



REPORT

# WATER AFFORDABILITY ADVOCACY TOOLKIT



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### About NRDC

NRDC is an international nonprofit environmental organization with more than 3 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment. NRDC has offices in New York City, Washington, D.C., Los Angeles, San Francisco, Chicago, Montana, and Beijing. Visit us at [nrdc.org](http://nrdc.org).

### About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for individuals with low income and other economic disadvantages in the U.S. through its expertise in utility and consumer law, policy analysis and advocacy, publications, litigation, expert witness services, and training for advocates.

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*Cover photo:* © Joshua Lott/Getty Images. Protesters march against mass water shutoffs in Detroit, Michigan on July 18, 2014. (Pictured at second-from-left: Maureen Taylor, chair of Michigan Welfare Rights Organization, a co-sponsoring organization of the rally.)

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## Introduction

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The critical importance of water cannot be overstated: Water sustains life. For communities, access to clean water is essential for protecting public health and sustaining local economies. For individual households, it is necessary for drinking, cooking, bathing, sanitation—and, as the COVID-19 pandemic highlighted, simply keeping our hands and homes clean to prevent disease. Yet in the United States, many people struggle to afford this vital necessity. The unaffordable cost of water and wastewater for these households undercuts health, environmental, and social justice goals while threatening to disrupt entire communities.

In cities and towns around the country, families face service shutoffs, punitive fees, liens on their homes, foreclosure and home loss, and more when they cannot afford their water and sewer bills. All of these practices by utilities—often unconstrained by state consumer protection laws and without a robust financial safety net for vulnerable households—disproportionately impact communities of color.<sup>1</sup>

Water bills continue to rise to support investments in outdated drinking water and wastewater infrastructure.<sup>2</sup> Mass shutoffs, like the 2014 crisis in Detroit (where the city disconnected water service to more than 27,000 homes with unpaid water bills), have garnered international attention, spotlighting how unaffordable water service threatens basic human rights.<sup>3</sup> The COVID-19 pandemic has underscored that everyone needs access to water regardless of ability to pay, and that no one should be forced to choose between paying their water bills and meeting other essential needs. The time to address the country's water affordability problems is now.

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“Water shutoffs are one of the most serious consequences of the high cost of household water in the United States. Water utilities routinely shut off running water to homes where families have not paid their bills.”

—FROM *THE INVISIBLE CRISIS: WATER UNAFFORDABILITY IN THE UNITED STATES*,  
UNITARIAN UNIVERSALIST SERVICE COMMITTEE, MAY 2016.<sup>4</sup>

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The toolkit offers solutions that help protect access to water, enable low-income households to afford water, and support effective state and local advocacy.

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## WHAT IS THE PURPOSE OF THE WATER AFFORDABILITY ADVOCACY TOOLKIT?

The Water Affordability Advocacy Toolkit has two aims. First, it seeks to explain many of the most critical challenges related to household-level water affordability that arise throughout the country. The topics concern not only the affordability of water and sewer service but also the *consequences* to people and communities when bills are unaffordable.

Second, for each topic, it offers a menu of potential state-level and local-level policy solutions and strategies that advocates can consider using—or adapting—to help ensure affordable access to essential water services in their communities, regardless of a household’s ability to pay.

The content of the toolkit was informed by conversations with water advocates, activists, and academics across the country. It is informed significantly by their experiences and insights.

Although not all the solutions will be appropriate everywhere, our hope is that the toolkit can serve as a starting point for advocates to develop comprehensive solutions for the problems faced by people in their communities and states.

## WHO SHOULD USE THIS TOOLKIT?

This toolkit is intended for those interested in policy reform around water affordability—including drinking water, wastewater, and stormwater utility service.

The authors recognize the wealth of knowledge that advocates, activists, and community members already have about water affordability, the urgent need for reform, and effective solutions. The toolkit seeks to systematically collect and share information that advocates, activists, and community members can use to help make change. Readers will find ideas, resources, and examples that may help them influence policymakers such as utility officials and governing boards, local elected officials,

state legislatures and utility commissions, and courts. Policymakers and utilities, too, can use this toolkit to better understand problems and solutions that may apply to their communities.

The focus of the toolkit is on policy reforms and strategies that can address systemic, household-level water affordability issues within a community. However, it is not intended to be a guide for *individual* households struggling with unaffordable water bills. Nor is it a handbook for legal service providers to advocate on behalf of their individual clients, although some of the information in the toolkit may be useful in that context. For individual customer advocacy, contact your local legal services organization or see the National Consumer Law Center’s *Access to Utility Service* (6th ed., 2018).<sup>5</sup>

## WHAT TOPICS DOES THE TOOLKIT COVER? WHAT RESOURCES DOES IT OFFER?

The Water Affordability Advocacy Toolkit is structured as a series of modules that can be read together or as stand-alone guides on individual topics. As emphasized throughout the toolkit, however, the policy solutions in all of the modules are most effective when used as part of a comprehensive approach. Taken together, these solutions can help (1) protect people from losing access to water, (2) enable low-income households to afford essential water services, and (3) strengthen advocates’ opportunities to influence key decisionmakers and hold water and wastewater utilities accountable to the people they serve.

In each module, readers will find an in-depth explanation of the topic and the dynamics (and decision makers) that advocates are likely to encounter; questions that can help advocates assess gaps in state and local laws and policies; examples of strong state and local programs, policies, and consumer protections from around the country, drawing on both the water sector and analogies from the energy utility sector; pitfalls to look out for; and other policy ideas to consider. Each module also includes extensive endnotes with references and further details and examples; some also conclude with a short list of key resources.

We recommend that you begin with the Background module, which provides a high-level overview of the water affordability crisis and introduces key concepts used throughout the toolkit. The Background module explores the meaning of water affordability and the human right to safe, affordable water and sanitation; the devastating consequences of unaffordable water bills; drivers of

rising water rates; and how the fragmented ownership and oversight of water and wastewater utilities present challenges for advocates.

From there, each of the 10 remaining modules addresses a distinct topic related to water affordability, although many modules identify where topics are closely interrelated. These modules are organized thematically as follows:

MODULE	SOLUTIONS EXPLORED
<b>Group 1: Protecting people from losing access to water</b>	
Water Shutoffs	<ul style="list-style-type: none"> <li>■ Combining shutoff protections with bill relief for those unable to pay</li> <li>■ Establishing shutoff protections for vulnerable individuals</li> <li>■ Prohibiting shutoffs while a billing dispute or application for assistance is pending</li> <li>■ Adopting temporary shutoff moratoriums</li> <li>■ Ensuring adequate notice and opportunity to contest a bill before a shutoff</li> <li>■ Eliminating barriers to reconnection such as punitive fees</li> <li>■ Preventing shutoffs when water bills are combined with billing for other city services</li> <li>■ Rejecting the use of flow limiters as an alternative to shutoffs</li> </ul>
Water Liens	<ul style="list-style-type: none"> <li>■ Banning lien sales of homes based on water debt</li> <li>■ Reforming state law protections regarding water lien sales</li> <li>■ Improving notice of water liens and opportunities to avoid a lien</li> <li>■ Creating an ombudsman position to help people avoid a water lien sale</li> <li>■ Offering customers effective debt relief programs to avoid liens and lien sales</li> </ul>
Water Debt	<ul style="list-style-type: none"> <li>■ Eliminating punitive fees and penalties that cause debt to spiral upward</li> <li>■ Temporary water debt forgiveness programs</li> <li>■ Offering “crisis assistance” grants</li> <li>■ Using “arrearage management plans” to retire water debt, by forgiving debt as customers pay their future (affordable) bills</li> <li>■ Offering fair, reasonable deferred payment plans to customers</li> </ul>
Billing Problems and Dispute Resolution	<ul style="list-style-type: none"> <li>■ Spotting common issues and unfair practices that can result in overbilling</li> <li>■ Preventing shutoffs when water bills are combined with billing for other city services</li> <li>■ Preventing abusive or unfair billing of tenants by landlords</li> <li>■ Fixing systemic billing problems that lead to excessive bills</li> <li>■ Creating fair processes for customers to dispute their bills</li> </ul>
Protections and Support for Renters (also contains information relevant to Group 2)	<ul style="list-style-type: none"> <li>■ Expanding bill affordability and assistance programs to effectively reach renters</li> <li>■ Reforming utility consumer protection rules to ensure that renters are protected</li> <li>■ Protecting renters' access to water service when landlords fail to pay the bill</li> <li>■ Regulating how landlords bill their tenants for water</li> </ul>

MODULE	SOLUTIONS EXPLORED
<b>Group 2: Making essential water services affordable for low-income households</b>	
Affordability and Assistance Programs	<ul style="list-style-type: none"> <li>■ Distinguishing affordability programs from assistance programs</li> <li>■ Designing percentage-of-income payment plans (PIPPs) that limit each participating household’s water bill to a predetermined percentage of household income deemed to be affordable</li> <li>■ Designing traditional assistance programs that directly reduce the size of a participating household’s water bill on an ongoing basis, but without regard to whether the household can actually afford the resulting bill*</li> <li>■ Using state and federal strategies to overcome barriers to local program implementation</li> <li>■ Funding programs at the local, state, and federal levels</li> </ul>
Equitable Water Rates	<ul style="list-style-type: none"> <li>■ Understanding the elements of ratesetting</li> <li>■ Avoiding diversion of rate revenues for nonutility purposes</li> <li>■ Challenging “cost allocations” that are unfair to residential customers</li> <li>■ Reducing reliance on fixed charges or declining block rates</li> <li>■ Adopting (and carefully designing) inclining block rates or “lifeline” rates</li> <li>■ Establishing separate rates for wastewater and stormwater</li> </ul>
Water Efficiency and Plumbing Repair Assistance	<ul style="list-style-type: none"> <li>■ Reducing water bills through direct-install program that upgrade plumbing fixtures and repair leaks</li> <li>■ Targeting programs effectively to reach low-income households that can benefit the most</li> <li>■ Integrating water efficiency assistance into low-income energy efficiency programs</li> <li>■ Seeking opportunities to reach multi-family housing</li> <li>■ Offering plumbing repair assistance as needed to ensure safe restoration of service following a shutoff</li> </ul>
Protections and Support for Renters (also contains information relevant to Group 1)	<ul style="list-style-type: none"> <li>■ Expanding bill affordability and assistance programs to effectively reach renters</li> <li>■ Reforming utility consumer protection rules to ensure that renters are protected</li> <li>■ Protecting renters’ access to water service when landlords fail to pay the bill</li> <li>■ Regulating how landlords bill their tenants for water</li> </ul>
<b>Group 3: Enabling more effective advocacy</b>	
Data Collection and Transparency	<ul style="list-style-type: none"> <li>■ Requiring mandatory reporting by utilities of affordability-related data</li> <li>■ Obtaining utility data through public records requests, rate-setting proceedings, and litigation</li> </ul>
Accountability and Participation in Decision Making	<ul style="list-style-type: none"> <li>■ Understanding variations in water and sewer utility governance and oversight</li> <li>■ Using existing opportunities to influence decisions on rates, rules, policies, and programs</li> <li>■ Improving public oversight and accountability of water and wastewater utilities in order to enhance advocates’ opportunities to influence outcomes</li> </ul>

\* The term “assistance program” (or “customer assistance program”) often is used to refer to many types of programs that reduce participating customers’ bills or debt, or that make it more convenient for customers to pay their bills on-time or pay off their debt in full. In the Affordability and Assistance Programs module, however, the term is used to refer only to programs that directly reduce the size of the bill on an ongoing basis and are targeted to a discrete subset of households. As noted at the beginning of the Affordability and Assistance Programs module, other types of assistance programs are addressed elsewhere in the toolkit.



Many of the modules discuss relevant differences between systems that are regulated by state utility commissions (which are mostly investor-owned utilities) and those that are not (which are mostly publicly owned and serve the majority of the U.S. population). The module on Accountability and Participation in Decision Making provides an in-depth discussion of that topic and further distinguishes among various governance structures for publicly owned systems.

Two additional modules are forthcoming. Rather than focusing on a specific topic, they will highlight strategies that advocates have used successfully to achieve many of the policies highlighted throughout the toolkit.

## WHAT IS NOT ADDRESSED IN THIS TOOLKIT?

The toolkit examines issues that directly affect household-level affordability, particularly for low-income households. It does not explore solutions that aim to reduce the total amount of money a utility must recover from its customers to operate, maintain, and improve its water and sewer system—for example, improving access to federal and state infrastructure funding, creating regional partnerships among utilities that may reduce the cost of delivering service (but which can also raise controversies over consolidation and privatization), or improving efficiency of operations (such as by reducing leakage from water distribution pipes). This is not to diminish the importance of those strategies. Indeed, any comprehensive approach to water affordability must consider whether a community's water and wastewater systems are funded, organized, and operated in ways that best enable the provision of safe, affordable water service to the community as a whole. Many other resources that address these topics are available online.<sup>6</sup>

The toolkit focuses on state and local policy solutions rather than federal policy. For the topics covered in the toolkit, nearly all decision making presently takes place at state and local levels. This is not to say that all problems can be solved by states and localities, that federal policy has no bearing on affordability, or that federal policy could not be used more extensively to address household-level affordability specifically. Rather, we have chosen to focus on resources for advocates who work on state and local policy. Existing federal policies or programs are mentioned occasionally, when they are directly relevant to the topics covered in the toolkit.

The toolkit does not address access to affordable water and sanitation services for households or communities that rely on private well water or on-site wastewater systems (e.g., septic systems) or for the estimated two million people in the United States who live without running water and basic indoor plumbing (and many more without sanitation).<sup>7</sup> It focuses on households served by centralized drinking water or wastewater systems.

Finally, although affordable water must be safe water, this toolkit does not address issues of safe drinking water, with one limited exception. (The Water Efficiency and Plumbing Repair Assistance module includes a brief discussion of customer contributions to lead service line replacement, which directly affects household-level affordability.)

## CONTRIBUTING REVIEWERS

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Cynthia Zwick, *Wildfire*

## A NEW FILM: *WHOSE WATER? THE PEOPLE'S MOVEMENT FOR SAFE, AFFORDABLE WATER AND SANITATION IN THE UNITED STATES*

Many of the individuals who directly contributed their insights to this toolkit, and other advocates whose work influenced the toolkit, are engaged with the National Coalition for Legislation on Affordable Water (NCLAWater).

NCLAWater is a coalition of national, state and local organizations, religious institutions, legal organizations, unions and others working to win the passage of national legislation and state legislation on comprehensive access to safe, affordable drinking water and sanitation—the human rights to water and sanitation.

A new film produced by a documentary filmmaker in partnership with NCLAWater—*Whose Water? The People's Movement for Safe, Affordable Water and Sanitation in United States*—illustrates the relationships between democracy and access to safe, affordable water and sanitation, and the various forms of community organizing deployed by communities lacking the political power to obtain their human right to water. Communities visited in the film include Martin County, Kentucky; Lowndes County, Alabama; Des Moines, Iowa; Allensworth, California; Navajo Nation; Philadelphia, Pennsylvania; and Detroit, Michigan. The film tells stories of unaffordable, inaccessible, and contaminated drinking water and inadequate sanitation across the U.S. and in the Navajo Nation, along with community-driven solutions for the human rights to water and sanitation.

More information on NCLAWater and *Whose Water?*, including a film [trailer](#) and a 10-minute [video](#) on the coalition, is available at [www.affordablewaternow.org](http://www.affordablewaternow.org).

### ENDNOTES

- 1 Coty Montag, *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities*, Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, April 2019, [https://www.naacpldf.org/wp-content/uploads/Water\\_Report\\_FULL\\_5\\_31\\_19\\_FINAL\\_OPT.pdf](https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf). For further discussion of evidence of disparate impacts, see the Background module of this toolkit.
- 2 The largest national water and sewer rate survey found that between 1996 and 2018, rates increased about 2.5 times as fast as the Consumer Price Index, a standard measure of inflation for consumer goods and services. American Water Works Association, "AWWA's 2019 Water and Wastewater Rate Survey Reveals Increasing Utility Costs Boosting Rates," May 9, 2019, <https://www.awwa.org/AWWA-Articles/awwas-2019-water-and-wastewater-rate-survey-reveals-increasing-utility-costs-boosting-rates>. Another analysis, based on census data, found that household water and sewer costs more than doubled between 2000 and 2016. See Joseph W. Kane and Lynn E. Broaddus, "Striking a Better Balance Between Water Investment and Affordability," Brookings blog, *The Avenue*, September 12, 2016, <https://www.brookings.edu/blog/the-avenue/2016/09/12/striking-a-better-balance-between-water-investment-and-affordability/>.
- 3 United Nations, "In Detroit, City-Backed Water Shut-Offs 'Contrary to Human Rights,' Say UN Experts," *UN News*, October 20, 2014, <https://news.un.org/en/story/2014/10/481542-detroit-city-backed-water-shut-offs-contrary-human-rights-say-un-experts#.WiGsEHlrXLM>.
- 4 Patricia A. Jones and Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, Unitarian Universalist Service Committee, May 2016, 11, [https://www.uusc.org/sites/default/files/the\\_invisible\\_crisis\\_web.pdf](https://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf).
- 5 National Consumer Law Center, *Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs* (Boston: National Consumer Law Center, 2018), <https://library.nclc.org/aus>.
- 6 For example, some useful resources are collected at the following links: River Network, "State Revolving Funds Resources," accessed May 13, 2022, <https://www.rivernetwork.org/resource/state-revolving-funds-resources/>; and River Network, *Equitable Water Infrastructure Toolkit*, accessed May 13, 2022, <https://www.rivernetwork.org/connect-learn/resources/equitable-infrastructure-toolkit/>.
- 7 Zoe Roller et al., *Closing the Water Access Gap in the United States: A National Action Plan*, Dig Deep and U.S. Water Alliance, accessed May 13, 2022, [http://uswateralliance.org/sites/uswateralliance.org/files/publications/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States\\_DIGITAL.pdf](http://uswateralliance.org/sites/uswateralliance.org/files/publications/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf).

## Background

Across the United States, communities are grappling with rising water and sewer rates, which are increasingly unaffordable for many low-income households. Nationally, water and sewer bills have been rapidly increasing for more than two decades—even as household incomes have stagnated for most of that time.

