

Protections and Support For Renters

Many lower-income households do not receive a water or sewer bill from a utility, even though they receive home water and sewer service. These are mostly renters, whose landlords are the direct customer of the utility.

These renter households pay for water and sewer service indirectly, either through their rent or via a separate payment to their landlord. This situation is especially common in multifamily buildings, which are usually “master metered” for water.

Renters who do not have their name on a water or sewer bill face unique challenges that are the focus of this module. Non-customer renters are often ineligible to participate in bill assistance programs and may be excluded from basic consumer protections available to other water users. Renters can also encounter difficulties related to their landlord’s management of the water account, such as when the landlord doesn’t pay the monthly bill or overcharges the renter for water service. (Many of these issues also apply to other non-customer households that receive water service, such as low-income condominium owners, mobile-home residents, or dependents of a property owner who reside at the property without a lease.)

Because renters are more likely than homeowners to be low-income and people of color, addressing these challenges is a pressing issue of social and racial justice.

Ensuring access to affordable water and wastewater service for renters will require sustained advocacy to raise the visibility of renter issues and push legislators, regulators, and utilities to consider renter interests when designing and implementing policies. Although it is impossible to address every problem that renters face, nearly every water affordability issue can be analyzed through a renter lens. For *every* module in this toolkit, it is worth asking: How does this issue apply to renters, and what can be done to ensure that they are not excluded or disadvantaged?

This module takes up that question specifically in regard to affordability and assistance programs, consumer protections, and problems related to the landlord-tenant relationship. The focus throughout is on renters in market-rate housing. Although renters in federally subsidized housing face unique challenges related to water affordability, those issues are beyond the scope of this module.¹

SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Expanding bill affordability and assistance programs to effectively reach renters
- Reforming utility consumer protection rules to ensure that renters are protected
- Protecting renters’ access to water service when landlords fail to pay the bill
- Regulating how landlords bill their tenants for water



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More than 1 in 3 low-income households do not receive a water bill directly from the utility.

RENTERS ARE AMONG THE MOST VULNERABLE WATER USERS

The Water Research Foundation estimates that 22 percent of all households receiving home water or sewer services do not have a direct customer relationship with their water provider.² For households with incomes under \$30,000 per year, that figure jumps to more than one in three. These non-customer water users are mainly renters, who pay for water and sewer service indirectly through their rent or a separate payment to the landlord. The vast majority—around 80 percent—live in multifamily rental buildings with a single water meter, also known as master-metered buildings.³

Because they are not technically “customers” of the utility, renters who lack a water account are often excluded from bill credit programs and consumer protections intended to help households make their monthly payments and maintain access to water service. As a practical matter, it can also be difficult to reach renters with available programs and protections when they have no established relationship with the utility—especially if utilities do not adjust their outreach efforts to specifically target renters.⁴

Renters can also face problems related to the fact that they do not control the water account. For example, a renter’s access to water and sewer service may be threatened if the landlord refuses or neglects to pay the monthly bill or charges the renter an exorbitant amount for water services.

The water affordability challenges faced by renters are especially pressing because of the characteristics of the renter population. As a group, renters have significantly lower income and are less wealthy than homeowners.⁵ Renters are also disproportionately Black, Indigenous, or other people of color.⁶ These groups are also more likely to experience other forms of social vulnerability such as housing or energy insecurity or chronic health problems.⁷ As a result, renters are doubly disadvantaged—they are among the most vulnerable water users, and also among the least protected by existing laws and policies.

The exclusion of renters from water affordability-related policies and protections exacerbates the difficulties that lower-income households face in maintaining access to water service. Given the disproportionate impact on households of color, it can also be seen a form of structural racism. Unfortunately, few regulators or water utilities have taken steps to systematically address the issue.

QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify opportunities to improve programs and protections for renters.

- Are your utility’s low-income affordability or assistance programs open to renters who do not have their own water utility account? How, if at all, can renters participate in these programs?
- Are renters who are not water utility customers covered by any state or local consumer protection rules?
- How does your utility deal with landlords who fail to pay their water bills? Does the utility disconnect service to tenants due to the landlord’s nonpayment?
- Does your utility illegally require renters to pay their landlord’s debts (or a prior tenant’s debts)?
- How do local landlord-tenant laws protect renters if the landlord asks the water utility to disconnect service without the renter’s consent?
- Does city or state law limit a landlord’s ability to apportion a building’s water utility costs to individual tenants (a practice known as ratio utility billing)? Are there stories of renters experiencing unfair water billing practices by landlords?

BILL AFFORDABILITY AND ASSISTANCE PROGRAMS CAN BE DESIGNED TO REACH RENTERS

Water and sewer bill affordability and assistance programs can be a critical source of support for lower-income households struggling to keep up with steadily rising water rates. (For a discussion of types of programs, see the Affordability and Assistance Programs module.) For renters who lack a utility account, however, these programs are often out of reach. A 2017 study by the Water Research Foundation surveyed customer assistance programs across the country and concluded that most “do not meet the needs of households in multifamily buildings, single-family renters, and others who do not receive bills directly from the water or wastewater service providers.”⁸

When water utilities raise their rates, landlords often pass those extra costs on to renters.⁹ However, participation in most affordability or assistance programs is restricted to customers who receive a bill directly from the utility. This leaves many renters exposed to rate increases without the supports available to other water users.

