA, *supra* note 9.

¹²⁹ *Id.*

to help with state energy assistance.¹³⁰ Moreover, by increasing amounts allocated by Leveraging Incentive Programs, states will be able to create more aggressive supplemental programs and remove stress from already dwindling LIHEAP funds.

An additional way to maximize LIHEAP funding is to eliminate fraud.¹³¹ A large proportion of LIHEAP fraud is accomplished by applicants using fake or invalid Social Security numbers.¹³² In 2010, only twenty-eight states required LIHEAP applicants to provide their Social Security number to qualify for benefits.¹³³ Requiring a Social Security number decreases the likelihood of LIHEAP fraud because Social Security numbers are a precise tool that state officials can use to verify applicants.¹³⁴ Many states do not require LIHEAP applicants to provide their Social Security numbers on their applications as there was a consensus that the Privacy Act of 1974¹³⁵ prevented HHS from requiring states from doing so.¹³⁶ However, the Tax Reform Act of 1976¹³⁷ “authorizes states to use [Social Security numbers] in administering certain programs, including ‘general public assistance’ programs, which HHS has interpreted to include LIHEAP.”¹³⁸ HHS has since allowed states to require Social Security numbers during the individual and household eligibility verification process.¹³⁹ Because of the HHS’s guidance, the number of states that require applicants’ Social Security numbers increased from twenty-eight in 2010 to forty in 2011.¹⁴⁰ Through states’ implementing common-sense fraud prevention, LIHEAP fraud rates should continue to decline.

VII. CONCLUSION

The Low Income Household Energy Assistance Program provides valuable services to needy families nationwide. But a lack of funding, state regulation, and federal oversight coupled with rampant fraudulent activity has impeded the program’s scope and effectiveness.¹⁴¹ With a more than \$2 billion decrease in federal funding since

¹³⁰ *Id.*

¹³¹ GAO-10-621, *supra* note 84, at 13.

¹³² Perl, *supra* note 28.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ See 5 U.S.C. § 552a.

¹³⁶ Perl, *supra* note 28.

¹³⁷ See 90 Stat. 1520

¹³⁸ Perl, *supra* note 28.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ DeHaven, *supra* note 11.

2010, LIHEAP requires an aggressive revamping to ensure its sustainability.¹⁴² Fraud prevention must be the foremost concern, at both the state and federal levels, and can be accomplished using common-sense preventive measures such as stronger applicant identity and income verification.¹⁴³ Additionally, bolstering relationships between state governments, CBOs, and local utility providers will provide state governments with a better picture of its residents' energy and funding needs as well as information regarding LIHEAP fraud.¹⁴⁴ If states are able to create more effective fraud prevention systems and implement aggressive preventive measures, such as requiring applicants to submit their Social Security numbers during the verification process, LIHEAP will be less likely to disburse funds to fraudulent applicants.¹⁴⁵

Since its expansion in 1984, LIHEAP has offered benefits to at-risk families throughout the United States.¹⁴⁶ At-risk and underserved groups such as young children must remain one of LIHEAP's top priorities.¹⁴⁷ If LIHEAP and state-funded energy assistance programs are to continue to provide assistance to the approximately fifteen million children currently living below the United States poverty threshold, as well as the other consumer groups that require relief, the program must undergo significant changes to prevent fraud and develop alternative funding sources.¹⁴⁸

¹⁴² CHEA, *supra* note 9.

¹⁴³ GAO-10-621, *supra* note 84, at 13.

¹⁴⁴ NCLC, *supra* note 13.

¹⁴⁵ Perl, *supra* note 28.

¹⁴⁶ *Id.*

¹⁴⁷ *About LIHEAP*, *supra* note 6.

¹⁴⁸ Columbia University, *Child Poverty*, *supra* note 75.