The largest national rate survey found that between 1996 and 2018, water and sewer charges increased about 2.5 times as fast as the Consumer Price Index (CPI), a standard measure of inflation for consumer goods and services.<sup>1</sup> Another analysis, based on census data, found that household water and sewer costs more than doubled between 2000 and 2016.<sup>2</sup> Over the same period, household incomes idled.<sup>3</sup> One recent peer-reviewed effort to characterize water affordability nationally, using data from a nationally representative sample of utilities, found that households at the 20th percentile of household income in their city spent an average of nearly 10 percent of their disposable income on essential water and wastewater services.<sup>4</sup>

The rising cost of water and sewer services has severe impacts for households and communities, including economic hardship, mental stress, and the loss of

water access due to forced shutoffs, to name just a few. These impacts are not evenly distributed; lower-income communities and communities of color are especially hard hit. However, unaffordable water bills can affect people everywhere. In multiple states, studies have found that low-income households in communities large and small, rural and urban, experience chronic challenges affording their water bills.<sup>5</sup> In some places, where rising costs of water and wastewater have collided with entrenched poverty, widespread inability to afford water bills has made the issue impossible to ignore.<sup>6</sup>

In response, communities are organizing around the issue of water affordability and the human right to water. Local water advocates have taken the fight for affordable access to essential water and sewer services to city halls, state legislatures, Congress, courts, and the streets.<sup>7</sup>



Protesters march against mass water shutoffs in Detroit, Michigan on July 18, 2014. (Pictured at second-from-left: Maureen Taylor, chair of Michigan Welfare Rights Organization, a co-sponsoring organization of the rally.)

© Joshua Lott/Getty Images





This module aims to provide some essential background on water affordability in the United States, as context for the rest of this toolkit. It also introduces some key ideas and frameworks used throughout.

The first section discusses the *definition* of water affordability used in the toolkit. For the most part, we adopt a household-level approach to understanding the subject. This is in keeping with the principle that every person has a human right to safe and affordable water.

Next, the module summarizes some of the *impacts* of unaffordable water. Unaffordable water bills can lead to economic hardship, loss of access to water services due to shutoffs, spiraling debt, loss of housing, loss of parental rights, and myriad other negative consequences. Lower-income households and households of color are particularly likely to suffer these consequences.

Increasingly unaffordable bills also have negative consequences for utility finances, by driving up the number of customers who cannot pay each month and the cost of collecting overdue amounts (including the cost of conducting service terminations).

Then, the module describes some of the *causes* of rising water rates, including decades of underinvestment in water infrastructure and the need to update aging components of water and wastewater systems. On the individual utility level, water rates reflect, among other things, the utility's specific capital needs and operational costs.

Next, the module discusses some *structural features* of the water sector that make addressing water affordability issues particularly challenging, including the highly

fragmented nature of the sector and the relative lack of regulatory oversight of utility finances and consumer protection.

Finally, the module briefly discusses the need to move toward a comprehensive approach to addressing household-level water affordability.

## DEFINING WATER AFFORDABILITY AND THE HUMAN RIGHT TO WATER

The issue of water affordability can be understood in different ways, including at the individual household level or generally across a community or an entire state or region. This toolkit approaches water affordability mainly from the perspective of the individual household. We focus especially on issues relevant to lower-income households, since they face the greatest affordability challenges. (As explained in the Introduction module, we focus on affordability for households connected to centralized water and sewer utility service.)

The straightforward, conceptual definition of household-level water affordability that underpins this toolkit is, as one public policy researcher has written, “the ability of individual customers to pay for water and sewer services to meet their basic needs while maintaining the ability to pay for other essential costs.”<sup>8</sup>

There is no consensus approach on how to *quantitatively* define or measure water affordability, however. Methodologies, metrics, and thresholds vary widely across various studies. (See text box: “Are water bills affordable? Where and for whom?”) This toolkit does not offer a preferred methodology.

The conceptual definition above is consistent with the principle of a human right to water, which is recognized by international law.<sup>9</sup> In the United States, many advocates champion the human right to water as an organizing principle for efforts to secure universal access to safe, affordable water. (See text box: “A human right to safe, affordable water and sanitation.”) The concept of a human right to water is gaining traction even among some leaders in the water utility sector, as reflected in the consensus principles that emerged from a dialogue convened by the Aspen Institute in 2021–22.<sup>10</sup>

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“The right to safe and clean drinking water and sanitation [is] a human right that is essential for the full enjoyment of life and all human rights.”

*SOURCE: UNITED NATIONS GENERAL ASSEMBLY, RESOLUTION NO. 64/292, “THE HUMAN RIGHT TO WATER AND SANITATION,” JULY 28, 2010.*

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## A HUMAN RIGHT TO SAFE, AFFORDABLE WATER AND SANITATION

The human right to water has become a rallying cry for many communities and water affordability advocates in the United States. It can be a powerful mobilizer and source of moral authority to hold those in power accountable.<sup>11</sup>

The human rights framework—including a right to affordable water—derives from international law.<sup>12</sup> The United Nations General Assembly formally “recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”<sup>13</sup> The General Assembly has further explained that these rights “entitle [ ] everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use [and] . . . physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.”<sup>14</sup>

Building on these international human rights, advocates in Detroit leveraged a 2011 visit from the United Nations Special Rapporteur on Water and Sanitation to expose the appalling lack of access to basic water and sanitation services among lower-income families—including mass water shutoffs—in Detroit and Flint, Michigan.<sup>15</sup>

U.S. courts have been reluctant to recognize any “fundamental right” to water under the federal Constitution.<sup>16</sup> However, a few state constitutions recognize some version of a right to “clean water.”<sup>17</sup> Moreover, at least two states have legislatively recognized a right of access to safe, *affordable* drinking water. California enacted legislation in 2012 recognizing a “right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes” and requiring state agencies to consider this right in their decision making.<sup>18</sup> More recently, the Virginia General Assembly adopted a resolution in 2021 recognizing that “access to clean, potable water in amounts that will ensure an acceptable standard of living is a necessary human right.”<sup>19</sup> The Virginia resolution also specifically addresses water affordability.<sup>20</sup>

In at least two other states, legislation has been introduced (but not passed) to codify a human right to water; in several others, legislation has been enacted or introduced that cites the human right to water as a foundational principle.<sup>21</sup>

For further reading, resources on the human right to water, including in the domestic U.S. context, have been developed by the Program on Human Rights and the Global Economy at Northeastern University School of Law.<sup>22</sup>

A right of access to affordable water service can also be placed in the context of a right to essential utility services more broadly. In 2021, the National Consumer Law Center, the Natural Resources Defense Council, and other advocates around the country developed a utility consumer’s bill of rights, “*A Roadmap to Utility Service as a Human Right*,” which offers bedrock principles of universal, affordable water, energy, and broadband service.<sup>23</sup> (The roadmap is reproduced as an appendix at the end of this module.) There is also an accompanying implementation guide that can be found online.<sup>24</sup> The authors invite advocates to apply and adapt the roadmap to their own circumstances to promote federal, state, and local policy reforms.<sup>25</sup> This toolkit reflects the roadmap’s principles and recommendations.

### UNAFFORDABLE WATER BILLS HARM PEOPLE, ESPECIALLY PEOPLE OF COLOR AND LOW-INCOME PEOPLE

Public water and sewer systems were developed in the United States, more than a century ago, primarily to protect public health by preventing the spread of infectious disease. They were created, in large part, through massive public investment made to realize those public health benefits.<sup>26</sup> Ironically, in the 21st-century United States, loss of water access due to a household’s inability to pay

puts individual and community health at risk. (See text box, “COVID-19 highlights the links between shutoffs and public health.”)

Unaffordable water and sewer bills can have severe consequences. When people cannot afford to pay, they often face disconnection of water service and liens on their property. These collection practices directly harm the health of individuals and communities, threaten access to housing (through foreclosure or eviction), and can even result in loss of parental custody of children.<sup>27</sup> There is no nationwide reporting on water shutoffs for nonpayment. But various studies have documented thousands or tens of thousands of shutoffs in individual cities around the country, in a given year.<sup>28</sup> Other studies have identified high levels of residential water debt in many cities.<sup>29</sup>

There is evidence that people of color disproportionately experience water affordability challenges. A recent working paper analyzing data from more than 1,500 U.S. water utilities found that Black residents are more likely to have bills that may be considered unaffordable, as a share of household income, even after controlling for poverty rates.<sup>30</sup> Analyses of data in various cities have shown people of color experiencing water shutoffs at higher rates than others.<sup>31</sup> Federal civil rights lawsuits have alleged racial disparities in water shutoffs and liens in

specific cities.<sup>32</sup> These disparities are consistent with other findings regarding utility shutoffs more generally, for which nationwide data are available.<sup>33</sup>

In some Black communities, water debts are a significant driver of property loss, leading to the destruction of generational wealth and feeding the racial wealth gap.<sup>34</sup> People of color also are more likely to lack access to basic water infrastructure, leading many to purchase expensive bottled water or spend large sums on gas to drive to access water for their daily needs.<sup>35</sup>

To pay unaffordable water bills and avoid water shutoffs, families may alternate between paying energy bills and water bills, or they may cut spending on other essential expenses including housing, medicine, transportation, food, and school supplies.<sup>36</sup> Reduced spending on these other daily needs has its own adverse consequences for health, employment, and other social outcomes.

Rising water and sewer rates can also increase costs for residents who do not pay a water bill directly—such as most renters in multi-family buildings—by raising the cost of rental housing.<sup>37</sup> Those residents can also experience disconnection of water service when a landlord fails to pay the water bill.

Unaffordable water bills and the threat of disconnection also cause significant psychological distress.<sup>38</sup> People in desperate situations whose water service is disconnected can be criminally prosecuted for reconnecting service without the utility's permission.<sup>39</sup>

Overdue or unpaid water bills can also spiral into greater household debt. Punitive late fees and interest charges can amplify the burden, turning small arrearages into massive ones. Overdue utility bills may show up on consumer credit reports, affecting credit scores and impacting people's ability to access financial services.<sup>40</sup>

## UNAFFORDABLE WATER BILLS ARE A LOSE-LOSE PROPOSITION FOR UTILITIES AND THEIR CUSTOMERS

Many utilities and regulators assume that when customers fail to pay their bills, the appropriate response is to use aggressive collection methods, such as shutoffs and liens, to coerce payment. When affordability is considered at all, it is often treated as a matter of charity rather than a core obligation to ensure universal access to essential public services.

In reality, though, the vast majority of customers who fail to pay their water bills do so because they cannot afford to.<sup>45</sup> Punitive approaches to the problem of nonpayment tend to exacerbate this problem, not solve it.

Increasingly, water and wastewater utilities are recognizing that, to generate the revenue they need to serve their communities, they must find ways to ensure that bills are affordable for those least able to pay.<sup>46</sup> For example, municipalities are often reluctant to raise rates because of concerns about costs to low-income customers; effective affordability or assistance programs can enable utilities to increase rates overall to generate needed revenue, while protecting people who can't afford higher water bills.<sup>47</sup>

When a significant percentage of a water utility's customers are unable to pay their bills, the utility's finances suffer, to the detriment of everyone served by the system.<sup>48</sup> By increasing the rate of bill nonpayment, unaffordable bills also increase the utility's cost of collecting overdue amounts and the cost of conducting shutoffs—expenses that are passed on to all customers. Ultimately, unaffordable bills can threaten a utility's capacity to deliver safe and reliable water and sanitation service.<sup>49</sup> When low-income customers are billed an amount they can afford, however, they are much more likely to pay those bills, voluntarily and on time, providing a more stable, predictable revenue stream for the utility.

## COVID-19 HIGHLIGHTS THE LINKS BETWEEN SHUTOFFS AND PUBLIC HEALTH

The COVID-19 pandemic has spotlighted the connections between access to water and public health, even as it has deepened existing challenges and inequalities related to water access. Guidance from the U.S. Centers for Disease Control and Prevention emphasizes the importance of frequent hand washing to prevent spread of the novel coronavirus.<sup>41</sup> Access to water is also essential for bathing and personal hygiene, hydration, and home sanitation, all of which help to reduce the spread of disease at any time, not only during a pandemic.

The pandemic imperiled many households' ability to pay for water and other essential services. Black households and other households of color were hit especially hard, due in part to the staggering wealth gap between Black and white households and higher rates of job and housing insecurity.<sup>42</sup>

In the early days of the pandemic, water advocates pushed governments to place moratoriums on water shutoffs in the interest of public health. Many cities and states did so. However, only 19 states plus Washington, D.C., and Puerto Rico adopted statewide moratoriums at any point during the pandemic, and many of those lasted only a few months.<sup>43</sup>

A recent study from Cornell University researchers suggests that water shutoff moratoriums were effective at reducing infections and deaths during the pandemic. The study estimated that a nationwide water shutoff moratorium would have reduced COVID-19 cases by 3.97 percent and deaths by 5.51 percent in the 41 states without a moratorium during the study period—protecting more than 480,000 people from infection and more than 9,000 people from death.<sup>44</sup>



## ARE WATER BILLS AFFORDABLE? WHERE AND FOR WHOM?

Whether water bills are affordable can be considered at many different scales, ranging from the individual household to an entire community, region, state, or even nation.

Determining whether an individual household can afford its water or sewer bills on a regular basis requires selecting a threshold for what is considered to be affordable, often expressed as a percentage of household income. Some advocates cite a United Nations recommendation of 3 percent, for example.<sup>50</sup> Some low-income water affordability programs use a sliding scale, aiming to keep bills to a lower percentage of income for the lowest-income customers. For example, the two U.S. cities that offer percentage-of-income rates to low-income households use sliding scales with a range of 1 to 4 percent (for combined water and sewer costs).<sup>51</sup> However, among community, utility, and other stakeholders across the country, there is no consensus threshold for household-level affordability.<sup>52</sup>

A separate question is whether water bills (or water rates) are considered affordable relative to household incomes across a utility's service area or other geographic area.<sup>53</sup> Historically, utilities typically have measured affordability of their rates based on customers at the median household income. Today, however, there is a widespread recognition that rate-setting and related public policy decisions must consider affordability for low-income households in particular.<sup>54</sup> Many recent water affordability studies focus on low-income households.<sup>55</sup> Yet, analysts have varied widely in their choice of metrics, data sources, assumptions, and thresholds of affordability. These methodological choices significantly affect where, for whom, and to what extent bills are determined to be unaffordable.<sup>56</sup> Advocates may wish to work with academics or other experts to choose one or more methodologies appropriate for their city or state, in order to quantify affordability challenges, measure trends over time, and establish goals that can inform state and local policies.

## UNDERSTANDING THE DRIVERS OF RISING WATER RATES

At the national level, decades of underinvestment—and the resulting need to rehabilitate, replace, and modernize aging water and wastewater infrastructure—are a primary driver of increasing water and sewer rates. Among the most substantial capital expenses water and sewer systems face are removing toxic lead service lines, enhancing water treatment to filter harmful chemicals in source water, eliminating sewage overflows, replacing ancient water mains and sewer lines, and making infrastructure more climate resilient in the face of more frequent and intense storms and flooding—all steps that are necessary to ensure safe, clean water for all.<sup>57</sup> These dynamics play out in communities across the country, with rate impacts

being higher in some places than in others depending on local circumstances. In some instances, a legacy of racial discrimination in provision of municipal water services contributes to present-day cost burdens.<sup>58</sup>

The need for massive investment will continue to drive rates up around the country, even with the substantial new federal infrastructure funding provided in the 2021 Bipartisan Infrastructure Law. The federal government and states can help ameliorate some of those pressures by prioritizing funds for the most disadvantaged communities. Yet the hundreds of billions of dollars of needed investment far outstrip the current availability of federal and state funds.<sup>59</sup>

At the individual utility level, water rates may be driven by a multitude of factors. Rates are significantly shaped by the cost to the utility of providing service, which is unique to each utility. The cost of providing service includes the cost of the infrastructure required to procure, treat, store, and deliver water—such as water intakes, pipes, valves, pumps, storage tanks, and meters—as well as operational expenses of the utility, ranging from chemicals to electricity to staff.<sup>60</sup> In water systems with deteriorating, leaky distribution systems, costs also include production of water that never reaches any customers—but that everyone ultimately pays for through rates.<sup>61</sup> In cities with historical population declines, a smaller number of people than municipal systems were designed to serve must now bear the cost of maintaining and fixing aging infrastructure, intensifying upward pressure on rates.<sup>62</sup>

Utilities often finance pipe replacements and other infrastructure projects by taking on debt or issuing bonds, which resurface in water rates as interest and other debt-related charges. Borrowing costs depend on the overall state of the utility's finances and can be a substantial portion of a utility's entire budget.<sup>63</sup> The cost to ratepayers of infrastructure investments will also be influenced by whether and to what extent the utility makes use of grants or low-cost loans available through state and federal government programs.<sup>64</sup>

There are many other reasons that rates may vary among water providers, including, for example, the opportunity for larger systems to realize economies of scale relative to smaller systems, differing utility ownership structures, differences in water supply costs, and the extent to which utility revenues may be diverted to nonutility purposes.<sup>65</sup> As explored in detail in the Equitable Water Rates module, rates also vary (for any given level of water use) depending on policy choices that utilities make when designing their rate structures.<sup>66</sup> For local advocates interested in improving affordability, it is important to understand the most significant factors affecting a utility's rates.

## COMPARING WATER RATES: RESOURCES AND CAUTIONARY NOTES

Comparing water rates across utilities can be tricky. Higher rates do not necessarily mean higher bills because typical water usage may differ from place to place—and bills are typically a function of both rates and usage. Likewise, simply comparing bills does not show whether affordability is a greater challenge in one community than in another, since affordability is a function of both bills and income levels across a community. Further, because the actual cost of providing water and sewer service may vary according to local conditions, higher rates or bills do not necessarily mean that a utility is “overcharging” its customers.

Still, wide variation in rates from place to place may reflect historical and current inequities in the provision, funding, and management of essential water services.

Several organizations publish compilations or offer online dashboards that can help you understand how your rates compare to those in other areas for a given level of water usage. The most widely-used free compilations and dashboards are listed below; be aware that they cover only certain states and may vary in how frequently they are updated.