Nationally, only a handful of water affordability or assistance programs allow participation by non-customer

renters. A major challenge in designing bill assistance programs for renters is how to deliver the benefits considering that the household may not receive a utility bill. Water utilities have taken various approaches to this problem, although each has challenges as identified in the chart below.¹⁰ There may also be creative approaches to delivering water bill assistance to non-customer renters that have not yet been implemented—such as providing direct assistance in the form of a tax credit.¹¹

Even where non-customer renter households are eligible for assistance, it can be harder to reach them with information about available programs since there is no pre-existing relationship with the water utility. Accordingly, it is important that the utility make proactive efforts to advertise programs to renters. The Water Research Foundation study referenced above highlights strategies to enroll hard-to-reach renter households, including by developing targeted marketing efforts and partnering with landlords, housing groups, and community-based organizations.¹² That report also contains additional detail on some of the approaches to delivering bill assistance discussed below.

Renters are disproportionately likely to be lower income and to be Black, Indigenous, or other people of color.



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Method	Challenges	Examples
Provide a subsidy to the landlord or property manager and require that it be passed on in the rent.	It can be difficult to enforce pass-on requirements and to incentivize landlord participation, especially for private, unregulated housing.	<p>Columbus, Ohio, provides a bill credit to landlords who participate in federal affordable housing programs or can show that at least 80 percent of their tenants qualify as low-income for program purposes. The full benefit must be passed on to the renters through their utility bills from the landlord.¹³</p> <p>Washington, D.C.'s Multifamily Assistance Program provides owners of eligible multifamily properties with a bill credit and requires that 90 percent of the credit be passed on to income-eligible residents. Building owners may keep the remaining 10 percent, providing an incentive to participate.¹⁴</p> <p>New York City provides a bill credit to owners of multifamily properties on the condition that they maintain rents within specific affordability thresholds and comply with additional requirements for conservation and performance.¹⁵</p> <p>The temporary federal Low Income Household Water Assistance Program allows landlords to accept a bill credit on behalf of their renters, provided they pass it on in the rent. The program also encourages utilities to enter into three-party agreements with landlords and tenants to ensure that benefits are passed on.¹⁶</p>
Provide a discount on a separate utility bill that the renter receives directly, such as for electricity or internet service.	This approach requires coordination between utility systems and potentially across separate companies, so execution can be difficult.	<p>Seattle Public Utilities allows renters who do not receive a water bill but do receive an electric bill from the city electric utility to receive water assistance as a credit on the electric bill. This arrangement is possible because both utilities are owned by the City of Seattle.¹⁷</p> <p>Similarly, Austin Water allows renters in multifamily buildings to access water assistance through a credit on their electric bill, provided that the household is served by the city electric utility. Participating households receive \$200 for the year, apportioned across the monthly bills. The utility plans to expand the program to assist the small fraction of households who are not served by the city's electric utility.¹⁸</p>
Allow the tenant to obtain individual service.	<p>Utilities typically require landlord consent.</p> <p>Individual service may be infeasible in multifamily buildings.</p>	In Philadelphia, a renter may apply for individual water service by showing proof of tenancy (such as a lease). The landlord is then notified of the application for individual service and is deemed to have consented if no objection is received within 20 days. ¹⁹ However, the city does not advertise this option to renters. ²⁰
Provide benefits directly to renters via a rent voucher or check.	The vouchers or payments may be considered income for purposes of federal and state benefit programs, and thus may affect eligibility or benefit levels.	<p>Baltimore's Water4All program provides bill assistance to non-customer renters by distributing pre-loaded debit cards. However, the payments are considered income for federal purposes, which requires recipients to file a 1099 tax form and could trigger loss of other income-qualified benefits for certain recipients.²¹</p> <p>The Portland Water Bureau has partnered with the organization that administers the city's rental assistance program to provide water assistance, in the form of a voucher, to non-customer renters at risk of eviction. Eligible households can receive up to \$650, once per year.²²</p> <p>The California Public Utilities Commission in 2022 approved a pilot program by California American Water Company to provide assistance directly to renters by partnering with community-based organizations.²³ Program details are still to be determined.</p>

CONSUMER PROTECTION RULES SHOULD EXPLICITLY PROTECT RENTERS' INTERESTS

Consumer protection laws that apply to water utilities often fail to meaningfully protect renters if the utility account is not the renter's name. For example, the language of consumer protection laws may refer only to utility "customers," excluding non-customer renters or at least creating ambiguity as to their status. (For discussion of consumer protections for customers that are directly billed by the utility, including renters with an account in their own name, see the Shutoffs module and the Billing Problems and Dispute Resolution module.)

There is no good reason for consumer protection laws to exclude renters who happen not to control the utility account. Although they may not receive a water bill from the utility, their need for access to affordable water service is just as pressing as that of any direct customer. Troublingly, the exclusion of non-customer renters from consumer protections renders lower-income households and households of color especially vulnerable to unfair or harmful utility practices, since these groups are disproportionately likely to rent.²⁴ Moreover, many federal courts have found that renters who lack a utility account have due-process rights under the U.S. Constitution that entitle them to certain protections, including the right to be notified in advance of any shutoff and to dispute erroneous charges.²⁵

Ensuring that renters are fully and fairly protected requires that regulators consider their interests at every stage when developing consumer protection regulations. Some common consumer protection issues for renters are discussed below, followed by a look at protections that specifically relate to the landlord-tenant relationship.