- The University of North Carolina’s Environmental Finance Center compiles and publishes information on water and wastewater rates from thousands of systems in more than 20 states, extracted from annual surveys performed in each state by local agencies, consultants, trade associations, and nonprofits.<sup>67</sup>
- The Nicholas Institute for Environmental Policy Solutions at Duke University published an online water affordability dashboard that covers 14 states and more than 3,000 utilities.<sup>68</sup>
- Circle of Blue publishes an annual survey of water rates in 30 major U.S. cities.<sup>69</sup>
- The Jersey WaterCheck website shows water rates of more than 100 water systems and several dozen wastewater systems in New Jersey, which can be searched by utility or compared across utilities.<sup>70</sup>

## THE FRAGMENTED OWNERSHIP AND OVERSIGHT OF WATER AND WASTEWATER UTILITIES PRESENT CHALLENGES TO ADVOCATES

The water and wastewater sector is highly fragmented and decentralized, with utilities operated primarily by local governments. For drinking water, there are approximately 50,000 community water systems in the United States. More than half of these are very small, serving populations of less than 500. At the opposite end of the spectrum, the largest 434 systems serve nearly half of the U.S. population. The overwhelming majority of people who receive drinking water from a utility (84 percent) are served by publicly owned utilities, with most of the rest served by investor-owned utilities.<sup>71</sup>

The wastewater sector is similar. It has somewhat fewer individual utilities, though they still number in the tens of thousands. Most wastewater utilities are small, with the majority of the population served by the largest ones. And the vast majority of wastewater customers are served by publicly owned systems, with investor-owned utilities serving an even smaller share than in the water sector.<sup>72</sup>

These structural features make it especially challenging to address household-level affordability issues in the water and wastewater sector, as compared with more centralized and highly regulated sectors such as gas and electric utilities.<sup>73</sup> For example, the proliferation of small water utilities can make it harder to administer and fund robust affordability and assistance programs in the water sector, since smaller utilities have less administrative capacity and revenue to support such programs. The fragmented nature of the sector also makes it more difficult to coordinate and scale advocacy efforts.

In addition, the fact that water utilities are mostly publicly owned creates problems related to regulatory oversight. Investor-owned water and wastewater utilities, which operate as for-profit monopolies in their service areas, are almost always regulated by state utility commissions. These commissions have extensive public processes to review and approve rates, typically with the involvement of designated ratepayer advocates (although with varying results in terms of affordability). In addition, utility commissions typically have various consumer protection rules for all utilities they regulate, addressing such issues as minimum notice requirements for shutoffs, prohibitions on shutoffs for certain vulnerable customers (such as those with specific medical needs) or at certain times of year (such as winter heating season), fair billing practices, dispute resolution procedures, and more.<sup>74</sup>

By contrast, publicly owned utilities—including most water and wastewater utilities—are typically not subject to state utility commission oversight of rates or consumer protections. These utilities set rates independently, subject to very general state law principles but with no state approval needed. Further, no state has a comprehensive, uniform set of consumer protection rules that apply to utilities that are not commission-regulated. Rules and policies on shutoffs, billing, and the like are also determined at the local level, where they vary extremely widely.<sup>75</sup> (See the module on Accountability and Participation in Decision Making for more discussion of how governance and oversight differ for investor-owned and publicly owned utilities.)

## TOWARD A COMPREHENSIVE APPROACH TO WATER AFFORDABILITY

Whether customers can afford their bills, and what happens when they cannot pay, are two distinct but related questions. Water rates, water usage, the availability of affordability or assistance programs, household income, and cost of living largely determine a customer's ability to pay. But bill collection practices and consumer protection rules determine what happens when someone cannot. A comprehensive approach to water affordability must address both questions. This toolkit aims to do so while recognizing the deep and multifaceted challenges described above.

(As noted in the Introduction module, a holistic approach must also address topics beyond the scope of the toolkit—

for example, improving access to state and federal infrastructure funding and adopting practices that enable more efficient provision of safe, reliable water and sewer service.)

The modules in this toolkit offer a broad range of policies and tactics that can be applied at the local and state levels. These include targeted programs to reduce low-income customers' bills, more equitable rate structures, debt relief programs, consumer protection rules, governance reforms, and more. The many cross-references from one module to another underscore that these policies work best when they are implemented together as part of a holistic affordability strategy. It is our hope that the ideas and examples in this toolkit can help advocates around the country achieve their goals of ensuring affordable access to essential water and wastewater services for every household.

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# Appendix

## A UTILITY CUSTOMER'S BILL OF RIGHTS

In 2021 the authors of this toolkit and other advocates around the country developed a utility consumer's bill of rights—“A Roadmap to Utility Service as a Human Right”—that offers bedrock principles of universal, affordable water, energy, and broadband service. The roadmap is reproduced in full below, and an accompanying implementation guide can be found online.<sup>76</sup> The authors of the roadmap invite advocates to apply and adapt it to their own circumstances to promote federal, state, and local policy reforms.



**Essential Utility Services During the COVID-19 Pandemic and Beyond: A Roadmap to Utility Service as a Human Right**

March 2021

- Safe, reliable, and affordable energy utility service — including heat, cooling, and light — is an essential human need.
- Safe, reliable, and affordable water and sanitation are essential human needs.
- Reliable, robust, and affordable broadband internet service is an essential human need.
- No household should be disconnected from these essential utility services based on the inability to pay.
- State laws, including those that direct the actions of public utility commissions and municipalities, and cooperatives, should explicitly recognize that uninterrupted utility service is an essential human need and essential to public health and safety.
- Utility service should be affordable for all households. In practice, that requires targeted, effective utility affordability programs sufficient to meet the needs of economically distressed households (such as percentage of income payment plans and/or discount rates).
- Utility billing and collection practices should recognize that uninterrupted utility service is an essential human need. In practice, that requires affordable debt retirement programs and prohibits, at a minimum, the assessment of late payment and reconnection fees, deposits, liens, sale of debt to debt buyers, and other aggressive collection practices.
- Utilities should monitor for and report on disparities in impacts by race and ethnicity on billing, collection, and termination practices, and all services provided, and correct any identified disparities.
- Utilities should provide robust and targeted energy and water efficiency services for economically distressed households.



## ENDNOTES

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  - “Direct or indirect costs to connect, deliver, and provide water should not be a hindrance to the access of water, and the costs of access to water should not compromise the ability to pay for other essential items, such as food, housing, and health care, so that no one is deprived of water because of inability to pay;”
  - “A statewide water affordability program would ensure that every household can afford to pay its water, wastewater, and stormwater bills based on the household’s income through percentage of income payment plans with arrears management;”
  - “Water service disconnections for nonpayment are contrary to promoting public welfare and public health, and the Commonwealth must protect vulnerable populations, including seniors, youths, and medically compromised individuals, from water service disconnections.”
- 21 See Kozikis and Winkler, “Between Confrontation and Cooperation,” 10-12 (discussing other state legislative initiatives in Louisiana, Ohio, Minnesota, and Michigan).
- 22 Northeastern University School of Law, “Right to Water.”
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## Water Shutoffs

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No one should lose access to water because of an inability to pay a water bill. Utilities often claim that shutoffs are a necessary collection tool to protect utility revenues and to prevent unscrupulous people from “free riding” on paying customers. However, studies ranging from the 1970s to recent decades have demonstrated that the overwhelming majority of households pay their utility bills when they are able.<sup>1</sup> The truth is that when people don’t pay, it is usually because the bills are simply unaffordable.

There is no nationwide reporting on water shutoffs for nonpayment. But multiple studies have documented thousands or tens of thousands of shutoffs in individual cities around the country in a given year.<sup>2</sup> In one study, among the 73 utilities around the country from which data were obtained in 2016, the authors tallied nearly 570,000 residential shutoffs.<sup>3</sup>

Disconnecting service to people who can’t afford to pay for water is both cruel and counterproductive. Shutoffs can have severe consequences, including harm to individual and community health, psychological stress, and loss of housing or even of child custody.<sup>4</sup> Struggling households will often sacrifice other needs to keep the water on, becoming trapped in a cycle of juggling necessities to stay connected to water.<sup>5</sup> As a result, shutoffs often exacerbate whatever crisis prompted a household to experience payment difficulties in the first place, making it *less* likely that they can get back on track.

This module focuses on policies that place limits and conditions on a utility’s ability to disconnect residential

service due to nonpayment. The programs and policies below may not be available from every water utility but could suggest areas where advocates can seek change, either at the local level or through state legislation.

Critically, protections from shutoffs—whether through limits on disconnection of individual customers or a utility-wide moratorium—should be accompanied by programs that address water debt and unaffordable bills. Simply prohibiting a utility from disconnecting water service does not eliminate a customer’s financial responsibility for water bills. Further, in households where unaffordable water bills are an ongoing problem, there is a high risk of falling behind again, once an immediate shutoff crisis is past.

Therefore, the restrictions on shutoffs covered in this module should be part of a holistic solution that minimizes the chances that households will be confronted with water bills that they cannot afford. The modules on Water Debt, Affordability and Assistance Programs, Equitable Water Rates, and Water Efficiency and Plumbing Repair Assistance address key components of such an approach.

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### SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Combining shutoff protections with bill relief for those unable to pay
- Establishing shutoff protections for vulnerable individuals and protections based on extreme temperature, season, time of day, or day of the week
- Prohibiting shutoffs while a billing dispute or application for assistance is pending
- Adopting temporary shutoff moratoriums to address problems facing a large number of customers
- Ensuring adequate notice and opportunity to contest a bill before a shutoff
- Eliminating or limiting punitive fees and other barriers to reconnection
- Preventing shutoffs when water bills are combined with billing for other city services
- Rejecting the use of flow limiters as an alternative to shutoffs

## RISKS TO THE HOUSEHOLD FROM WATER SHUTOFFS

Relying on shutoffs as a collection tool creates serious risks for households. Interruptions to water access can significantly disrupt people's home and work life, impacting their ability to care and provide for themselves and their dependents. Individuals need safe drinking water and sewer service to prepare meals and practice basic hygiene. Some also need water for the safe operation of medical devices.<sup>6</sup>

Some utilities impose additional charges when a household is disconnected, such as late fees, interest, disconnection and reconnection fees, or deposit requirements.<sup>7</sup> Disconnection can also result in other costs, such as the need to buy expensive bottled water. These added fees and costs can increase the household's debt and exacerbate their financial distress, making it even harder to restore and maintain service after a shutoff.

There are more severe risks from being disconnected for an extended period of time. In some cases, a water shutoff can lead to loss of housing. Having running water and sewer service is considered essential for a home to be habitable—safe and fit to live in—as these services are necessary for hygiene and sanitation. Homes without water for long periods of time are at risk for building code violations and possibly condemnation.<sup>8</sup> For tenants, a shutoff can lead to eviction if the lease terms require the tenant to maintain water service.<sup>9</sup>

Moreover, when a shutoff causes housing instability, it can harm worker productivity and disrupt schooling for students.<sup>10</sup> Prolonged shutoffs can also lead to



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A protester at the Detroit March for Justice in Detroit, Michigan, on October 2, 2015.

structural damage to water pipes or water quality dangers from bacterial buildup in the pipes.<sup>11</sup> In some cases, disconnection of water service can also lead to loss of heat where there is no water for boilers and radiators.

Shutoffs can also lead to loss of child custody. Social services may be called in regarding the well-being of young children if a home is considered unsafe due to lack of running water or sewer service.<sup>12</sup> Further, in some places, anyone reconnecting their home to service without authorization can face felony criminal charges.<sup>13</sup>

### QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify issues to address concerning shutoffs for nonpayment:

- How does your utility notify customers of a pending shutoff for nonpayment, procedures to avoid disconnection, and the process for disputing a bill? Is this notice adequate? Is there enough time to line up emergency assistance or work out a payment arrangement to avoid a shutoff? Is there a fair process for disputing a bill?
- Does your utility have robust affordability or assistance and debt relief programs to prevent shutoffs for households unable to afford their bills?
- Does your utility have special shutoff protections if members of a household are ill, elderly, survivors of domestic violence, or minors? Does it have shutoff protections based on extreme temperature or season (e.g., winter)? Does it prohibit shutoffs on or before weekends or holidays?
- Which communities, households, and neighborhoods are being most impacted by shutoffs? How are they being impacted?
- Does your utility delay enforcing a shutoff when a customer has a good-faith dispute over a bill, or when an application for assistance is pending?
- Does your utility impose punitive fees or deposit requirements that make it hard for households to get reconnected?
- Does your utility use flow limiters in place of shutoffs?
- Are there state laws that provide rules or requirements concerning any of the issues above? If so, do they apply equally to all water utilities, or only to those regulated by a state utility commission?

## PROTECTIONS FROM SHUTOFFS

Some utilities have rules or policies to protect against shutoffs under certain circumstances, such as when disconnecting service would cause a significant risk to the household or the public. These rules (if they exist) may have been created by state legislators or regulators, by local officials (for example, through local legislation or mayoral executive order), or by the utility itself. The text box below provides some tips for researching the local rules.

### FINDING A WATER UTILITY'S CONSUMER PROTECTION RULES

Water and sewer utilities should have their service rules published somewhere. As discussed in the Accountability and Participation in Decision Making module, how water and sewer systems are governed can differ from city to city within the same state. So figuring out which body of government has authority over a water or sewer utility can take some research.

The first place to look for a water or sewer utility's written customer protection rules is on the utility's website; it may appear, for example, in the billing or customer service section. For some utilities, particularly those regulated by state utility commissions, these rules may be included as part of their tariff, the legal document that sets out the utility's rates and conditions of service; this should also be available online. In the tariff, look for a section titled "General Rules," "Terms and Conditions," or something similar.

If the water utility is run by the municipality, the customer protection rules may also be in a local ordinance or regulation. You may be able to find the rules by contacting a local elected official's constituent services.

Only a small percentage of water utilities are privately owned, and many of these are regulated by a state utility commission. The commission's website may have links to the rules for commission-regulated water utilities and may also have a summary of those utilities' consumer protection rules. The commission's consumer affairs division should also be able to direct you to the water service rules. A legal services attorney or the state's utility consumer advocate's office (if one exists) may also be able to help you find the water or sewer service consumer protection rules.

Very few states have uniform shutoff protections that apply to all water utilities. California's Water Shutoff Protection Act establishes baseline safeguards applicable to all water systems above a certain size; utility commission-regulated systems in California are subject to additional commission rules. California advocates are currently advancing legislation to strengthen the act. (For details on the California law and proposed amendment, see the text box below, "California's Water Shutoff Protection Act.") In Michigan, advocates are pushing for their own Water Shutoff Protection Act to provide uniform statewide shutoff safeguards.<sup>14</sup>

In most states, the state utility commission is a source of uniform statewide rules for utilities under their jurisdiction, which are predominantly privately owned utilities. However, the majority of each state's water utilities are beyond the reach of the utility commission's rules. (There are exceptions, such as in Wisconsin, where the state utility commission regulates virtually all water utilities.)<sup>15</sup>

Even where shutoff rules exist, they may not apply to all households. For example, rules that apply only to utility "customers" may not protect renters whose landlord pays the water bill. (Issues related to renters are discussed further in the Protections and Support for Renters module.)

Some common shutoff protections to look for—or advocate for—in utility rules or state or local law are summarized below. Endnotes include specific state or local examples (although the authors have not investigated how effectively the rules are implemented in each instance).<sup>16</sup> California's Water Shutoff Protection Act also includes some of these protections.

- **Shutoff protections combined with bill relief for low-income households and others unable to pay:**

A robust safety net is needed to prevent shutoffs when people *cannot afford* their water bills. This requires not only restrictions on shutoffs based on inability to pay, but also the adoption of programs and policies that provide effective debt relief and ensure that future bills are affordable. (For extensive discussion of options, see the modules on Water Debt, Affordability and Assistance Programs, Equitable Water Rates, and Water Efficiency and Plumbing Repair Assistance.) A shutoff moratorium could provide immediate relief to struggling households while these programs are being established.

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There are many ways to structure shutoff protection rules, but these protections alone do not eliminate a customer's debt or reduce future water bills.

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- **Special shutoff protections for vulnerable individuals:** If someone in the home is very sick or elderly, is a domestic violence survivor, has a disability, or has young children, there may be special rules prohibiting shutoffs.<sup>17</sup> Even where there are no rules, the utility may be persuaded to hold off on disconnecting water service in order to protect the health and safety of the residents. If there are individuals in the home who have special medical equipment that requires safe water to operate, it's a good idea to let the utility know right away.<sup>18</sup> Rules that provide shutoff protection based on medical need are very common for utilities regulated by state utility commissions; such rules typically require verification from a qualified medical professional that a resident's health and safety will be at risk if the water is disconnected.<sup>19</sup> A recent report by the National Consumer Law Center provides detailed analysis and recommendations concerning serious illness protections for utility customers.<sup>20</sup>
- **Extreme temperature shutoff protections:** Rules that prohibit shutoffs during extremely hot or cold weather are common for electricity and natural gas service. However, shutoffs of water service can also pose risks in hot weather (e.g., dehydration) or cold weather (e.g., lack of heat when heating systems depend on hot water or steam). The City of Jackson, Mississippi, for example, will not disconnect water service for nonpayment when the National Weather Service for Jackson has issued a freeze warning or excessive heat warning as of 8:00 AM on the day of the scheduled disconnection.<sup>21</sup>
- **Seasonal shutoff moratoriums.** Electric and gas utilities are often prohibited from shutting off service to lower-income customers during the winter. Few states offer comparable protection for water service, even though some homes have heating systems that rely on water. States and cities that offer winter shutoff protections include New Jersey (for all water utilities), Pennsylvania (for utilities regulated by the state utility commission), and Philadelphia and Pittsburgh (for municipal water utilities).<sup>22</sup>
- **Limitations on times of day and days of the week when water shutoffs can occur:** Terminating utility service when the utility's billing office isn't open or right before it closes—such as right before closing time or before weekends or holidays—is unfair and potentially dangerous because it does not allow the customer time to make a payment and get reconnected. This can lead to a customer going without water for an extended period despite willingness and ability to pay. It is common for state utility commissions to have rules limiting when a water shutoff can occur, which apply to utilities subject to commission regulation.<sup>23</sup> Municipal utilities, particularly the larger ones, may have similar rules.<sup>24</sup>
- **Protection from shutoffs if there is a good-faith dispute over a bill:** When a customer has contacted the utility with a good-faith dispute over a bill, the best practice is to delay disconnection while the dispute is being resolved.<sup>25</sup> Most rules prohibiting shutoffs in the case of a dispute require that the customer initiate contact with the utility and that the parts of the bill not in dispute be paid. (See the Billing Problems and Dispute Resolution module for additional discussion.)
- **Protections from shutoffs while customers are seeking assistance and following receipt of assistance:** State laws and utility policies should prohibit shutoffs while an application to enroll in an affordability, assistance, or debt relief program is pending; a law passed in New Jersey provides that protection on a temporary basis as the state transitions out of a COVID-19 shutoff moratorium.<sup>26</sup> Further, affordability or assistance program rules could provide a customer with shutoff protection for a period of time after the customer initially receives assistance. For example, federal guidelines for the temporary Low Income Household Water Assistance Program (LIHWAP) recommend that participating utilities provide this protection.<sup>27</sup>
- **Temporary shutoff moratoriums:** Sometimes when there is a widespread problem that poses a risk of disconnection for a large number of customers, a utility or government entity will enact a ban on shutoffs for a period of time. Many people associate moratoriums with the COVID-19 pandemic, when temporary shutoff bans were enacted in many states and cities.<sup>28</sup> However, governments and utilities have imposed temporary moratoriums for other reasons as well. For example, DeKalb County, Georgia agreed to suspend shutoffs after a massive community outcry around erroneous and outrageously high water bills affecting thousands of customers.<sup>29</sup> Advocating for a moratorium can be an effective way to reduce the immediate harms caused by system-wide problems. However, customers are still responsible for their water bills, and water debt can continue to grow during periods when shutoffs are suspended, posing the risk of widespread shutoffs when the moratorium ends. (For more on dealing with water debt, see the Water Debt module.)