As a baseline protection, it is critical that water utilities notify all residents, including non-customers, before

initiating a shutoff at a property. Because renters may not be expecting a communication from the water utility, the utility should ideally be required to attempt to contact any non-customer residents in multiple ways and on multiple occasions, including by posting a notice conspicuously in a common area of the building.²⁶

In addition, notification procedures should consider the additional barriers renters may face in resolving payment issues. For example, renters may need extra time to negotiate payment of a water bill with their landlord, to coordinate with other tenants, or (if allowed by local utility rules) to set up a new customer account in their own name.

Some states have special rules intended to guard against the most severe harms of shutoffs. These may include, for example, restrictions on shutoffs during the winter or where the shutoff would cause a medical emergency. (For an overview of these types of protections, see the Water Shutoffs module.) If the rules do not provide a clear avenue for non-customer renters to qualify for these protections, they may be unable to avoid a shutoff even in dangerous and potentially life-threatening situations.

Because renters who lack a utility account are less likely to be aware of the utility's policies and procedures, it can also be difficult for them to enforce their rights. Adding to the problem, many utilities do not track which of the properties they serve are residential rental properties. Thus, even if a utility is technically required to notify renters of a pending shutoff, it may be able to evade the requirement by claiming ignorance. Regulators can better protect renters by requiring utilities to maintain complete and accurate records and to confirm the presence or absence of any non-customer residents at a property before initiating a shutoff.²⁷ Alternatively, or in addition, landlords can be required to furnish information about their tenants to the utility, with penalties for failing to comply, as in Pennsylvania.²⁸

SPECIAL ISSUE: WHEN THE UTILITY WON'T ALLOW THE RENTER TO OPEN AN ACCOUNT

Some utilities have policies that prohibit renters from opening utility accounts, even when doing so is feasible. Utilities often attempt to justify this by arguing that it is more difficult to collect from renters. However, these policies can be harmful because they effectively put renters at the mercy of their landlord when it comes to accessing utility service.

In some cases, utilities may refuse to open a new tenant account when there are unpaid water bills associated with either the building's landlord or a rental unit's previous tenant. Most courts that have considered the question have found that it is unconstitutional for publicly owned utilities to engage in this practice.²⁹ The rationale is that denying service to a renter based on the debts of an unrelated third party is arbitrary and discriminatory, in violation of the U.S. Constitution's Equal Protection Clause (and potentially the U.S. Constitution's "substantive due process" protections).

Counterintuitively, blanket policies of prohibiting all renters from opening utility accounts have generally been okayed by the courts, since the same rationale does not apply. Nevertheless, these policies are harmful for the reasons identified above. As explained below, covering at least 7 states have held that, where a publicly owned water utility does not allow a renter to open an account in their own name, it is unconstitutional to disconnect water service because the landlord failed to pay a bill.

PROBLEMS WITH THE LANDLORD

When the landlord won't pay the water bill

For many rental properties, the landlord is responsible for paying the water bill. This can cause problems for the renter if the landlord refuses or neglects to pay the bill, resulting in a shutoff.

Federal appellate courts in the Second and Sixth Circuits have held that it is unconstitutional for a publicly owned utility to shut off water service to a renter because the landlord failed to pay a bill—at least where the renter cannot open his or her own utility account and assume personal responsibility for the water bills going forward.³⁰ These rulings were based on the well-established legal principle that it is unconstitutional to punish someone for the unpaid debts of a third party. The Second Circuit covers New York, Vermont, and Connecticut, while the Sixth Circuit covers Michigan, Ohio, Kentucky, and Tennessee. Courts in other states may have a different interpretation; it's worth consulting a legal services attorney, or perhaps a sympathetic law professor, to understand the state of the law in a particular area.

Some federal courts have found that the U.S. Constitution bars municipal water utilities from disconnecting renters because of a landlord's unpaid bill.

Some state consumer protection laws offer a comparable level of protection. For example, a Connecticut statute prohibits water utilities from terminating service to a renter based on the landlord's unpaid bills where it is not possible to set up an individual account for the renter.³¹ Instead, the law authorizes the utility to seek a "rent receivership" through which the utility can collect rent directly from the tenants, deduct the amount owed for water, and pass on the remainder to the landlord.³² This approach effectively protects the renter's interest in maintaining access to water service while providing an alternative (and arguably more effective) remedy to the utility.³³

In addition, some individual utilities may have policies against conducting shutoffs to multifamily buildings, particularly if alternative remedies are available.³⁴

Other state laws offer lesser, though still potentially meaningful, protections for tenants of delinquent landlords. Some states guarantee renters the right to request a utility

account in their own name, where it is technically feasible to provide one.³⁵ (At the opposite extreme, in many places renters are prohibited from opening utility accounts.) For this approach to be effective, it is important that the law also allow renters to deduct the cost of utility payments from their rent, since paying for water on top of rent may be unaffordable for many tenants.³⁶

As an alternative, some states allow renters to avoid disconnection by paying the landlord's water bill directly and deducting those payments from their rent. This approach avoids any technical barriers to setting up individual tenant accounts. Notably, Pennsylvania combines both approaches by allowing renters the option to set up a new account *or* to pay their landlord's bill directly.³⁷

For both of these approaches, however, it may be practically challenging—or impossible—for renters in multifamily buildings to coordinate payments from all residents.³⁸ If the renters are unable to do so, they remain subject to shutoff due to the landlord's nonpayment. For this reason, it is more protective to simply prohibit shutoffs to renters where setting up an individual account is infeasible, in line with the Second and Sixth Circuit rulings and the Connecticut approach. Renters should consult with local landlord-tenant attorneys or tenants' rights groups to understand their options.³⁹

CONSTITUTIONAL RIGHTS VERSUS REALITY

Parts of this module describe rights and claims that renters may have against their water provider under the U.S. Constitution, including the right to receive advance notice of a shutoff, the right to dispute a bill, and rights to maintain service notwithstanding a landlord's failure to pay. Because federal constitutional rights are not always codified in utility-related statutes or regulations, however, they may not always be honored in practice. Pushing for utility-related constitutional rights to be codified into law can be one way to ensure that they are more consistently followed.

In some cases, getting the utility to take constitutional claims seriously may require litigation, or at least the threat of it. Litigation is a time-consuming and potentially expensive endeavor that is beyond the reach of many water advocacy groups (and certainly most households). Improving access to legal aid for renters, such as through a renter's right to legal counsel, can better ensure that their rights are enforced.⁴⁰

In addition, because the U.S. Constitution protects only against actions by government, constitutional rights will also apply only to publicly owned utilities or to situations in which the government is otherwise involved (including, in some instances, when a private utility acts pursuant to a rule approved by state regulators).⁴¹ Nevertheless, constitutional claims can provide a creative avenue for renters to contest water shutoffs and push for utility policy change.

When the landlord initiates a shutoff to remove a tenant

In some cases, a landlord may unilaterally terminate water service to a residential property as a means of illegally forcing a renter out, either by asking the utility to terminate service or by physically shutting off the water themselves. This is sometimes called a “self-help” eviction. Forcing a renter to move out by shutting off water service (or any means other than formal eviction procedures) is nearly always illegal under state landlord–tenant law. Where the landlord is responsible for paying the water bill under the lease or local law, the failure to do so by neglect is also illegal.

Tenants who face a self-help eviction because of an illegal shutoff can likely bring various legal claims against their landlord, including for violating the lease agreement. Renters should consult with local landlord–tenant attorneys or tenants’ rights groups to understand their options.⁴²

In some cases, the renter may also have a legal claim against the utility for implementing an illegal shutoff. Although some courts have found that only *customers* can sue a utility to prevent a shutoff, others have allowed non-customer renters to sue utilities for terminating service at the landlord’s request, concluding that the shutoff violated the tenant’s constitutional right to due process.⁴³

When the landlord controls the tenants’ water bills

In many rental properties, including the vast majority of multifamily buildings, water service is not individually metered at the household level. Nevertheless, landlords will typically pass on water utility costs through rent or through a separate transaction, though it is often not identified as a

line item on a rent bill or in a lease. This can make it hard for renters to understand if they are being fairly charged or to access certain affordability or assistance programs that require the renter to show proof of responsibility for utility payments. Recent water affordability legislation in Baltimore attempts to address this problem by requiring residential leases to expressly state whether the tenant is responsible for water costs and to describe the calculation method and average monthly cost.⁴⁴

In some cases, landlords estimate each tenant’s share of the building’s water costs using a formula or other means and add it to monthly rent as a discrete charge. This practice is often called ratio utility billing. Because water billing practices at multifamily properties are often completely unregulated, there is the potential for inequity if bills are unfairly apportioned, or even outright abuse if residents are being overcharged. (This issue is discussed in more detail in the module on Billing Problems and Dispute Resolution.)

When the landlord retaliates against tenants for exercising their rights

When renters invoke a legal remedy against their landlord—such as the right to take over their water account or to pay the landlord’s bill and deduct utility payments from their rent—they may face retaliation. For example, the landlord might respond by simply raising the rent or by trying to evict the renter on other grounds. Pennsylvania’s utility protection law addresses this problem by expressly stating that landlords may not retaliate against renters for exercising their rights under the law.⁴⁵ In practice, protecting renters from retaliation also requires ensuring that they can readily access legal services to enforce their rights.⁴⁶

KEY RESOURCES:

Janet Clements et al., *Customer Assistance Programs for Multi-Family Residential and Other Hard-to-Reach Customers*, Water Research Foundation, 2017, https://www.waterrf.org/system/files/resource/2019-07/4557_1.pdf.

This report offers a detailed examination of the nationwide population of non-customer water users, options for delivering bill assistance to renters and other non-customer users, and best practices for utilities to reach these users with available programs. Some of the programs discussed in this toolkit module are covered in more detail in the report.

California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*, 2020, https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf. Also see this document’s *Appendices*, 2020, https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_appendices.pdf.

The California state water agency’s 2020 report on options for a statewide low-income water rate assistance program discusses some key considerations related to renters. See, in particular, the main report at 31–34 (proposing a tax credit-based approach to delivering water assistance to renters) and the appendices at 44–63 (discussing options for delivering bill assistance to households, including renters) and 88–89 (discussing problems and solutions related to nonpayment of the water bill by the landlord).