## CALIFORNIA'S WATER SHUTOFF PROTECTION ACT

California's Water Shutoff Protection Act was passed in 2018 and took effect in February 2020. It requires all water utilities with at least 200 service connections to provide certain minimum consumer protections.<sup>30</sup> In the 2021–2022 legislative session, advocates are advancing legislation to strengthen the protections and extend the requirements to smaller systems.<sup>31</sup> Below are highlights of the existing law and (in italics) the pending bill to strengthen it. (The summary of proposed amendments is based on the bill as introduced. The state legislature's website includes changes made as the bill advances through various committee hearings.)<sup>32</sup>

### Baseline requirements for local shutoff policies and debt

**repayment:** Utilities must have a written policy on disconnection of service for nonpayment, translated into certain languages, and posted online and/or available upon request. The local policy must include:

- A plan for deferred or reduced payments.
- Alternative payment schedules.
- A formal mechanism for a customer to contest or appeal a bill.
- A telephone number to contact to discuss options to avoid a shutoff.
- *Proposed amendment: Require utilities to develop arrearage management plans to forgive all debt over a 12-month period if the customer stays current on new bills.*

### Minimum number of days overdue before shutoff:

- Shutoff is prohibited unless customer's bill is at least 60 days overdue.
- *Proposed amendment: Prohibit shutoff unless customer's bill is at least 120 days overdue and arrears are at least \$400.*

### Disconnection protection where there is combined billing for water services and non-water services or fees:

- *Proposed amendment: Prohibit utilities from disconnecting water service if the customer has paid an amount equal to or greater than the monthly charge for water service.*

### Minimum notice requirements:

- At least 7 days before disconnection, the utility must call or provide written notice of the pending disconnection and must explain the opportunities to prevent the shutoff, the process to have a water bill reviewed, and how to appeal a bill. If the company cannot contact the customer by phone or mail, the utility must visit the customer or leave a written notice in a place where it is likely to be seen by the customer.
- If a water customer is disconnected, the utility must explain how the customer can be reconnected.

**Protection while billing dispute is pending:** If a customer appeals a water bill, the utility is forbidden from shutting off the water while the appeal is going on.

**Serious illness protection:** A disconnection is prohibited if it causes a serious threat to a resident's health.

### Limitations on fees:

- Low-income customers' reconnection fees are capped at \$50 during business hours and \$150 if reconnection is outside of normal business hours, but fees cannot exceed the actual cost to the utility.
- Low-income customers can have interest charges waived once every 12 months.
- *Proposed amendment: Require utilities to waive disconnection and reconnection fees for low-income customers.*

### Protections for tenants and other non-account-holders receiving service:

- For rental housing units receiving individually metered service, where the landlord is the named account holder, utilities must provide at least 10 days' advance written notice to tenants before shutoff and a process for tenants to take over the water service account.
- *Proposed amendment: Add protections for households that reside in a master-metered multifamily building or mobile home park when the owner is in arrears on the water and sewer bill.*

### Annual reporting:

- Utilities must report the annual number of disconnections for nonpayment.
- *Proposed amendment: Require reporting of annual number of disconnections for nonpayment for each zip code served, and add the following data points to the annual report: data on the number of accounts for which water service was restored within 36 hours, 36 hours–7 days, and more than 7 days after disconnection; the number of accounts in arrears and the median amount of the debt; and the number of customers enrolled in a water affordability program.*

### State enforcement:

- The California State Water Resources Control Board (State Water Board) has enforcement authority and can impose fines up to \$1,000 per day for violations.<sup>33</sup>
- *Proposed amendment: Require the State Water Board to assist small water systems with compliance.*
- *Proposed amendment: Require state utility commission to establish a streamlined process for investor-owned electric and gas utilities to share data with water utilities to help identify customers enrolled in low-income utility assistance programs.*

## WHEN A LARGE NUMBER OF CUSTOMERS ARE FACING SHUTOFFS

Communities experiencing a large number of shutoffs for nonpayment may want to consider organizing to stop these shutoffs while seeking system-wide changes to fix the underlying root cause of the shutoffs. Shutoff data can be used to demonstrate a pattern of different shutoff rates based on income and race.<sup>34</sup> (See also the module on Data Collection and Transparency.)

## CUSTOMERS MUST RECEIVE ADEQUATE NOTICE AND HAVE AN OPPORTUNITY TO CONTEST A BILL BEFORE A SHUTOFF

Having clear, fair, and accessible processes for disputing a water bill is a critical consumer protection.<sup>35</sup> Furthermore, under the Due Process Clause of the U.S. Constitution, users of publicly owned water utilities (e.g., municipal utilities) are entitled to advance notice of a shutoff and an opportunity to dispute the charges.<sup>36</sup> (See the module on Billing Problems and Dispute Resolution for further discussion about this essential consumer protection.)

### THE EMERGENCY LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM (LIHWAP)

The emergency federal LIHWAP program can help households at risk of shutoff or who need to be reconnected to water. This program is temporary and has limited funding, but for those able to receive assistance, it can pay off water debt and help households get reconnected to water.<sup>37</sup> See the module on Affordability and Assistance Programs for more information.

## RECONNECTING SERVICE AFTER A SHUTOFF (FEES AND DEPOSITS)

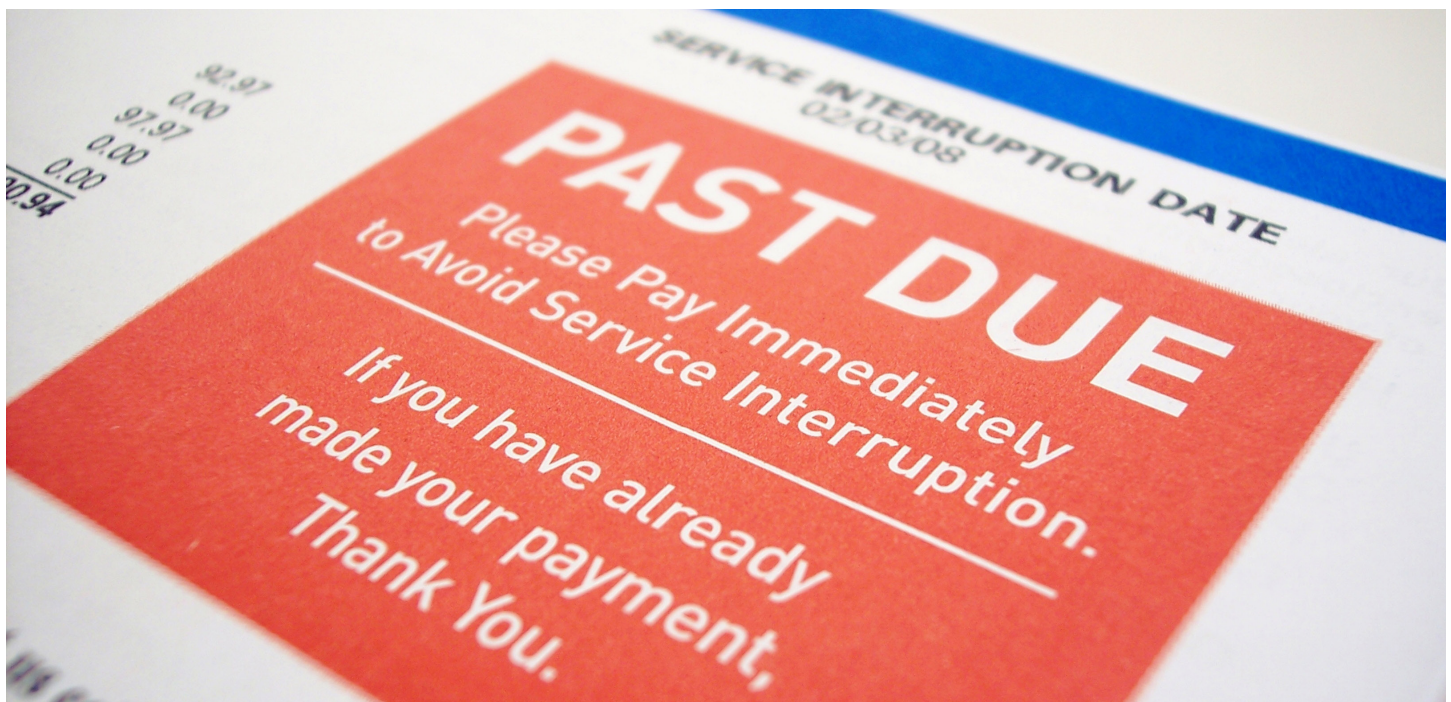
As described above, for struggling households, missing a bill payment can lead to assorted fees, penalties, interest, and deposit requirements that increase debt and make it harder to get reconnected.

The Water Debt module provides examples of state laws and utility rules that eliminate or restrict these charges. For example, California's Water Shutoff Protection Act limits reconnection fees for low-income customers; pending legislation to amend the law would waive shutoff and reconnection fees entirely for low-income customers. San Francisco's municipal water and sewer utility eliminated a \$55 disconnection fee and \$55 reconnection fee because it came to realize those fees were punitive.<sup>38</sup>

Households can face other costs when trying to reconnect, such as plumbing repairs that may be necessary to safely restore service and water costs for the flushing of lines as necessary to ensure safe water following reconnection.<sup>39</sup> Effective affordability and assistance programs could help address these costs.

## SPECIAL PROBLEMS WHEN THE WATER BILL ALSO INCLUDES OTHER UTILITIES AND SERVICES

Some municipalities combine water and wastewater service with other equally costly or more expensive municipal services, such as electricity and solid waste disposal, on a single bill. In these cases, failure to pay the full bill, for all services, may lead to loss of water service.<sup>40</sup> (See the Billing Problems and Dispute Resolution module for more discussion on this topic.)



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## CAUTION: FLOW RESTRICTORS THAT PROVIDE SUBSTANDARD SERVICE MAY BE PROPOSED AS AN ALTERNATIVE TO SHUTOFFS

Some water utilities have taken an interest in an emerging, and disturbing, practice of drastically reducing the flow of water to a household that is behind on its water bills. The use of flow restrictors is often framed by the utilities as more compassionate than shutoffs.<sup>41</sup> Many advocates disagree with that characterization and instead see water flow restrictors as rationing a basic necessity and jeopardizing water quality as well as the performance of fixtures and appliances. This is second-class (if not lower) service, and it fixes attention on punitive measures instead of focusing resources on addressing the underlying water affordability problem.

Basic activities such as bathing take much longer with flow limiters. A dramatic reduction in the flow of water affects whether showers will have enough pressure to work, particularly on an upper floor. In fact, flow restrictors appear designed to make struggling households miserable until the water debt is paid off.

Reduced flow rates may also affect the functioning of household plumbing systems in ways that create risks to health and safety. For example, the anti-scald mechanism in a shower may not work as designed when flow rates are reduced.<sup>42</sup> Additionally, if a utility is proposing use of flow restrictors, advocates should consider pushing the utility to assess whether restrictors could jeopardize the safety of drinking water.<sup>43</sup>

Phoenix's water department began installing low-flow restrictors in March of 2020 in the roughly 600 homes where water was shut off at the time.<sup>44</sup> The city stated that with installations of the restrictors, "flows would be restricted to the lowest level at which the meter still registers use," thereby precluding outdoor and discretionary water use.<sup>45</sup> But the city conceded that indoor use is drastically impaired as well. A water utility representative explained that the restrictor leaves a 1.3 millimeter opening at the meter that limits flow to 0.4 gallons per minute—as opposed to the typical maximum flow rate of 20–30 gallons per minute through a residential meter. As described in a media article, "Showers become splash baths. Filling a glass of water takes 20 to 30 seconds instead of 2 seconds."<sup>46</sup>

According to Circle of Blue, the experiment lasted only a few weeks in 2020. When COVID-19 hit, the water department suspended penalties for late payments and removed the installed flow restrictors, thereby restoring regular water service.<sup>47</sup> But the program was restarted in 2021, with restrictors removed only when a water debt was resolved or a payment plan was entered into.<sup>48</sup>

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### KEY RESOURCES:

Food & Water Watch, *America's Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions*, October 24, 2018, <https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis>.

*This report collected and analyzed data on shutoffs from 73 large water utilities in states across the country. It also contains a discussion of the harms of shutoffs and policy recommendations.*

Olivia B. Wein and Charlie Harak, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now*, National Consumer Law Center, February 2021, <https://www.nclc.org/issues/energy-utilities-communications/protecting-seriously-ill-consumers-from-utility-disconnections.html>.

*This report surveys state policies concerning disconnection of electric and gas service to individuals experiencing serious illness. Although the report focuses on the energy sector, it may be useful when considering similar protections for water users.*

*Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs* (Boston: National Consumer Law Center, 2018), <https://library.nclc.org/aus>.

*This manual provides exhaustive discussion and examples of utility (mainly energy) shutoff protections. The online version requires a subscription and the hard copy is available for purchase, but a copy may be available in a local law library or legal services office.*



## ENDNOTES

- 1 See Darlene R. Wong et al., *Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States*, National Consumer Law Center (hereinafter NCLC), March 2014, 10, <https://www.nclc.org/images/pdf/pr-reports/report-water-affordability.pdf> (discussing a 1977 Senate report finding that “97 percent of all consumers pay all bills on time, every month, in a good economy”); John Cromwell et al., *Best Practices in Customer Payment Assistance Programs*, Water Research Foundation, January 2010, 35, [https://aquadoc.typepad.com/files/water\\_affordability\\_4004.pdf](https://aquadoc.typepad.com/files/water_affordability_4004.pdf) (discussing studies from 2004, 2005, and 2007 finding that “most people want to pay their utility bills on time if it is at all possible for them to do so”).
- 2 Food & Water Watch, *America’s Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions*, October 24, 2018, <https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis>. Other data from particular states and cities show similarly staggering numbers. In California, in 2018, researchers found that water utilities reported water shutoffs to about 200,000 single-family households. 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/>. Detroit garnered international headlines—and the condemnation of United Nations human rights official—when it imposed mass shutoffs during and after the city’s bankruptcy. From 2014 to 2017, the city disconnected about 100,000 homes for nonpayment. Joel Kurth, “Detroit Shut Water to 1 in 10 Homes This Year. Yes, That’s Progress,” Michigan Radio, NPR, December 5, 2017, <https://www.michiganradio.org/families-community/2017-12-05/detroit-shut-water-to-1-in-10-homes-this-year-yes-thats-progress>. In 2019, Detroit shut off water to 23,000 homes. See Nina Lakhani, “Detroit Suspends Water Shutoffs Over Covid-19 Fears,” *The Guardian*, March 12, 2020, <https://www.theguardian.com/us-news/2020/mar/12/detroit-water-shutoffs-unpaid-bills-coronavirus>. In mid-January 2020, shortly before the COVID-19 pandemic spurred a moratorium on shutoffs, it was estimated that 9,500 households in Detroit lacked running water due to shutoffs for nonpayment. Joel Kurth, “Detroit Says No Proof Water Shutoffs Harm Health. Get Real, Experts Say,” *Bridge Michigan*, March 9, 2020, <https://www.bridgemi.com/michigan-health-watch/detroit-says-no-proof-water-shutoffs-harm-health-get-real-experts-say>. In Buffalo, from 2015 to March 2019, there were 17,000 instances of water being shut off for nonpayment. Nina Lakhani, “Millions in U.S. at Risk of Water Shutoffs Amid Layoffs Triggered by Pandemic,” *Consumer Reports*, accessed May 13, 2022, <https://www.consumerreports.org/utilities/millions-in-us-at-risk-of-water-shutoffs-amid-layoffs-triggered-by-pandemic-a2187925013/>.
- 3 Food & Water Watch, *America’s Secret Water Crisis*.
- 4 Patricia A. Jones and Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, Unitarian Universalist Service Committee, May 2016, 11–12, [https://www.uusc.org/sites/default/files/the\\_invisible\\_crisis\\_web.pdf](https://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf); Coty Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America’s Cities*, Thurgood Marshall Institute at the NAACP Legal Defense Fund, April 2019, 26–29, [https://www.naacpldf.org/wp-content/uploads/Water\\_Report\\_FULL\\_5\\_31\\_19\\_FINAL\\_OPT.pdf](https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf); Nina Lakhani, “Water Insecurity Causes Psychological Distress for Americans, Study Finds,” *The Guardian*, September 17, 2020, <https://www.theguardian.com/us-news/2020/sep/17/us-water-bills-psychological-distress-study>.
- 5 Dahlia Rockowitz et al., “Household Water Security in Metropolitan Detroit: Measuring the Affordability Gap,” *University of Michigan Poverty Solutions*, August 2018, <https://poverty.umich.edu/10/files/2018/08/PovertySolutions-PolicyBrief-0818-r2.pdf>.
- 6 For example, dialyzers and infusion pumps require safe water during use, cleaning, and maintenance. See U.S. Food and Drug Administration, “Unique Considerations in the Home,” accessed April 15, 2022, <https://www.fda.gov/medical-devices/home-use-devices/unique-considerations-home>.
- 7 The Water Debt module provides many illustrative examples. One particularly egregious example is provided by Phoenix, which imposes a 3 percent monthly late fee on delinquent balances of bundled city service bills that include water. The late fee compounds each month, as prior late fees are considered to be part of the delinquent amount, resulting in an effective 34 percent penalty on a balance carried for a year. Phoenix City Code ch. 37 art. V § 37-88(A), <https://phoenix.municipal.codes/CC/37-88>. The city requires customers to pay all delinquent amounts before restarting service and may impose a deposit requirement. Phoenix City Code ch. 37 art. V § 37-94(A), <https://phoenix.municipal.codes/CC/37-94>. Extended payment agreements are expressly *not* available if the customer “is in the process of disconnection due to nonpayment.” See City of Phoenix Water Services, “How to Setup an Online Payment Arrangement,” accessed May 20, 2022, <https://www.phoenix.gov/waterservicesite/Documents/Payment%20Arrangement%20FAQ%20Final.pdf>.
- 8 Greensboro Rules & Regs. for the Operation of Water and Wastewater System G.5 (Discontinuance of Service), <https://www.greensboro-nc.gov/departments/water-resources/customer-service-for-residents-and-businesses/water-and-sewer-rules-and-regulations> (stating, “If water service is discontinued, the premises may be condemned.”); ACLU Michigan, “Permanent Moratorium on Water Shutoffs and Condemnation of Homes for Unpaid Water Bills,” letter to the director of neighborhood services and inspections, city manager, and City Council of Saginaw, Michigan, July 8, 2021, [https://acb0a5d73b67fccd4bbe-c2d8138f0ea10a18dd4c43ec3aa4240a.ssl.cf5.rackcdn.com/10033/Saginaw+Letter+to+Water+Department\\_.pdf?v=1626097489000](https://acb0a5d73b67fccd4bbe-c2d8138f0ea10a18dd4c43ec3aa4240a.ssl.cf5.rackcdn.com/10033/Saginaw+Letter+to+Water+Department_.pdf?v=1626097489000).
- 9 National Housing Law Project, “Disconnection of Utilities,” section 11.2.4.2.6 in *HUD Housing Program: Tenants’ Rights* (San Francisco: National Housing Law Project, 2018), <https://www.nhlp.org/products/green-book/> (noting that maintaining utility service can be a requirement in the lease and loss of service can be grounds for eviction).
- 10 Food & Water Watch, *America’s Secret Water Crisis*, 3–6.
- 11 This issue came to the fore in some cities at the start of the COVID-19 pandemic, when utilities restored service to households that had been disconnected for nonpayment. Garret Ellison, “Damaged Plumbing Delays Detroit Water Restarts During Coronavirus Outbreak, Activists Warn,” Michigan Live, March 20, 2020, <https://www.mlive.com/coronavirus/2020/03/damaged-plumbing-hampers-detroit-water-restarts-during-coronavirus-pandemic-activists-warn.html>; Michigan Department of Environment, Great Lakes, and Energy, “Flushing Your House Plumbing System When Water Services Are Restored,” accessed May 20, 2022, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/DWEHD/Community-Water-Supply/Flushing-Your-House-Plumbing-System-When-Water-Services-are-Restored-English.pdf?rev=8e55d7f5970046958f52556a3a6a4911>.
- 12 Jones and Moulton, *The Invisible Crisis*, 11. The report notes that lack of running water is considered child neglect in 21 states and cites documented cases of water shutoffs leading to the loss of child custody in Detroit.
- 13 See Jones and Moulton, *The Invisible Crisis*, 12. Advocates in Michigan have introduced legislation to decriminalize unauthorized reconnection, making it instead a civil infraction. *Ibid.* at 37. That legislation has been reintroduced in several consecutive sessions of the Michigan Legislature, most recently in 2021 as SB 346, <http://legislature.mi.gov/doc.aspx?2021-SB-0346>, and SB 347, <http://legislature.mi.gov/doc.aspx?2021-SB-0347>.
- 14 Mich. SB 343 (introduced March 25, 2021), <http://legislature.mi.gov/doc.aspx?2021-SB-0343>. The bill would establish shutoff notice requirements; create shutoff protections for seniors, families with children, and people who are seriously ill or disabled; protect renters from shutoffs when the landlord fails to pay a water bill; prohibit shutoffs during the heating season; and guarantee low-income customers the opportunity to avoid a shutoff by entering a payment plan or affordability program, with monthly payments based on ability to pay.
- 15 Public Service Commission of Wisconsin, “Water Utility Regulation,” accessed May 13, 2022, <https://psc.wi.gov/Pages/ForUtilities/Water/Water.aspx>.