ENDNOTES

- 1 Whether and how renters in federally subsidized housing can access water assistance and other programs depend in part on whether they live in public housing owned and administered by a local housing authority, receive tenant-based rental assistance, or live in privately owned, project-based subsidized housing. For an overview of how water costs are treated in each type of subsidized housing and a discussion of challenges related to providing water assistance to renters in such properties, see Janet Clements et al., *Customer Assistance Programs for Multi-Family Residential and Other Hard-to-Reach Customers*, Water Research Foundation, 2017, 41, 83–84, https://www.waterrf.org/system/files/resource/2019-07/4557_1.pdf.
- 2 Clements et al., *Customer Assistance Programs for Multi-Family*, 3.
- 3 *Ibid.*, 3, 50.
- 4 *Ibid.*, 25.
- 5 Joint Center for Housing Studies of Harvard University, “Renter Demographics,” accessed April 19, 2022, 16–17, <https://www.jchs.harvard.edu/sites/default/files/ahr2011-3-demographics.pdf>. The disparity is especially significant for renters living in multifamily properties and mobile home users, two groups that are likely to lack a water account. The Water Research Foundation’s 2017 study on hard-to-reach water users reported a poverty rate of 26 percent for renter households in multifamily properties, 25 percent for mobile home residents, and 23 percent for single-family renters—versus 8 percent for multifamily owners and 7 percent for single-family owners. Clements et al., *Customer Assistance Programs for Multi-Family*, 7, https://www.waterrf.org/system/files/resource/2019-07/4557_1.pdf.
- 6 National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, March 2021, 13–14, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf. The racial disparity between renters and owners is especially strong among extremely low-income households. “Twenty percent of Black households, 18 percent of American Indian or Alaska Native households, 14 percent of Latino households, and 10 percent of Asian households are extremely low-income renters. In contrast, only 6 percent of white non-Latino households are extremely low-income renters.” *Ibid.* at 13.
- 7 Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, Center for American Progress, October 30, 2020, <https://www.americanprogress.org/article/pandemic-exacerbated-housing-instability-renters-color/>; Ariel Dreihobl, Lauren Ross, and Roxana Ayala, *How High Are Household Energy Burdens: An Assessment of National and Metropolitan Energy Burden Across the United States*, American Council for an Energy-Efficient Economy, September 2020, 2–6, <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf> (explaining the causes and impacts of higher energy burdens experienced by communities of color); Katrina R. Ellis et al., “Chronic Disease Among African American Families: A Systematic Scoping Review,” *Preventing Chronic Disease* 17 (December 21, 2020), <http://dx.doi.org/10.5888/pcd17.190431>.
- 8 Clements et al., *Customer Assistance Programs for Multi-Family*, xxi.
- 9 The extent to which a landlord is able to pass on water and sewer costs to tenants may depend on whether the housing is market rate, publicly subsidized, or rent-regulated. Clements et al., *Customer Assistance Programs for Multi-Family*, 79–80.
- 10 For further discussion of approaches to delivering benefits to non-customer households, see Clements et al., *Customer Assistance Programs for Multi-Family*, 73–98.
- 11 The California State Water Resources Control Board’s 2020 report offering recommendations for implementing an assistance program for low-income water customers suggested delivering such aid to non-customer renter households through a state income tax credit. The board favored this approach because it made use of an existing benefit delivery system and avoided the potential pitfalls of cash assistance. However, the board noted that this approach would deliver a credit only on an annual rather than monthly basis, which could create cash flow issues for some households. See California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*, February 2020, 31–34, https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf. For the board’s discussion of alternate approaches that it considered and rejected, see State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program Appendices*, February 25, 2020, 44–63, https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_appendices.pdf.
- 12 Clements et al., *Customer Assistance Programs for Multi-Family*, 41, 99–105.
- 13 City of Columbus, Department of Public Utilities, “Multi-Unit Master Metered Property Water/Sewer Low Income Discount Program Application,” accessed April 20, 2022, <https://www.columbus.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=54674>.
- 14 Once an owner qualifies, income-eligible residents must agree to participate in the program. Residents who already participate in certain benefit programs or reside in designated affordable housing units are automatically income-qualified; all others must submit proof of income. See D.C. Water, “Welcome to the DC Water Cares Multifamily Assistance Program!”, accessed April 20, 2022, <https://www.dewater.com/welcome-dc-water-cares-multifamily%2%A0assistance%2%A0program%2%A0>.
- 15 NYC Housing Preservation and Development, “Multifamily Water Assistance Program,” accessed April 20, 2022, <https://www1.nyc.gov/site/hpd/services-and-information/multifamily-water-assistance-program.page>.
- 16 U.S. Department of Health and Human Services (hereinafter HHS), Office of Community Services, “Low Income Household Water Assistance Program: Information Memorandum,” FAQ 5, January 13, 2022, <https://www.acf.hhs.gov/ocs/policy-guidance/lihwap-im-2022-02-update-faqs-lihwap-fy2022>; HHS, Office of Community Services, “LIHWAP Renters Resource,” accessed May 13, 2022, https://www.acf.hhs.gov/sites/default/files/documents/ocs/TTA_LIHWAP_Renters%20Resource%20Guide_FY2022.pdf (providing guidance to LIHWAP recipients on procedural considerations related to serving renters).
- 17 Seattle Public Utilities, “Utility Discount Program,” City of Seattle, accessed April 20, 2022, <https://www.seattle.gov/utilities/your-services/discounts-and-incentives/utility-discount-program>.
- 18 Austin Water, “Austin Water Expands Affordability Initiatives to Include Multi-Family Customer Assistance,” City of Austin, May 24, 2021, <https://www.austintexas.gov/news/austin-water-expands-affordability-initiatives-include-multi-family-customer-assistance>; Austin Water, “Austin Water Multifamily Customer Assistance Program Discount Receives Council Approval,” City of Austin, December 10, 2020, <https://www.austintexas.gov/news/austin-water-multifamily-customer-assistance-program-discount-receives-council-approval>.
- 19 Phila. Water Dep’t Reg. § 100.2(d) (Application for Service as Residential Customers), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>.
- 20 As of spring 2022, Philadelphia’s website stated that renters must provide written consent from their landlord to set up an individual account, in seeming contradiction to the “deemed consent” rule. City of Philadelphia, “Water, Gas & Utilities: Tenants,” accessed May 19, 2022, <https://www.phila.gov/services/water-gas-utilities/become-a-water-customer/tenants/>; Re: Application of the Philadelphia Water Department Proposed Change in Water, Wastewater and Stormwater Rates and Related Charges, Fiscal Years 2022–2023, Direct Testimony of Roger D. Colton on behalf of the Public Advocate, March 22, 2021, 65–67, <https://www.phila.gov/media/20210324163618/PA-St-3-Colton.pdf>.