- 16 Water affordability advocates may also find it useful to point to a resolution of the National Association of State Utility Consumer Advocates, which called on state utility commissions and state legislatures to adopt more comprehensive programs and policies to reduce the incidence of water shutoffs. Nat'l Ass'n of State Util. Cons. Advocates, Resolution 2019-06, "Encouraging State Legislatures and State Public Utility Commissions to Institute Programs to Reduce the Incidence of Disconnection of Residential Water Service Based on Nonpayment and to Collect Uniform Data on Such Disconnections," 2019, <https://www.nasuca.org/2019-06-nasuca-water-affordability-resolution/>. See also NCLC, "Protections From Disconnection," section 6.3 in *Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs* (Boston: National Consumer Law Center, 2018), <https://library.nclc.org/aus>.
- 17 For example, the City of Jackson, Mississippi adopted by mayoral executive order a "Water and Sewer Customer Bill of Rights," which provides, among other things, that the municipal water utility "will not disconnect your service for nonpayment for a period of sixty days when you provide a written notice from a medical doctor...certifying that disconnection of service would create a life-threatening situation for you or other permanent resident of your household." City of Jackson, Mississippi, "Water and Sewer Customer Bill of Rights," November 14, 2019, <https://www.jacksonms.gov/documents/water-and-sewer-customer-bill-of-rights/>. The Boston Water and Sewer Commission offers shutoff protections to seniors or customers with medical needs if they show financial hardship. Boston Water and Sewer Commission, "Residential Billing Info & Assistance," accessed April 15, 2022, <https://www.bwsc.org/residential-customers/billing-info-and-assistance>. Massachusetts law provides shutoff protections to certain vulnerable customers of investor-owned utilities, including households with a financial hardship where there is an infant under 12 months or households with adults over 65 and a minor. 220 Mass. Code Regs. §§ 25.03, 25.05, <https://www.mass.gov/info-details/220-cmr-department-of-public-utilities#220-cmr-17.00--30.00>. In Pennsylvania, victim of domestic violence with a Protection from Abuse or other court order may not be disconnected for nonpayment for utility service in another person's name. Pennsylvania Code, Title 52, Ch.56, Subch. L, 56.252; Community Legal Services of Philadelphia, "Affordable Utilities for Survivors of Domestic Violence," February 23, 2021, <https://clsphila.org/utilities/affordable-utilities-for-survivors-of-domestic-violence/>.
- 18 For example, dialyzers or infusion pumps require safe water during use, cleaning, and maintenance. US Food & Drug Administration, "Unique Considerations in the Home," accessed April 15, 2022, <https://www.fda.gov/medical-devices/home-use-devices/unique-considerations-home>. U.S. Food & Drug Administration, "Unique Considerations in the Home."
- 19 Illinois offers a typical example. Ill. Admin. Code tit. 83, § 280.130 (m), <https://www.law.cornell.edu/regulations/illinois/Ill-Admin-Code-tit-83-SS-280.130> ("Medical Certification: A utility shall not disconnect service to a residence for 60 days upon receipt of a valid medical certificate for a resident of the household, so long as the account is eligible for medical certification under Section 280.160.").
- 20 Olivia B. Wein and Charlie Harak, *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now*, National Consumer Law Center, February 2021, <https://www.nclc.org/issues/energy-utilities-a-communications/protecting-seriously-ill-consumers-from-utility-disconnections.html>.
- 21 City of Jackson, Mississippi, "Water and Sewer Customer Bill of Rights," November 14, 2019, <https://www.jacksonms.gov/documents/water-and-sewer-customer-bill-of-rights/>.
- 22 A New Jersey regulation establishes a "Winter Termination Program," which originally applied only to electric and gas utilities. It prohibits shutoffs from November 15 to March 15 for residential customers participating in certain income-based state and federal assistance programs or who are "unable to pay their utility bills because of circumstances beyond their control." N.J. Admin. Code § 14:3-3A.5, <https://www.law.cornell.edu/regulations/new-jersey/N-J-Admin-Code-SS-14-3-3A-5>. In 2021, the state legislature extended these protections to customers of all water utilities. N.J. Stat. Ann. §§ 40A:5A-28 to 40A:5A-30 (applicable to publicly owned water utilities), <https://law.justia.com/codes/new-jersey/2021/title-40a/>. N.J. Stat. Ann. §§ 48:2-29.54 to 48:2-29.56 (applicable to privately owned, utility commission-regulated water utilities), <https://law.justia.com/codes/new-jersey/2021/title-48/>. Pennsylvania prohibits water utilities regulated by the state utility commission from terminating "heat-related service" from December 1 to March 31, except with permission from the commission. It also prohibits terminating water service to "landlord ratepayers" during the same period. 52 Pa. Code § 56.100, <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/052/chapter56/s56.100.html>. Philadelphia suspends shutoffs of residential occupied properties from December 1st to March 31st each winter. Phila. Water Dep't Regs. § 100.4(d), <https://water.phila.gov/regulations>. Pittsburgh's "Winter Shutoff Moratorium" protects single-family residential customers earning an annual income that is at or below 300% of the federal poverty level from disconnection between December 1 and March 31 each winter. Pittsburgh Water and Sewer Authority, "PWSA Expands Customer Assistance Programs," press release, February 15, 2022, <https://www.pgh2o.com/news-events/news/press-release/2022-02-15-pwsa-expands-customer-assistance-programs>.
- 23 Illinois and New Jersey offer typical examples, which include restrictions on times of day and days of the week when shutoffs can occur. Ill. Admin. Code tit. 83, § 280.130 (l), "Time of Day and Day of the Week Prohibitions and Limits," <https://www.law.cornell.edu/regulations/illinois/Ill-Admin-Code-tit-83-SS-280.130>; N.J. Admin. Code § 14:3-3A.1(c), <https://www.law.cornell.edu/regulations/new-jersey/N-J-Admin-Code-SS-14-3-3A-1>.
- 24 For example, the City of Jackson, MS, will not disconnect service for nonpayment on any Saturday, Sunday, or any holiday observed by the city, unless the city is open to accept payment and restore service on those days. City of Jackson, Mississippi, "Water and Sewer Customer Bill of Rights," November 14, 2019, <https://www.jacksonms.gov/documents/water-and-sewer-customer-bill-of-rights/>. The City of Phoenix will not disconnect service for nonpayment on a Friday, Saturday, Sunday, city-observed holiday, or the day before a city-observed holiday. Phoenix City Code ch. 37 art. V § 37-88(C), <https://phoenix.municipal.codes/CC/37-87>.
- 25 A typical example is found in Maryland's rules for customers of investor-owned utilities, which prohibit shutoff for nonpayment of a disputed amount while the dispute is pending. Md. Code Regs. 20.32.01.04(N). Seattle requires customers to pay the undisputed portion of the combined water and electric utility bill during the dispute resolution process and provides that shutoffs and other collection activities will be put on hold while the dispute is pending. Seattle Public Utilities, Policy & Procedure Number SPU-CS-104, "Customer Billing and Service Disputes Within the Customer Service Branch (eff. 11/1/05)," [https://www.seattle.gov/util/cs/groups/public/@spuweb/@policy/documents/webcontent/02\\_008541.pdf](https://www.seattle.gov/util/cs/groups/public/@spuweb/@policy/documents/webcontent/02_008541.pdf). The Louisville Water Co. appoints a company employee as the "account consultation officer" to handle customer billing disputes. If this officer determines there is an amount owed to the water company, the customer has 7 days from the decision to pay that amount owed before the water company may disconnect the service. Louisville Water Co. Serv. Rules & Regs. § 1.14.6 - 1.14.8, [https://www.louisvillewater.com/sites/louisvillewater.com/files/user\\_uploads/2020%20Service%20Rules%20final%20w%20page%2023.pdf](https://www.louisvillewater.com/sites/louisvillewater.com/files/user_uploads/2020%20Service%20Rules%20final%20w%20page%2023.pdf).
- 26 N.J. S2356 (2022-2023 Session) (approved as Pub. L. 2022, ch. 4, on March 25, 2022), <https://www.njleg.state.nj.us/bill-search/2022/S2356>. A state agency notice to municipalities explains the law's provisions. N.J. Dept. of Community Affairs, Division of Local Government Services, "Treatment of Residential Water, Sewer & Electric Arrearages; Residential Ratepayer Assistance," Local Finance Notice 2022-11, April 29, 2022, <https://www.nj.gov/dca/divisions/dlgs/lfns/22/2022-11.pdf>.
- 27 LIHWAP was created on an emergency basis to address arrears accrued during the COVID-19 pandemic. The U.S. Department of Health and Human Services, which oversees LIHWAP, suggests that states require participating utilities to maintain service for at least 90 days after the LIHWAP benefit is disbursed. U.S. Department of Health and Human Services, Office of Community Services, "LIHWAP IM-2021-03 Use of Funds Q and A FY2021," July 23, 2021, <https://www.acf.hhs.gov/ocs/policy-guidance/lihwap-im-2021-03-use-funds-q-and-fy2021>. See attachment 2: "Sample Low Income Household Water Assistance Vendor Agreement," § 6.k, [https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM\\_LIHWAP\\_Sample%20Vendor%20Agreement\\_FY2021.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM_LIHWAP_Sample%20Vendor%20Agreement_FY2021.pdf).
- 28 Nineteen states, plus Washington, D.C., and Puerto Rico, adopted statewide water shutoff moratoriums for some period of time during the pandemic. See Larry Levine, "Congress & States Must Protect Water Access During COVID-19," NRDC *Expert* blog, August 7, 2020, <https://www.nrdc.org/experts/larry-levine/congress-states-must-protect-water-access-during-covid-19>. Many individual cities did so as well. See Food & Water Watch, "External-Local-State Water Shutoff Moratoria Amidst Coronavirus," spreadsheet, accessed May 3, 2022, <https://docs.google.com/spreadsheets/d/153Ze6RRZ-ZZ9oVkaSvErhVHGMv3Z4laQDs0GR07UmYnQ>.

- 29 Tyler Estep, “After 5 Years, DeKalb Set to End Moratorium on Water Disconnections,” *Atlanta Journal-Constitution*, April 20, 2021, <https://www.ajc.com/news/atlanta-news/after-5-years-dekalb-set-to-end-moratorium-on-water-disconnections/MJ2DG4K77JCNFKBAA3UU6SPLXI/>.
- 30 The California State Water Resources Control Board offers a plain language summary of the Act here: California State Water Resources Control Board, “Water Shutoff Protection Act FAQs,” accessed April 13, 2022, [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/docs/SB\\_998\\_FAQs\\_1.10.20.pdf](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/SB_998_FAQs_1.10.20.pdf). The law is codified at Cal. Health & Safety Code §§ 116900-116926 (West), [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=HSC&division=104.&title=&part=12.&chapter=6.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=104.&title=&part=12.&chapter=6.&article=).
- 31 Cal. SB 223 (2021), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB223](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223). A fact sheet on the bill can be found here: Office of California Senator Bill Dodd, “SB 223–Dodd: Strengthening Low-Income Residential Water Service Protections,” accessed May 13, 2022, <https://drive.google.com/file/d/1yD8cDcZc5FEt0NyGORmJlbJ7O6K-Er04/view>.
- 32 See Cal. SB 223 (2021), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB223](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223).
- 33 State Water Resources Control Board, *Water Quality Enforcement Policy*, April 4, 2017 (effective October 5, 2017), [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf).
- 34 Federal civil rights lawsuits have alleged racial disparities in water shutoffs in specific cities, based on statistical analysis of data obtained from local water utilities. See ACLU Michigan, “Civil Rights Coalition Files Class Action Lawsuit Challenging Detroit Water Shutoff Policy,” July 9, 2020, <https://www.aclumich.org/en/press-releases/civil-rights-coalition-files-class-action-lawsuit-challenging-detroit-water-shutoff>; NAACP Legal Defense Fund, “LDF Files Lawsuit Against the City of Cleveland to Address Discriminatory Water Liens and Shutoffs,” press release, December 18, 2019, <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-city-of-cleveland-to-address-discriminatory-water-liens-and-shutoffs/>.
- 35 The 2020 Baltimore Water Accountability and Equity Act creates an Office of Water Customer Advocacy within the utility and has an independent appeals process. A subsequent amendment strengthened the dispute resolution procedures as well as the Office of Water Customer Advocacy and created a data collection requirement regarding the dispute resolution process. Balt. City Code art. 24, §§ 2-17 through 2-23. (The most current version of the Baltimore City Code is available here: <https://legislative.baltimorecity.gov/city-codes>.) In Michigan, advocates are pursuing legislation to establish uniform water customer protections concerning billing and dispute resolution. See Mich. SB 0348 (2021), <http://legislature.mi.gov/doc.aspx?2021-SB-0348>.
- 36 *Memphis Light, Gas, & Water Division v. Craft*, 436 U.S. 1 (1978); *Georgia State Conference of the NAACP v. City of LaGrange*, 940 F.3d 627 (11th Cir 2019) (claim that the city’s practice of disconnecting water service for failure to pay unrelated municipal debt has a discriminatory impact on Black residents in violation of the Fair Housing Act survives a challenge to dismiss); *Pickett v. City of Cleveland*, No.1:19 CV 2911 (D. Ohio Sept. 29, 2020) (claim that city violated plaintiffs’ due process rights by failing to provide adequate notice before disconnecting water service survives a motion to dismiss).
- 37 U.S. Department of Health and Human Services, Office of Community Services, “Low Income Household Water Assistance Program.”
- 38 Brett Walton, “Utilities Ordered to Forgive Customer Water Debt,” Circle of Blue, August 12, 2020, <https://www.circleofblue.org/2020/wef/utilities-ordered-to-forgive-customer-water-debt/>.
- 39 Garret Ellison, “Damaged Plumbing Delays Detroit Water Restarts.”; Michigan Department of Environment, Great Lakes, and Energy, “Flushing Your House Plumbing System.”
- 40 Kyl Center for Water Policy at Morrison Institute, *Ten Tenets of Water Equity: Considerations for Community Water Systems*, Arizona State University, April 2021, 10, [https://morrisoninstitute.asu.edu/sites/default/files/water\\_equity\\_2021.pdf](https://morrisoninstitute.asu.edu/sites/default/files/water_equity_2021.pdf); City of Phoenix Water Services Department, *Water Equity Initiative*, June 23, 2020, 5, [https://www.phoenix.gov/waterservicessite/MediaAssets/WSD%20Home%20Page/EquityPaper\\_2020-06-23\\_Final.pdf](https://www.phoenix.gov/waterservicessite/MediaAssets/WSD%20Home%20Page/EquityPaper_2020-06-23_Final.pdf).
- 41 Brett Walton, “Phoenix Tests Water Shutoff Alternative,” Circle of Blue, July 15, 2020, <https://www.circleofblue.org/2020/world/phoenix-tests-water-shutoff-alternative/>.
- 42 WaterSense, “WaterSense Specification for Showerheads Supporting Statement,” U.S. Environmental Protection Agency, March 4, 2010, 6-7, <https://www.epa.gov/sites/default/files/2017-01/documents/ws-products-support-statement-showerheads.pdf>.
- 43 For example, reduced flows may increase the likelihood of backflow events that allow contamination of water supplied to other nearby customers. Additionally, if a restrictor reduces a household’s total water usage, as seems inevitable, then water will remain longer in the home’s internal piping. In general, the risk of pathogen growth can increase as water remains in pipes for a longer period of time. A utility should have the burden of demonstrating that flow restrictors will not pose these sorts of water quality risks.
- 44 See Walton, “Phoenix Tests Water Shutoff Alternative.”
- 45 City of Phoenix Water Services Department, *Water Equity Initiative*.
- 46 See Walton, “Phoenix Tests Water Shutoff Alternative.”
- 47 *Ibid.*
- 48 See City of Phoenix Water Services Department, “Low Flow,” YouTube video, August 23, 2021, <https://www.youtube.com/watch?v=vIla79glnsw>.

## Water Liens

For customers of publicly owned water and wastewater utilities, the consequences of unpaid water bills do not stop at late fees and disconnections but, rather, directly contribute to loss of home ownership. Families who cannot pay their water bills can lose their homes, either because a water shutoff makes it uninhabitable or because of a water lien that leads to displacement from the home.

A lien is placed on a person's property to secure a debt the property owner owes to another person or entity, such as a tax debt owed to a municipality. A water lien is a lien based, in whole or in part, on a delinquent water or sewer bill.

A water lien may be sold at an auction sale, potentially leading to foreclosure of the home. In some municipalities, the lien sale and the sale or foreclosure of the property are not separate proceedings but happen at the same time.<sup>1</sup> According to a 2019 study by the NAACP Legal Defense and Educational Fund, every state authorizes a process for placing liens on homes due to unpaid water debts to publicly owned utilities.<sup>2</sup> Municipalities place these liens on homes for water debts as low as a few hundred dollars. In short, what may start as a relatively small past-due water bill can cost some people their main asset, their home.

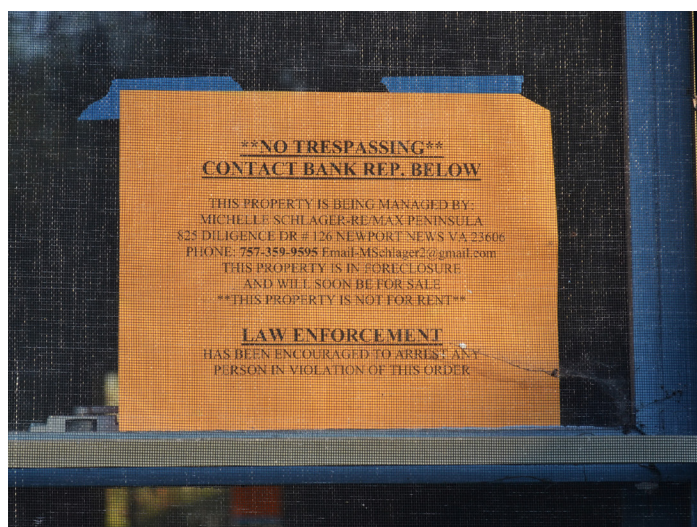
Water liens drive property loss in some cities, and communities of color feel that loss the most acutely.<sup>3</sup> A 2019 report found that Cleveland regularly placed liens

on homes for debts as low as \$300, resulting in a decrease in home ownership among Black families.<sup>4</sup> The problem is not limited to Cleveland.<sup>5</sup> In this sense, municipal water liens threaten a primary means of wealth building, home ownership, and contribute to the racial wealth gap. Notably, investor-owned water utilities do not have authority to place a lien or to foreclose on a property due to unpaid bills. Investor-owned water utilities can go to court to obtain a judgment for the water debt and place a lien on the home, but this is a judgment lien, and the utility will have to wait in line with other creditors to be paid when the property is sold.<sup>6</sup>

This module provides background on the municipal water lien process and local policies that exacerbate the problem. It then explores rules and programs that can be adopted at the local and state levels to keep people from losing their homes or facing spiraling debt due to a municipal water lien.

### SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Banning lien sales of homes based on water debt
- Reforming state law protections regarding water lien sales
- Improving notice of water liens and opportunities to avoid a lien
- Creating an ombudsman position to help people avoid a water lien sale
- Offering customers effective debt relief programs to avoid liens and lien sales



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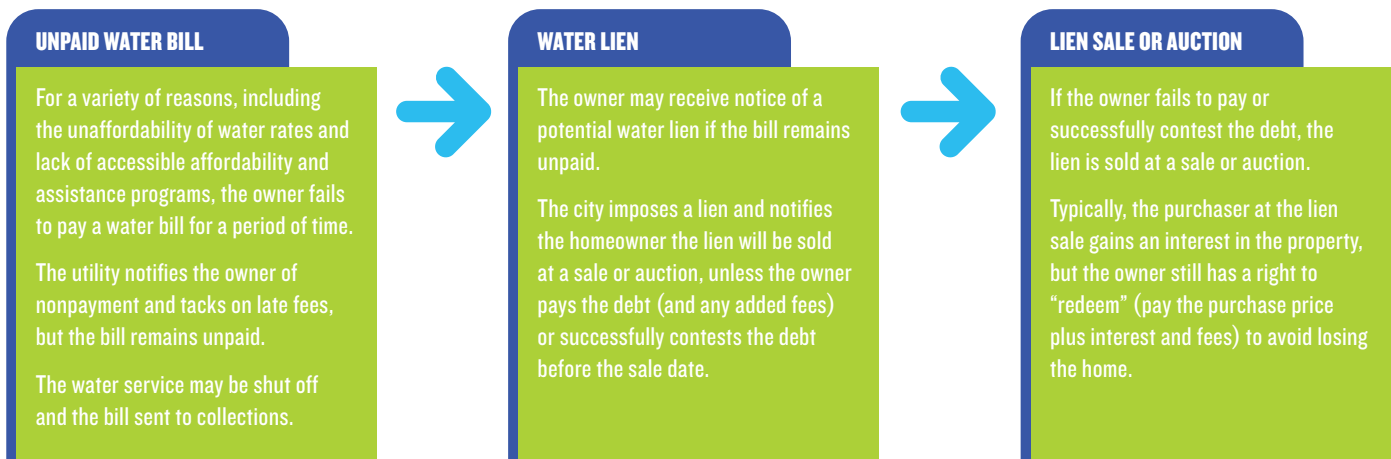


## WATER LIENS DRIVE HOME LOSS

While every state allows municipal water liens, the laws vary from municipality to municipality within states.<sup>7</sup> In some municipalities, when a homeowner becomes delinquent on his or her water bill, the government can place a lien on the home and sell the lien to satisfy the debt. Sometimes it is difficult for homeowners to know how much of the lien amount is for water and how much is for property taxes.<sup>8</sup> From the moment a water lien is imposed, many homeowners see their debt explode as interest, fees, and other costs get tacked onto the bill. The situation worsens once the lien is sold, making it difficult for the owner to cure the debt and retain ownership of the home. In effect, the sequence of events following a water lien often sends some homeowners into a spiral of financial instability that may lead to loss of property and displacement from the home.

To better understand this complex process, here is a quick look at how a water lien can lead to loss of a home.

This sequence of events may vary depending on the municipality. In some cases, a municipality can obtain court approval to sell or auction a property directly, resulting in immediate loss of home ownership.<sup>9</sup> While there are some steps between an unpaid water bill and a water lien, the process can move quickly for many families, leaving them little time to weigh their options. Given the complexity of this process and how rapidly it can progress, families dealing with burdensome unpaid water bills or a resulting shutoff should seek legal counsel.



### QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify issues to address concerning municipal water liens:

- Does your water utility use liens to collect on water debt?
  - If so, has the use of liens led to customers losing their homes or bearing other economic hardships? Which customers or communities are being affected? (See the Data Collection and Transparency module for methods of obtaining data.)
  - Is there a minimum amount of water debt that must accumulate before the municipality resorts to a lien? Are water debts combined with other debt such as property taxes in the calculation of the minimum amount?
- What is the process for the water utility to place or sell a lien? Who oversees it? Is there a tax ombudsman?
  - Are customers provided with advance notice and a fair opportunity to avoid the lien? Is the notice actually effective at informing the customers and giving them an opportunity to avoid the lien?
  - Who is collecting on the lien?
  - Are there state or local laws that protect homeowners' home equity or prohibit unfair practices (such as exorbitant fees and charges)?
  - What fees and charges are added to a customer's total balance?
- What options does your water utility provide for customers to affordably resolve their debt and avoid a lien? (See the Water Debt module for a discussion of alternative approaches.)

The purchaser of a lien generally gains an interest in the property rather than full ownership.<sup>10</sup> This means the occupant-owner still has the right to prevent full ownership from passing to the purchaser. If the owner fails to pay the purchaser within a specific amount of time, known as the redemption period, he or she loses the title to the home and it passes to the purchaser, who then has the right to evict.<sup>11</sup>

Why do publicly owned utilities use liens to settle unpaid water bills? Some utilities argue that liens are an important alternative to shutoffs to incentivize customers to pay past-due water bills—although some use both shutoffs and liens as collection tools. Regardless, water liens are rife with problems that harm customers.

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“In the case of Vicki Valentine, an unemployed Baltimore homeowner, the redemption costs made it impossible for her to redeem. The Huffington Post reported that she had fallen behind on a \$362 water bill she owed the city. As interest, penalties, and legal fees accrued, the debt ballooned to \$3,600, ten times the original amount. The tax certificate purchaser eventually foreclosed on the home and Ms. Valentine was later evicted.”

—FROM *THE OTHER FORECLOSURE CRISIS*, NATIONAL CONSUMER LAW CENTER<sup>12</sup>

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## HARMFUL PRACTICES IN THE WATER LIEN PROCESS

Water liens are a problem for a number of reasons and leave homeowners vulnerable in unique ways. Municipalities and states do little to inform homeowners about the process and how to avoid losing their home.<sup>13</sup> In states like Maine, a water lien results in an automatic foreclosure unless the homeowner pays the charges within a specified period.<sup>14</sup> In Cleveland, a class action alleged that the city’s water lien practices disproportionately affected Black residents; homeowners claimed they had little ability to challenge their water bills because the city provided them no notice of their right to dispute charges. The homeowners further alleged that most of those who tried to dispute their charges received no hearing.<sup>15</sup> Not only are bills sometimes wrong or inflated, but municipalities often have discretion over water lien sales—meaning no judge oversees the process to ensure that the law is followed.<sup>16</sup> This is a recipe for corruption and unethical dealing that can lead to disparate and discriminatory outcomes.<sup>17</sup>

Due to an overall lack of transparency, investors take advantage of water lien sales.<sup>18</sup> A homeowner could lose their home worth hundreds of thousands of dollars for a lien of as little as a few thousand dollars. The house may later be resold by the purchaser for a huge profit while the homeowner is left out in the cold.<sup>19</sup> Lien purchasers, which may be individuals or large investors like banks, manipulate and use the lien sale process to profit from homeowner distress. Worse yet, many states allow these purchasers to add exorbitant fees and interest rates that owners must pay to avoid losing their homes.<sup>20</sup>

## KEY PROBLEMS WITH WATER LIENS

### Lack of Notice

- Some cities automatically issue a lien based on how long an account has been overdue and how much is owed. In other cities, liens may seem automatic due to lack of notice. Lack of notice reduces the homeowner’s ability to challenge a past-due water bill or the resulting lien.

### Loss of Home Equity

- As investors snatch up valuable properties during lien sales, homeowners may lose their home equity. Few states protect homeowners’ equity interests during these sales.

### Foreclosure

- Inability to pay exorbitant bills (which include fees and interest tacked on to the original past-due bill) presented by the city or by an investor means homeowners often face foreclosure. Many states have no limitations on how much an investor can demand from a homeowner.

### Lack of Renter Protections

- Practices that preclude renters or tenants from opening their own water accounts and becoming customers of the utility, thereby denying them associated rights and protections, leave them vulnerable to displacement.

The exploitation does not end in the water lien sale process. Small liens can spark bidding wars among investors who may pay the city more than the lien amount.<sup>21</sup> However, more often the city asks for only the amount owed on the lien. Because the lien is typically less than the property's value, homeowners lose equity in their homes. When a home sells for more than the lien, state laws provide that homeowners cannot receive the excess funds—the difference between the lien amount and the sell price—until the original water debt and any fees, interests, and other costs are satisfied, and only if the homeowner requests the excess funds. The process harms the homeowner's home equity interest, a main source of wealth and financial security for some families. And as the National Consumer Law Center noted in a 2012 study, very few states have procedures to safeguard homeowners' equity interests.<sup>22</sup>

### STEPHANIE BROWN, IN BALTIMORE, FELL BEHIND ON HER WATER BILL AND NEARLY LOST HER HOME<sup>23</sup>

"It all started in 2017 when my neighbor came over, asking if I knew my house was up for sale. I told her no, that must be a mistake. She had the paper in her hand, flipped to the section with the list of properties that were up for tax sale, and there it was. The home I have lived in for 32 years was listed for tax sale at \$1,532.50, the amount I owed on my water bill. . . .

In order to save my home, I tried calling the Department of Finance, and they gave me the runaround for two days. Each person I talked to would say I needed to talk to someone else, and I couldn't get any answers from anyone."

After struggling to get answers, Stephanie eventually found out she would have to pay half her monthly income to resolve the past-due water bill and save her house. She ended up borrowing money from her brother.

These problems in the water lien process contribute to home loss and an increase in vacant or abandoned homes, deteriorating quality of life in communities.<sup>24</sup> As noted earlier, water lien sales and foreclosures hit Black communities hardest. For instance, a report by the NAACP Legal Defense and Education Fund found that while Cuyahoga County, Ohio, is only 30 percent Black, more than 60 percent of water liens were in predominantly Black neighborhoods in 2017 and 2018.<sup>25</sup> The same report also highlighted Baltimore's practice of placing liens on homes for past-due water bills as low as \$350.<sup>26</sup> News reports there highlighted people about to lose their homes over water debt—even as the homeowners argued that the underlying water bills were erroneous.<sup>27</sup> However, in 2017 the mayor of Baltimore suspended lien sales based solely

on unpaid water bills.<sup>28</sup> In 2019, the Maryland legislature passed the Water Taxpayer Protection Act, making the suspension permanent for the city of Baltimore for residential properties.<sup>29</sup>

The water lien process involves a range of practices that harm housing security and impact a family's long-term financial well-being. This is especially true for families whose main asset is their home. Without stronger laws to protect homeowners from water liens and make them less vulnerable during the lien sale process, many families will continue to lose their homes because of unpaid water bills.

## SOLUTIONS TO ADDRESS THE HARMS OF WATER LIENS

Although publicly owned utilities argue they need the lien process to recover unpaid water bills, the best way to avoid liens is to adopt policies and programs that ensure people can afford their water bills, such as those explored throughout this toolkit. With good programs in place, liens (and shutoffs) become unnecessary. People should not lose water service because of inability to pay, nor should they lose their homes. People-centric approaches are needed to address affordability challenges.

Policy solutions to reduce the harms of water liens include banning lien sales based solely on delinquent water bills, improving notice to provide homeowners the opportunity to contest bills before a lien is imposed, and offering repayment plans to homeowners to satisfy delinquent water bills.<sup>30</sup> In some cases, state law may need to be amended to allow local governments to change their practices concerning liens.

### ■ Ban lien sales of homes based on water debt.

State or local legislation can ban lien sales of homes when those liens are based on delinquent water or sewer bills. The prohibition should protect both homeowners and renters. For example, as noted above, in 2019 Maryland passed legislation banning lien sales of homes based on past-due water bills in the city of Baltimore. The Maryland law protects homeowners by allowing lien sales based on unpaid water bills only when the property is not a residence, the lien is at least \$350, and the unpaid charges are at least three quarters in arrears.<sup>31</sup>

### ■ Reform state protections regarding lien sales, including water lien sales.

Advocate for state legislation to safeguard homeowner equity and protect homeowners from exorbitant redemption costs, unreasonable fees, and interest associated with a lien.<sup>32</sup>



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Water liens can send homeowners into a spiral of financial instability, potentially leading to loss of the home.

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- **Improve notice of water liens and opportunities to avoid a lien.**

Advocate for a state or local law requiring increased notice and waiting periods before a lien is placed on a home, so homeowners have the opportunity to challenge the lien. Adequate notice should be provided at every step of the process.<sup>33</sup>

- **Create an ombudsman to guide people through the lien process and help them avoid lien sales.**

Advocate for the creation of an ombudsman or other role whose purpose is to help clarify the complex lien process and inform people of their options to avoid a lien sale.<sup>34</sup>

- **Offer customers effective debt relief programs to avoid liens and lien sales.**

See the Water Debt module for policy options that offer debt relief to customers, providing both the municipality and the customer an alternative way to address debt without resorting to a lien or lien sale.

In addition to these policy solutions, advocates should discourage municipalities from using any existing lien authority to collect unpaid water debts. There are examples of cities, such as Cambridge, Massachusetts, that have lien authority for water debts but have a policy to not use this method.<sup>35</sup> Advocates should look to those cities to learn what has worked and how to replicate these policies elsewhere. Ultimately, the consequences of unpaid water bills should not include loss of one's main asset and housing security.

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## KEY RESOURCES:

Cody Montag, *Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities*, NAACP's Legal Defense & Educational Fund, Inc.

*The NAACP Legal Defense Fund's 2019 report spotlights the harms of water liens and includes an in-depth investigation of the impacts of lien sales in Baltimore, Maryland and Cleveland, Ohio.*

John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales* (July 2012), National Consumer Law Center.