- 21 Emily Sullivan, “Baltimore Launches Much-Delayed Water Bill Discount Program,” WYPR News Baltimore, February 8, 2022, <https://www.wypr.org/wypr-news/2022-02-08/baltimore-launches-much-delayed-water-bill-discount-program>.
- 22 Portland Water Bureau, “Assistance for Renters in Multi-Family Properties,” City of Portland, accessed May 13, 2022, <https://www.portlandoregon.gov/water/article/689542>; City of Portland, “Financial Assistance for Residents in Multifamily Housing,” accessed May 13, 2022, <https://www.portland.gov/water/water-financial-assistance/multifamily-housing-financial-assistance>.
- 23 California Public Utilities Commission, Notice of Resolution W-5241, California-American Water Company, Order Authorizing Implementation of a Multi-Family Assistance Pilot Program and Associated Cost Tracking in a Modified Customer Assistance Program Balancing Account, April 29, 2022, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M465/K649/465649756.pdf>; California Public Utilities Commission, Results of Commission Meeting, June 2, 2022, https://ia.cpuc.ca.gov/agendadocs/3509_results.pdf (approving Resolution W-5241).
- 24 Joint Center for Housing Studies of Harvard University, “Renter Demographics,” 16–17; National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, March 2021, 13–14, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf.
- 25 The Due Process Clause prohibits government-affiliated actors from interfering with a person’s constitutionally protected interests without “due process of law.” In the utility context, this has been interpreted to require publicly owned utilities (and some private utilities, in narrow circumstances) to follow certain procedures before shutting off a customer’s utility service, including providing advance notice of the shutoff and a fair opportunity to dispute the charges. Whether the Due Process Clause also protects water users who are *not* direct customers, and what protections it provides, depends on the facts. However, several courts have found that renters are also entitled to due process protections, at least under certain circumstances. See DiMassimo v. City of Clearwater, 805 F.2d 1536, 1537–1538 (11th Cir. 1986) (finding that the city water utility’s decision to terminate a non-customer renter’s service without notice at the request of the landlord violated due process because it effectively destroyed the customer’s right under local landlord–tenant law to seek a court order against the landlord to prevent the shutoff); Turpen v. City of Corvallis, 26 F.3d 978 (9th Cir. 1994) (similar); Durbin v. City of W. Memphis, Ark., 2015 WL 1470141, at *6 (E.D. Ark. Mar. 31, 2015) (similar); but see Midkiff v. Adams Cty. Reg’l Water Dist., 409 F.3d 758 (6th Cir. 2005) (finding that, unlike in DiMassimo and other cases, Ohio landlord–tenant law provisions prohibiting landlords from unilaterally terminating water service to tenants “simply cannot be inflated to provide a right to continued water service”).
- 26 Utility commission rules in some states establish this requirement, but only for utilities that are regulated by the commission (typically investor-owned utilities). Examples include Colorado, Maine, and New Jersey. 4 Colo. Code Regs. 723-5-5408(i)(IV), <https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=9712&fileName=4%20CCR%20723-5> (requiring disconnection notice to be posted in a common area); 65-407-660 Me. Code R. § 10(1)(2), <https://www.maine.gov/sos/cec/rules/65/407/407c660.doc> (requiring notice to be posted at or near the front or rear entrance of a rental property); N.J. Admin. Code § 14:3-3A.6(a), (b), <https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=f027f8f3-b74c-4dfc-b790-88fafd286705&nodeid=AAUADAAGAAG&nodepath=%2FROOT%2FAAU%2FAAUAD%2FAAUADAAG%2FAAUADAAGAAG&level=4&haschildren=&populated=false&title=C%2A7+14%3A3-3A.6+Discontinuan>ce+of+service+to+tenants&config=00JAAIYTg5OGJYi04MTI4LTRINjQtYTe4Yi03NTQxN2E5NmE0ZjQKAFBvZENhdGFsb2ftaXPxZTR7bRPtXLJok9kz&pdDocFullpath=%2Fshared%2Fdocument%2FAdministrative-codes%2Furn%3AcontentItem%3A5XKV-PW31-JG59-230Y-00008-00&ecomp=vg1_kkk&prid=96976c11-e248-457d-a72c-77e741fda572 (requiring water utilities to hand-deliver or mail notice to each tenant or post notice in a “conspicuous area of the premises and in the common areas of multiple family premises,” and also make “best efforts to provide copies of the discontinuance notice to all tenants”; if posting is the method of notification, the utility must “use its best efforts to also place a copy of the notice on each tenant’s car windshield or under the door of each tenant’s dwelling”).
- 27 N.J. Admin. Code § 14:3-3A.6(a) (requiring water utilities, prior to termination, to “make every reasonable attempt to determine when a landlord–tenant relationship exists at premises being serviced”).