*This report provides an overview of consumer issues related to tax lien sales, including a detailed overview of the lien sale process. Many of the issues discussed apply to water liens.*

## ENDNOTES

- 1 For example, in Philadelphia this process is colloquially referred to as a “water foreclosure.” Robert Ballenger, Director, Energy Unit, Community Legal Services, personal communication, March 28, 2022.
- 2 Coty Montag, *Water/Color: A Study of Race & the Water Affordability Crisis in America’s Cities*, Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, May 2019, [https://www.naacpldf.org/wp-content/uploads/Water\\_Report\\_FULL\\_5\\_31\\_19\\_FINAL\\_OPT.pdf](https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf).
- 3 Ibid.
- 4 Ibid.
- 5 For example, according to a recent survey, an average of 6,600 water liens per year are placed on homes in Richmond, Virginia, and 1,800 are placed on homes in St. Louis. Center for Water Security and Cooperation, *American Water Access Survey*, Spring 2022, <https://drive.google.com/file/d/10LjfhNyz3q8p368XjQTn512VegSikub/view>.
- 6 Charlie Harak, Jen Bosco, and Ana Girón Vives, *Utilities Advocacy for Low-Income Households in Massachusetts*, 4th ed. (Boston: National Consumer Law Center, 2019), 24, <https://www.masslegalservices.org/content/utilities-advocacy-low-income-households-massachusetts>.
- 7 John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales*, National Consumer Law Center (hereinafter NCLC), July 2012, [https://www.nclc.org/images/pdf/foreclosure\\_mortgage/tax\\_issues/tax-lien-sales-report.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-report.pdf); Rochelle Bobroff, “Legislative Remedies for the Injustice of D.C.’s Real Property Tax Sale System,” *Clearinghouse Review Journal of Poverty Law and Policy* 48, no. 7-8 (November–December 2014): 150–55, <https://www.crowell.com/files/Legislative-Remedies-for-the-Injustice-of-DC-s-Real-Property-Tax-Sale-System.pdf>; “Losing Your Home Over a Water Bill,” *Baltimore Sun*, June 4, 2017, <https://www.baltimoresun.com/opinion/editorial/bs-ed-tax-sales-20170604-story.html>.
- 8 NCLC, “Notification of Tax Sale,” section 15.2.3.2 in *Home Foreclosures* (Boston: NCLC, 2017), <https://library.nclc.org/hf>.
- 9 For example, in Philadelphia, once the city files a “rule returnable” (a date by which the opposing party or homeowner must respond) and receives judicial approval, it can sell the property at public auction free and clear. The Sheriff’s Office handles the proceeds of the sale, and the owner may be able to get some of his or her equity out of the home. Robert Ballenger, Director, Energy Unit, Community Legal Services, personal communication, March 28, 2022.
- 10 NCLC, “Redemption and Foreclosure,” section 15.2.3.4 in *Home Foreclosures*.
- 11 Ibid.
- 12 John Rao, “Case Studies of Real People Harmed Due to Small Liens Against Their Homes,” in *The Other Foreclosure Crisis: Property Tax Lien Sales*, NCLC, July 2012, [https://www.nclc.org/images/pdf/foreclosure\\_mortgage/tax\\_issues/tax-lien-sales-stories.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-stories.pdf).
- 13 Rao, *The Other Foreclosure Crisis*.
- 14 Ibid at 39.
- 15 NAACP Legal Defense Fund, “LDF Files Lawsuit Against the City of Cleveland to Address Discriminatory Water Liens and Shutoffs,” press release, December 18, 2019, <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-city-of-cleveland-to-address-discriminatory-water-liens-and-shutoffs/>; *Pickett v. City of Cleveland*, No. 1:19 CV 2911 (N.D. Ohio Sept. 29, 2020), [https://www.clevescene.com/media/pdf/09.29.20\\_oliverdecision\\_clewaterlawsuit.pdf](https://www.clevescene.com/media/pdf/09.29.20_oliverdecision_clewaterlawsuit.pdf).
- 16 Coty Montag, “Lien In: Challenging Municipalities’ Discriminatory Water Practices Under the Fair Housing Act,” *Harvard Civil Rights-Civil Liberties Law Review* 55, no. 1 (Winter 2020): 199–265, <https://harvardcrcl.org/wp-content/uploads/sites/10/2020/09/Montag.pdf>; NCLC, “Notification of Tax Sale.”
- 17 Giving municipalities full discretion in the water lien and tax sale process “could mean that some homeowners in a particular jurisdiction are unfairly penalized for overdue municipal charges and others are not.” Montag, “Lien In.”
- 18 This lack of transparency extends to information about whether (and to what extent) municipalities even use liens to collect unpaid water bills. In other words, many homeowners may not know that their delinquent water bill can lead to a lien on their home.
- 19 Rao, *The Other Foreclosure Crisis*.
- 20 Ibid; NCLC, “Fraud by Tax Sale Speculators,” section 15.5 in *Home Foreclosures*.
- 21 Chris Burrell, “Some Cities Are Cashing In On Homeowners’ Tax Debts, And Making Foreclosure More Likely,” GBH News, January 21, 2019, <https://www.wgbh.org/news/local-news/2019/01/21/some-cities-are-cashing-in-on-homeowners-tax-debts-and-making-foreclosure-more-likely>.
- 22 Rao, *The Other Foreclosure Crisis*.
- 23 Stephanie Brown, testimony to Baltimore City Council, Taxation, Finance & Economic Development Committee, in favor of the Water Accountability and Equity Act, May 16, 2019, <https://www.nrdc.org/sites/default/files/waea-testimony-stephanie-brown-20190516.pdf>.
- 24 Montag, “Lien In.”
- 25 Montag, *Water/Color*.
- 26 Ibid.
- 27 “Homeowners: Water Bill Mistakes Led to Us Possibly Losing Our Homes,” CBS Baltimore, March 21, 2012, <https://baltimore.cbslocal.com/2012/03/21/homeowners-water-bill-mistakes-led-to-us-possibly-losing-our-homes/>.
- 28 Baltimore City Department of Public Works, “Water-Only Liens Not Subject to Tax Sale,” December 20, 2017, <https://publicworks.baltimorecity.gov/news/press-releases/2017-12-20-water-only-liens-not-subject-tax-sale>.
- 29 Md. Code Ann., Tax-Prop. § 14-849.1 (West); Danielle E. Gaines, “Baltimore Lawmakers Push to End Tax Sales Over Water Bills,” WTOP News, January 31, 2019, <https://wtop.com/maryland/2019/01/baltimore-lawmakers-push-to-end-tax-sales-over-water-bills/>.
- 30 For policy recommendations to protect consumers from the harms of tax lien sales generally, see Rao, *The Other Foreclosure Crisis*.
- 31 Md. Code Ann., Tax-Prop. § 14-849.1 (West).
- 32 Rao, “Case Studies of Real People Harmed.”
- 33 Ibid.
- 34 Washington, D.C., for example, enacted legislation creating an ombudsman position to help people avoid tax lien foreclosures. Bobroff, “Legislative Remedies”; Government of D.C., “Office of the Real Property Tax Ombudsman,” accessed May 14, 2022, <https://dc.gov/service/office-real-property-tax-ombudsman>.
- 35 Martha F. Davis, *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities*, Northeastern Law Program on Human Rights and the Global Economy, July 2019, <http://humanright2water.org/wp-content/uploads/2020/04/1907-A-Drop-in-the-Bucket-.pdf>.

## *Water Debt*

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Unpaid water bills lead to late fees and shutoffs, threatening financial security, housing stability, and family health. As with other utilities, inability to pay for water and sewer services can also result in bills being sent to debt collectors, harming an individual’s credit history and score. Also like other utilities, after a water shutoff a municipality may deem a home “uninhabitable” and force its occupants to move out. Unlike other utility services, however, most water service is provided by publicly owned utilities. Those utilities can not only perform shutoffs but also impose liens on homes for overdue bills, which can result in foreclosure for as little as a few hundred dollars in water debt. (See the Water Liens module for a detailed discussion.) In effect, an unpaid water bill of just a few hundred dollars can send families into a financial tailspin and turn their lives upside down.

Water debt is a looming crisis affecting cities nationwide. A 2020 review of data from 12 major cities found that more than 1.5 million households owed their local water utilities \$1.1 billion in overdue water bills.<sup>1</sup> In late 2020, California water utilities reported that residential customers owed more than \$1 billion in unpaid water bills.<sup>2</sup>

Water debt issues derive from unaffordable bills, chronic billing errors, and old debt accruing interest and penalties that far exceed the amount of the original bill. In some cases, when a homeowner dies and ownership of the home passes to a family member, old debt attached to a property is passed down (and continues to grow) from one generation to the next.<sup>3</sup> Furthermore, rising water prices have made water increasingly unaffordable for low-income households.<sup>4</sup> Worse yet, some municipalities have chronic problems with water billing that contribute to erroneous water debts and shutoffs.<sup>5</sup> Customers struggling with water debt often have few options. Local programs for debt relief are very limited. Until recently there had never been a federal emergency assistance program for households behind on their water bills. Congress funded water debt

relief on an emergency, temporary basis as part of a COVID-19 relief package.<sup>6</sup>

This module provides background on the causes of water debt and utility policies that exacerbate the problem. It then explores policies and programs that can be adopted at the local, state, and federal levels to avoid and reduce customer debt, particularly for households least able to pay.

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### **SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:**

- Elimination of punitive fees and penalties that cause debt to spiral upward
  - Temporary water debt forgiveness programs
  - Short-term “crisis assistance” grants
  - Arrearage management plans
  - Fair, reasonable deferred payment plans
-



## QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify issues to address concerning water debt:

- Is there any information available about the prevalence and extent of water debt in your community? (See the Data Collection and Transparency module for strategies to obtain this information from your utility.)
- How does the local utility collect water debt? Does it rely on punitive practices like liens and third-party debt collectors? (See the Water Liens module for a detailed discussion of liens.)
- What options, if any, does your water utility provide to help customers eliminate or manage their debt? Are the terms it offers to customers reasonable in light of their financial circumstances?
- If the utility has a water affordability or assistance program, does it include an arrearage management/debt relief component?

## UNDERSTANDING WATER DEBT

While a large body of data has been collected about other utility debts, information concerning water debt remains scant.<sup>7</sup> This lack of data and research is particularly alarming given that water debt is rising. However, the data available are clear: Water debt has become pervasive in many cities, exacerbating housing insecurity among the most cash-strapped households.<sup>8</sup>

A close examination of a couple of cities reveals the stark reality of these facts and the significant associated harms. In Chicago, for example, researchers examining water billing data found that in many neighborhoods, households at the 20th percentile for household income spend more than 8 percent of their income on water. Households in majority-Black census tracts were found to have water debt 10 times higher than that of households in majority-white neighborhoods; they also have the highest average water bills. In majority-Black neighborhoods, households at the 20th percentile for household income spend on average 19 percent of their income on water.<sup>9</sup> The same study also found that households in nonmetered properties pay significantly more every year than do customers in metered homes, which are located primarily in majority-white areas of the city.<sup>10</sup>

And the problems do not end there. The city of Chicago regularly turns delinquent water bills over to private debt collectors, who often use aggressive and punitive methods like wage garnishment to collect debts. Debt collectors there have garnished millions of dollars in wages for water debts.<sup>11</sup> In St. Louis County, Missouri, out of 647 debt collectors, the Metropolitan St. Louis Sewer District ranks second for the number of lawsuits filed.<sup>12</sup>

In Detroit, water debt became such a problem that in 2014 the city initiated a mass disconnection effort that garnered international attention.<sup>13</sup> The effort resulted in shutoffs to some 30,000 customers and eventually drew attention from the United Nations.<sup>14</sup> But even in cities that take a less extreme approach, the situation is grim for many in low-income communities. For instance, water debt has disproportionately hit Black and Latino communities in Philadelphia. That debt often accumulates, staying with the property as a home is transferred from family member to family member over time.<sup>15</sup> In Philadelphia, this accumulated (and sometimes intergenerational) water debt is an even bigger problem than unaffordable monthly water bills; legal services attorneys there have seen such debt go as high as \$50,000.<sup>16</sup>

## AN UNEQUAL DEBT BURDEN<sup>17</sup>

In Chicago, 60 percent of water debt is held by residents in majority-black zip codes—the South and West sides of the city.

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Punitive late fees and aggressive collection practices  
make it harder for households to pay off their water debt.

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## HARMFUL PRACTICES THAT EXACERBATE THE WATER DEBT CRISIS

There are systems and mechanisms that make it more difficult for households to pay off their water debt. These practices include levying punitive fees, penalties, and interest on unpaid water bills, requiring deposits to reconnect service after shutoff for nonpayment, using private debt collectors who engage in aggressive collection practices, and reporting unpaid water debts to credit bureaus. The amount due from these various charges can be much larger than the original water debt.

These practices are common and worsen the financial burden for many already cash-strapped customers. One study found that more than 70 percent of municipalities and more than 80 percent of counties in Maryland charge late fees, reconnection fees, or disconnection fees; reconnection fees were the most common and ranged from \$35 to \$90.<sup>18</sup> Elsewhere, some utilities reserve the right to remove the meter and charge a meter removal fee when a customer has not paid a bill.<sup>19</sup> Some states, like New Jersey, require some water and sewer utilities to charge 1.5 percent monthly interest on past-due bills—amounting to an annual interest rate of at least 18 percent.<sup>20</sup> Phoenix imposes a 3 percent monthly late fee on delinquent balances of bundled city service bills, which include water; the late fee compounds each month, as prior late fees are considered part of the delinquent amount, resulting in an effective 34 percent penalty on a balance carried for a year.<sup>21</sup> Chicago levied a \$350 fee on one customer's past-due bill to cover the cost of a private attorney that represented the city in a hearing on

the bill.<sup>22</sup> The city charged that same customer more than \$1,700 in penalties alone between 2011 and 2021.<sup>23</sup>

The city of Saginaw, Michigan, threatens customers whose water has been disconnected with fines for building code violations ranging from \$100 to \$400, potentially leading to condemnation of a home.<sup>24</sup> Renters in subsidized housing risk eviction if they are disconnected from utility service for an extended period of time where maintenance of utility service is a requirement in the lease.<sup>25</sup> This jeopardizes their ability to obtain affordable housing.

The situation becomes even more punitive if the city sends the debt to a collector.<sup>26</sup> In Chicago, which has outsourced its debt collection to private law firms, households with water debts face wage garnishment and worse from aggressive debt collectors. From 2013 to 2021, debt collectors in Chicago garnished \$8.8 million in wages.<sup>27</sup> Water debts can eventually affect consumer credit ratings, since debt collectors report this information to credit bureaus. Consumers with negative credit histories experience difficulty obtaining employment, apartment leases, auto loans, and other financial products.<sup>28</sup> For this reason, water debts can trap many individuals in a cycle of financial insecurity or poverty.

To restore service after a shutoff or to establish service at a new address, some utilities require customers with current or past water debt (or other utility or nonutility debt) to pay a deposit on future bills.<sup>29</sup> This deposit can be two or more times a typical monthly bill.<sup>30</sup>

### FEES, PENALTIES, AND INTEREST

Cities attach punitive fees (late fees, reconnection fees, disconnection fees, etc.), penalties, and interest that can be hundreds or thousands of dollars on top of the unpaid bill.

### TURNING OVER BILLS TO PRIVATE DEBT COLLECTORS

Private debt collectors use abusive practices, including harassing calls and letters and seeking court judgments for wage garnishment and home liens.

### CREDIT AGENCY REPORTING

Debts in collection show up on consumer credit reports and affect credit scores, harming the consumer in myriad ways.



## ELIMINATING POLICIES AND PRACTICES THAT CAUSE WATER DEBT TO BALLOON

In the investor-owned energy sector, numerous examples can be found of rules that eliminate or restrict late fees, deposits, and interest that cause water debt to balloon. A few examples can also be found that apply to water. Examples from both sectors are described below. Of course, there is no reason why the same policies cannot be applied to both energy and water utilities. Indeed, during the COVID-19 pandemic, some states barred all energy and water utilities from charging late fees, in connection with statewide utility shutoff moratoria.<sup>31</sup>

Utilities often argue that the purpose of late charges is to compensate the utility for expenses incurred as a result of late payment, or that a late charge provides an incentive for timely payment.<sup>32</sup> The wide variation in the size of late fees tends to undermine the assertion that the charges compensate the utility for expenses.<sup>33</sup> As to the incentive claim, utility consumer advocates have argued that imposing late fees just punishes households who simply cannot afford to pay their utility bill, making it more difficult for them to catch up.

San Francisco provides an example of a publicly owned water and sewer utility eliminating certain fees that made it harder for struggling households to get back on their feet. The city's utility eliminated a \$55 disconnection fee and \$55 reconnection fee because it came to realize that those fees were punitive.<sup>34</sup>

California appears to be the only state that limits any category of fees for all water utilities. The state's Water Shutoff Protection Act, which applies to all water utilities serving at least 200 customers, limits the amount of reconnection fees for customers who are at or below 200 percent of the federal poverty level or participate in certain benefits programs. These customers can also have interest charges waived once every 12 months.<sup>35</sup> Pending legislation would amend the law to require utilities to waive disconnection and reconnection fees for low-income customers.<sup>36</sup> (The Water Shutoff Protection Act and the pending legislation are explored in detail in the Water Shutoffs module.)

In Michigan, advocates are backing state legislation that would require municipal water and sewer utilities to waive late fees, reconnection fees, and deposits for households that have incomes under 200 percent of the federal poverty guidelines or participate in certain federal or state benefits programs.<sup>37</sup>

Some states have prohibited or restricted the use of late fees or deposits by investor-owned utilities (including, in some cases, investor-owned water utilities). For example, Illinois adopted legislation prohibiting investor-owned electric and gas utilities from imposing late fees and deposit requirements on low-income customers (defined by state law as customers whose income is at or below 80 percent of area median income or who are eligible for certain utility assistance programs).<sup>38</sup> A preexisting public



utility commission rule in Illinois prohibits investor-owned water utilities from subjecting low-income customers to late fees and deposit requirements.<sup>39</sup> In California the state utility commission, prompted by legislation directing it to develop rules or policies to reduce the number of electric and gas shutoffs, prohibited large investor-owned electric and gas utilities from charging deposits to start or restart service. In adopting that rule, the commission noted that “the utilities have failed to demonstrate that deposit requirements are beneficial” and that “reestablishment deposits make it increasingly difficult for households to have their utilities reconnected . . . [and] to catch up once they have fallen behind.”<sup>40</sup> In Massachusetts, investor-owned electric and gas utilities are prohibited from charging a deposit to start or continue service, although they are allowed to require customers to pay overdue bills before continuing service.<sup>41</sup>

## PROGRAMS AND POLICIES THAT HELP HOUSEHOLDS RESOLVE WATER AND SEWER DEBT

The best water utility debt relief programs combine a robust affordability element to address the ongoing, monthly unaffordability of water utility bills with a debt relief mechanism to eliminate existing water bill arrears (past-due amounts). Combining debt relief with an affordability program is essential to keep low-income households from accruing debt once again. Several of the debt relief programs profiled in this section take this approach. (For further discussion of programs designed to make monthly bills affordable for low-income households, see the Affordability and Assistance Programs module.)