- 28 68 Pa. Stat. § 399.18(a).
- 29 The reasoning is that because there is no legal basis to hold a tenant accountable for the debts of a third party, utility policies that distinguish between tenants on this basis are irrational and thus violate equal protection (and potentially substantive due process). The Second, Fifth, Sixth, Seventh, and Ninth Circuits have all adopted some version of this reasoning and prohibited the denial of service to tenants based on their landlord’s debts. Only the Third Circuit has gone the other way, concluding that these practices are constitutional. Davis v. Wier, 497 F.2d 139, 144–45 (5th Cir. 1974) (holding that “the fact that a third-party may be financially responsible for water service provided under a prior contract is an irrational, unreasonable and quite irrelevant basis upon which to distinguish between otherwise eligible applicants for water service”); Craft v. Memphis Light, Gas & Water Div., 534 F.2d 684 (6th Cir. 1976), *aff’d*, 436 U.S. 1 (1978) (holding that refusal of water service to new tenants based on unpaid bills of prior tenants violated equal protection); Sterling v. Vill. of Maywood, 579 F.2d 1350 (7th Cir. 1978) (holding that refusal of water service to a tenant based on a landlord’s unpaid water bill, if true, would violate equal protection); O’Neal v. City of Seattle, 66 F.3d 1064 (9th Cir. 1995) (holding that refusal of service to a new tenant based on debt of an unrelated prior tenant violated equal protection); Winston v. City of Syracuse, 887 F.3d 553 (2d Cir. 2018) (holding that termination of water service to tenants based on a landlord’s failure to pay bills violated equal protection and due process); but see Ransom v. Marrazzo, 848 F.2d 398 (3d Cir. 1988) (reasoning that, while terminating service to a tenant was not a rational means of collecting debts from the landlord, it was a rational means of collecting revenue generally and thus served the utility’s general interest in resolving unpaid debts).
- 30 Winston v. City of Syracuse, 887 F.3d 553 (2d Cir. 2018); Golden v. City of Columbus, 404 F.3d 950 (6th Cir. 2005).
- 31 Conn. Gen. Stat. § 16-262e(a), https://www.cga.ct.gov/current/pub/chap_283.htm#sec_16-262e. This statute preexisted the court decision in Winston v. City of Syracuse, referenced above.
- 32 Conn. Gen. Stat. § 16-262f, https://www.cga.ct.gov/current/pub/chap_283.htm#sec_16-262f.
- 33 The California State Water Resources Control Board endorsed this approach in its 2020 *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*. As the report noted: “When a water system shuts off water to a residential master-metered account, the burden falls most severely on the tenants who are deprived of water for drinking, cooking, and sanitation purposes ... While tenants of a master-metered residential property are under no financial or legal obligation to the water system for paying water bills, they are the ones who suffer when the water is shut off. A shutoff, therefore, is a poorly tailored enforcement mechanism for residential master-metered accounts.” Instead, the report found that “property-based” enforcement mechanisms that directly target the landlord, such as property tax liens, would be a more appropriate approach. State Water Resources Control Board, *Recommendations for Implementation*, 88–90.
- 34 The East Bay Municipal Utility District, for example, has had a no-shutoff policy for multifamily buildings since 2011. Instead, the utility relies on a California law that permits municipal utility districts to collect debt from landlords through property liens. See Laura Feinstein, Morgan Shimabuku and Greg Pierce, “When Utilities Shut Off Water for the Poor, We Are All at Risk,” Pacific Institute Blog, April 20, 2020, <https://pacinst.org/when-california-utilities-shut-off-water-for-the-poor-we-are-all-at-risk/>.
- 35 For example, Pennsylvania’s Discontinuance of Service to Leased Premises Act (66 Pa. Cons. Stat. §§ 1521–1533) and Utility Service Tenants Rights Act (68 Pa. Stat. § 399.1-399.9) guarantee tenants this right, if establishing a separate account is technically feasible. 66 Pa. Cons. Stat. § 1527(d), <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=66&div=0&chpt=15§n=27&subsctn=0> (for investor-owned utilities); 68 Pa. Stat. Ann. § 399.7(b) (for publicly owned utilities). Illinois and California do likewise. 765 Ill. Comp. Stat. 735/1, [https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2207&ChapterID=62#:~:text=\(a\)%20A%20residential%20tenant%20shall,paid%20to%20the%20utility%20company](https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2207&ChapterID=62#:~:text=(a)%20A%20residential%20tenant%20shall,paid%20to%20the%20utility%20company); Cal. Health & Safety Code § 116916(b) (West), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=116916.

- 36 The Pennsylvania and California laws that allow tenants to avoid disconnection by establishing their own accounts also allow the tenants to deduct their utility payments from rent. 66 Pa. Cons. Stat. § 1529, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=66&div=0&chpt=15&sctn=29&subsctn=0> (for investor-owned utilities); 68 Pa. Stat. § 399.9 (for publicly-owned utilities); Cal. Health & Safety Code § 116916(e) (West), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=116916. The Illinois law that allows tenants to avoid disconnection by establishing their own accounts provides a remedy in court whereby tenants can receive credit against their rent. 765 Ill. Comp. Stat. 735/1.3, [https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2207&ChapterID=62#:~:text=\(a\)%20A%20residential%20tenant%20shall,paid%20to%20the%20utility%20company](https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2207&ChapterID=62#:~:text=(a)%20A%20residential%20tenant%20shall,paid%20to%20the%20utility%20company).
- 37 66 Pa. Cons. Stat. § 1527(b),(d), <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=66&div=0&chpt=15&sctn=27&subsctn=0>.
- 38 At least one state allows tenants to petition a court for a receivership to coordinate payment of the landlord’s utility bill from the proceeds of tenant’s rent, although that, too, is likely to be a cumbersome process and an extremely difficult one for low-income tenants to navigate. 765 Ill. Comp. Stat. 735/2, [https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2207&ChapterID=62#:~:text=\(a\)%20A%20residential%20tenant%20shall,paid%20to%20the%20utility%20company](https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2207&ChapterID=62#:~:text=(a)%20A%20residential%20tenant%20shall,paid%20to%20the%20utility%20company).
- 39 For links to local legal service providers, see Legal Services Corporation, “Get Legal Help,” accessed May 13, 2022, <https://lsc.gov/about-lsc/what-legal-aid/get-legal-help>. State bar associations may also have pro bono attorneys who can assist renters.
- 40 Several states and cities have recognized a renter’s right to an attorney in certain civil legal proceedings, such as eviction proceedings. See National Coalition for a Civil Right to Counsel, “The Right to Counsel for Tenants Facing Eviction: Enacted Legislation,” accessed May 13, 2022, http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf.
- 41 *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974) (noting that “it may well be that acts of a heavily regulated utility with at least something of a governmentally protected monopoly will more readily be found to be ‘state’ acts than will the acts of an entity lacking these characteristics”); *Denver Welfare Rts. Org. v. Pub. Util. Comm’n*, 190 Colo. 329, 335-37 (Colo. 1976) (finding that a public utility commission order approving a rule on utility service disconnections was “state action” subject to the Fourteenth Amendment because after “two full days of hearings” the commission “expressly adopted the procedures . . . thereby throwing its weight on the side of the rule”); but see *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019) (articulating a more restrictive legal test for “state action” than the test used in *Jackson*).
- 42 For links to local legal service providers, see Legal Services Corporation, “Get Legal Help,” <https://lsc.gov/about-lsc/what-legal-aid/get-legal-help>.
- 43 Whether a renter has a constitutional claim against a utility for assisting with a self-help eviction depends on the facts. In one case, for example, a non-customer tenant sued the city water utility after it terminated the tenant’s service, without notice, at the landlord’s request. The federal court found that the utility’s action violated the tenant’s constitutional rights because it effectively destroyed the tenant’s right under Florida landlord–tenant law to seek a court order preventing the landlord from performing the shutoff. *DiMassimo v. City of Clearwater*, 805 F.2d 1536, 1537–1538 (11th Cir. 1986). Other federal courts have also found due process violations in similar circumstances. See, e.g., *Turpen v. City of Corvallis*, 26 F.3d 978 (9th Cir. 1994) (finding a protected property interest in continued utility service based on Oregon landlord–tenant law); *Durbin v. City of W. Memphis, Ark.*, 2015 WL 1470141, at *6 (E.D. Ark. March 31, 2015); but see *Midkiff v. Adams Cty. Reg’l Water Dist.*, 409 F.3d 758 (6th Cir. 2005) (finding that Ohio landlord–tenant law provisions prohibiting landlords from unilaterally terminating water service to tenants “simply cannot be inflated to provide a right to continued water service”).
- 44 Balt. City Code art. 13, § 7-3(a-1), <https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2013%20-%20Housing.pdf>.
- 45 68 Pa. Stat. § 399.11 (for publicly owned utilities); 66 Pa. Cons. Stat. § 1531, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=66&div=0&chpt=15&sctn=31&subsctn=0> (for investor-owned utilities).
- 46 For links to local legal service providers, see Legal Services Corporation, “Get Legal Help,” <https://lsc.gov/about-lsc/what-legal-aid/get-legal-help>.