As discussed below, various local, state, and federal programs have been offered, on a temporary basis, to address water debt that accumulated during the COVID-19 pandemic. But there are no permanent federal or state programs that help households address water or wastewater arrears. Legislation pending in California would create a statewide Water Rate Assistance Program, which includes “crisis assistance” (i.e., a one-time grant to pay an overdue bill, specifically to avoid a shutoff or restore service), as well as ongoing assistance to reduce future bills.<sup>42</sup>

Some individual utilities do have permanent debt relief programs. What is provided to water customers can be as minimal as a one-time grant to forestall shutoff or restore service after a disconnection for nonpayment. Most existing local programs likely fit that description.<sup>43</sup> More robust utility-run debt relief programs are designed to meet the needs of the individual customer. The most progressive model is an arrearage management plan that eliminates debt over time, provided that a customer makes future on-

time payments. Less favorable, but still valuable to many customers, are deferred payment plans under which the customer pays off arrears in installments over a period of months or years, in addition to timely payment of future bills. Both of these options are explored below.

### Temporary federal assistance for water arrearages

In 2020–2021, as part of the federal response to financial fallout from the COVID-19 crisis, Congress allocated \$1.1 billion for a temporary Low Income Home Water Assistance Program (LIHWAP).<sup>44</sup> Like the long-standing Low Income Home Energy Assistance Program (LIHEAP), LIHWAP is administered by states under broad federal program guidelines. Eligibility requirements and benefit levels vary by state. However, the priority use of funds is to pay arrears as necessary to restore service or prevent disconnection for nonpayment. Although states have until the end of 2023 to distribute their LIHWAP allotments, it is widely recognized that the available funding will meet only a fraction of the existing need.<sup>45</sup>

Other federal COVID-19 housing assistance programs also provided states the option to include water debt relief for participating renters and homeowners.<sup>46</sup>

### State and local COVID-19 arrears programs

Several states and municipalities across the country offered (or continue to offer) debt relief for customers that accrued water debt during the COVID-19 pandemic. Some examples of these programs, many of them supported by flexible American Rescue Plan Act (ARPA) funding, are described below:

- **California** allocated nearly \$1 billion of its flexible ARPA funding to water and wastewater debt in 2021. The state’s Water Resources Control Board offered two debt relief programs—one for water and another for wastewater agencies—for unpaid customer debt accrued between March 4, 2020, and June 15, 2021.<sup>47</sup>
- **The city of Buffalo, New York**, allocated \$13 million of its ARPA funds to create a COVID-19 water and sewer debt relief program to assist an estimated 30,000 households with significant arrearages. The Water and Sewer Amnesty program provided debt forgiveness to low-income households whose bills were either two quarters or more past due or \$300 in arrears and covered any interest or fees associated with late bills. Participating customers were then enrolled in the city’s low-income assistance program.<sup>48</sup>



- **The Greater Cincinnati Water Works** utility offered emergency financial assistance for residential customers who experienced economic hardship related to COVID-19 and were unable to pay their water bill without risking further hardship for their household.<sup>49</sup>
- **Virginia** dedicated more than \$200 million in federal COVID-19 relief funds to energy and water debt relief for households experiencing financial hardship due to the pandemic. Customers of publicly owned and investor-owned water and wastewater utilities were included.<sup>50</sup> (As discussed in the Data Collection and Transparency module, Virginia also required publicly owned utilities to submit data on customer arrears to inform distribution of these assistance funds.)

### Crisis assistance

As noted above, most permanent local programs to help customers with overdue water bills (i.e., programs not limited to the COVID-19 pandemic) are focused only on so-called crisis assistance. This approach offers a one-time grant to help a customer avoid shutoff. Some typical examples can be found in a 2016 EPA compendium of local water customer assistance programs.<sup>51</sup>

Depending on the program design, eligibility may be limited to low-income customers or may include others with a temporary inability to pay due to personal financial crisis (e.g., loss of job, unexpected medical bills). However, the maximum available grant is often set at an arbitrary level that may or may not be enough to meet a particular customer's immediate needs. Usually there is also a maximum number of times in a given period that a customer can receive this assistance.

Some municipal utilities rely entirely on liens, rather than shutoffs, as a primary approach to collecting on overdue bills. Consequences of liens can be severe, including permanent loss of one's home (see the Water Liens module). Therefore, crisis assistance programs should be available not only to help customers avoid shutoff for nonpayment but also to help them pay off liens based on water debt. The federal LIHWAP program, for example, allows funds to be used to pay off liens, even when the lien has been transferred to a third-party debt collector.<sup>52</sup>

### Arrearage management/debt relief programs

Arrearage management programs (AMPs) provide relief for low-income utility customers who have significant past-due amounts on their utility bills. Their availability tends to be limited—for example, once every set number of years, although utilities may have discretion to offer the AMP more frequently.<sup>53</sup>

AMPs differ from a deferred payment arrangement (traditional payment plan) in one important aspect, the treatment of the debt. With AMPs, the debt is set aside at the start of the program and does not grow due to interest or fees; instead, the debt shrinks with each on-time payment of the current bill. Ideally, AMPs apportion these reductions over a predetermined period of time, decreasing debt until it is completely eliminated.

To offer a realistic path out of debt for customers with large arrears, an AMP program should ensure complete elimination of outstanding debt within a reasonable time frame, such as one year (and no more than two). As noted previously, it is also important to combine AMPs with an effective, income-based affordability program that reduces the current bill to ensure that participants don't fall behind on new bills. Although not all existing AMPs include all of these best-practice elements, even programs that are less than ideal can help to reduce water debt burdens.

AMPs have been an important tool to respond to spiraling utility costs and the increasing numbers of utility customers who cannot afford to pay their bills.<sup>54</sup> In Massachusetts, for example, AMPs have been extremely effective in helping electric and gas utility customers minimize and eliminate arrearages, particularly during the COVID-19 economic fallout.<sup>55</sup> The California Public Utilities Commission (CPUC) recently ordered the four large investor-owned electric and gas companies to implement AMPs in a proceeding to consider new approaches to disconnections and reconnections. The CPUC AMP rules will sunset after four years unless the commission extends, reauthorizes, modifies, or rescinds its order.<sup>56</sup>

Data from energy utility AMPs show that they benefit not only individual customers but also other ratepayers and the utilities themselves. In Massachusetts, an AMP was shown to have a positive impact on utility revenues because customers in the plan made higher payments than they otherwise would have and continued to make higher payments even after completing the plan.<sup>57</sup> The utility's costs to administer the AMP were offset by reduced collection and termination costs, with these reduced costs leading to lower rates for all ratepayers.

Similarly, in Washington, D.C., very low income participants, including many whose service had already been disconnected, not only significantly reduced their arrears when they entered the program but were more successful at paying their monthly utility bills than comparably poor nonparticipants.<sup>58</sup>

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## ENERGY UTILITY TOUTS ARREARAGE MANAGEMENT PROGRAMS AS A “WIN-WIN” FOR THE CUSTOMER AND THE UTILITY

“Customers participating in arrears management programs receive clear benefits. Those participants gain the protection against service disconnections while on the program and can gain a fresh start by successfully completing an AMP with arrears that are totally canceled. . . .

Utilities gain several benefits, too. The costs associated with collection activities on these accounts are diminished as field visits and disconnections are avoided. In addition, AMP customers are paying more towards their bills.”

—PENNI MCLEAN CONNOR, EXECUTIVE VICE PRESIDENT OF CUSTOMER EXPERIENCE  
AND STRATEGY, EVERSOURCE (A MAJOR ELECTRIC AND GAS UTILITY IN THE NORTHEAST)<sup>58</sup>

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An AMP can also operate at the statewide level. Under New Jersey’s Fresh Start program, if an electric or gas customer participating in the state’s Universal Service Fund affordability program “pays current charges on monthly utility bills, in full, for one year, prior overdue balances are eliminated.”<sup>60</sup>

In the water sector, no states have laws requiring water utilities to offer an AMP. However, legislation proposed in California would require all water utilities to develop arrearage management plans that forgive all debt over a 12-month period if a residential customer stays current on new bills.<sup>61</sup>

In recent years, several municipal water utilities have developed their own AMPs, which incorporate some or all of the elements described above. Four such programs are described below. (The Philadelphia and Baltimore programs, which also include reductions in future bills, are discussed further in the Affordability and Assistance Programs module.)

- **Philadelphia’s Tiered Assistance Program (TAP)** is a strong example of a program designed to achieve *both* affordable bills and debt relief for low-income customers entering the program—a best practice for achieving long-term water affordability. TAP offers low-income customers monthly bills based on a percentage of household income.<sup>62</sup> Initially it offered a debt relief component that covered only late fees and interest. TAP was updated in 2020 to include an AMP that forgives any outstanding debt after full payment of 24 monthly TAP bills, which need not be consecutive.<sup>63</sup> Participants who become ineligible for the program due to a change in income before making 24 bill payments receive debt forgiveness in an amount pro-rated to the number of months enrolled.<sup>64</sup> As of spring 2022, the Water Department had agreed to make further changes to the program, according to local advocates.<sup>65</sup> Under the expected rules, the program will erase 1/24 of the

household’s debt each time a monthly TAP bill is paid. (Philadelphia also has a separate rule that all utility debt older than 15 years is automatically forgiven.<sup>66</sup>)

- **Baltimore City’s Water4All program**, launched in February 2022, is another example of a percentage-of-income water bill affordability program that incorporates an AMP. Every time a customer makes an on-time payment of a current bill under the Water4All program, an equivalent amount is credited toward the participant’s outstanding arrears.<sup>67</sup>
- **Chicago’s Utility Billing Relief (UBR) program** was launched in 2019, along with a moratorium on water shutoffs due to water debt.<sup>68</sup> The UBR provides LIHEAP-eligible customers with a 50 percent discount on water bills and an arrearage management/debt relief component.<sup>69</sup> Under the UBR, 1/12 of the customer’s arrearage is forgiven for every on-time (discounted) monthly bill payment.<sup>70</sup> Participants are given an additional opportunity for enrollment in the UBR should they default in their initial enrollment.
- **Pittsburgh’s Bill Discount Program (BDP)** is a less robust AMP than those found in Philadelphia, Baltimore, or Chicago. For low-income customers who enroll and agree to an active payment plan, a \$30 monthly credit is applied against the customer’s outstanding debt for each on-time payment.<sup>71</sup>

### Deferred payment arrangements

Deferred payment arrangement programs (DPAs), a less effective way than AMPs to help customers address debt, exist in both the energy and water utility sectors. DPAs allow customers to pay off overdue bills in multiple installments over time (months or even years) while protecting them from shutoffs, tax lien sales, or other adverse collection actions during the term of the DPA. However, DPA programs have a less than stellar track

record for success in retiring arrearages, for obvious reasons: DPAs require customers, many of whom continually struggle to afford their current utility bill, to pay an *additional* amount each month in order to retire the debt and remain connected to essential utility service.<sup>72</sup>

Where the utility has the discretion to determine the terms of the DPA, consumers can face very unreasonable payback time frames and high charges added to the regular bill due to the water debt. Consumers may feel desperate and accept any DPA terms offered by the utility to postpone a water shutoff. But because the underlying affordability problem has not been addressed, this can quickly lead to a shutoff and additional charges for late fees and deposits, thus growing the water debt.

Putting aside the inherent limitations of DPAs, requiring water utilities to offer standardized, default DPA terms, including certain best-practice provisions, can create a level set of consumer protections and mitigate some of the harm from the power imbalance between the utility and the consumer. These provisions include a zero or minimal down payment, a repayment period (and down payment amount, if any) based on the individual customer's financial circumstances, and an opportunity for a second chance if the customer experiences changed financial circumstances and misses one or more payments. For example, New York State requires investor-owned water utilities to offer DPAs incorporating all of these components.<sup>73</sup> Notably, during the COVID-19 pandemic, New York's DPA rules were extended to cover publicly owned utilities.<sup>74</sup>

At least one state has a permanent requirement for both commission-regulated and non-regulated water utilities to offer DPAs. California's Water Shutoff Protection Act, enacted in 2018, requires all water utilities with at least 200 connections to offer customers a DPA to avoid shutoff. The law does not, however, specify any minimum requirements for the terms of a DPA.<sup>75</sup>

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## KEY RESOURCES:

Circle of Blue, *Water Debt*, accessed May 19, 2022, <https://www.circleofblue.org/water-debt/>.

*The online water news website Circle of Blue has published a series of articles and investigative reports on the scale and impact of water debt in the United States.*



A graphic promoting the Philadelphia Water Department's (PWD) Tiered Assistance Program (TAP).

© Philadelphia Water Department

While standard minimum DPA terms are important to protect consumers, a recent study of programs offered by Louisville's water and sewer utilities suggests that utilities could improve the success rate of DPAs by allowing customers easily to customize their payment plans to fit their budgets.<sup>76</sup>

Finally, advocates should seek regular reporting of customer performance under DPAs in order to evaluate whether these agreements are helping customers bring their accounts up to date. For example, the California Public Utility Commission recently issued a ruling that will require investor-owned water utilities to regularly report data (on at least a quarterly basis) on the effectiveness of DPAs.<sup>77</sup> (For further discussion of utility data reporting requirements, see the module on Data Collection and Transparency.)

## UNAFFORDABLE WATER AND DEBT RELIEF—WHAT NOT TO DO

Some utilities' answer to unaffordability and water debt is to install water flow restrictors as the "humane" alternative to disconnections. This, however, amounts to second-class water service as the restrictor slows the flow of water to a trickle. (Issues with flow restrictors are discussed in the module on Water Shutoffs.)

## ENDNOTES

- 1 Brett Walton, “Millions of Americans Are in Water Debt,” Circle of Blue, August 5, 2020, <https://www.circleofblue.org/2020/world/millions-of-americans-are-in-water-debt/>; Brett Walton, “Chart: Customer Water Debt Data in 12 U.S. Cities,” Circle of Blue, October 15, 2020, <https://www.circleofblue.org/2020/world/chart-customer-water-debt-data-in-12-u-s-cities/>. Nearly all of these data were from the second half of 2019 or early 2020, prior to the COVID-19 pandemic.
- 2 Brett Walton, “California Households Owe \$1 Billion in Water-Bill Debt,” Circle of Blue, January 19, 2021, <https://www.circleofblue.org/2021/world/california-households-owe-1-billion-in-water-bill-debt>.
- 3 Municipal water and wastewater utilities commonly designate the property owner as the customer, with the debt remaining attached to the property even when ownership changes.
- 4 See the Background module for a discussion of increasing water rates and unaffordability.
- 5 See NAACP Legal Defense and Educational Fund, “Opposition to Lifting DeKalb County Water Disconnection Moratorium,” letter to Michael Thurmond, CEO of DeKalb County, Georgia, May 26, 2021, [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/water/Letter-Re-DeKalb-Water-Disconnection-Moratorium-5.26.21.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/water/Letter-Re-DeKalb-Water-Disconnection-Moratorium-5.26.21.pdf).
- 6 U.S. Department of Health and Human Services (hereinafter HHS), Office of Community Services, “Low Income Household Water Assistance Program (LIHWAP),” accessed May 11, 2022, <https://www.acf.hhs.gov/ocs/programs/lihwap>.
- 7 Brett Walton, “Lack of Utility Data Obscures Customer Water Debt Problems,” Circle of Blue, October 12, 2020, <https://www.circleofblue.org/2020/world/lack-of-utility-data-obscures-customer-water-debt-problems/>.
- 8 Walton, “Millions of Americans”; Walton, “Chart: Customer Water Debt Data.” A series of investigative articles and videos published by Circle of Blue illustrate the issue through data analysis and first-person narrative of people experiencing the impacts of water debt in many cities. See Circle of Blue, *Water Debt*, accessed May 19, 2022, <https://www.circleofblue.org/water-debt/>.
- 9 Anthena Gore, Louise Sharrow, and Justin Keller, *City of Chicago Water Affordability Analysis*, Elevate Chicago and Metropolitan Planning Council, January 18, 2022, <https://www.elevatenp.org/wp-content/uploads/City-of-Chicago-Water-Affordability-Analysis-1.pdf>.
- 10 The Chicago free meter installation program, MeterSave, notes that on average, homes with meters will save 25 percent on their bills, and two-unit houses will save more. Chicago Department of Water Management, “MeterSave Program,” accessed April 13, 2022, <https://www.metersave.org/MeterSave>.
- 11 María Inés Zamudio, “Drowning in Debt,” WBEZ Chicago, November 8, 2021, <https://interactive.wbez.org/waterdebt/>.
- 12 Debt Collection Lab, “Debt Collection Tracker: St. Louis County,” accessed May 13, 2022, <https://debtcollectionlab.org/lawsuit-tracker/missouri/st-louis-county>.
- 13 Patricia A. Jones and Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, Unitarian Universalist Service Committee, May 2016, <http://uswateralliance.org/sites/uswateralliance.org/files/Invisible%20Crisis%20-%20Water%20Affordability%20in%20the%20US.pdf>.
- 14 Walton, “Millions of Americans.”
- 15 Community Legal Services of Philadelphia, “The Dangerous Weight of Water Debt,” November 13, 2019, <https://clsphila.org/utilities/weight-of-water/>.
- 16 Robert Ballenger, Director, Energy Unit Community Legal Services of Philadelphia, personal communication, September 15, 2021.
- 17 Zamudio, “Drowning in Debt.”
- 18 Alexandra Campbell-Ferrari et al., *The Accessibility Trap: Maryland’s Invisible Water Crisis*, Center for Water Security and Cooperation, December 2018, [https://c5d63933-8ae9-4f33-bb98-7289974e9958.filesusr.com/ugd/5b69db\\_ec476217202a4eb29585cacada9363b2.pdf](https://c5d63933-8ae9-4f33-bb98-7289974e9958.filesusr.com/ugd/5b69db_ec476217202a4eb29585cacada9363b2.pdf).
- 19 Rules & Regs. for the Operation of the Water and Wastewater System of the City of Greensboro § G.5 (Discontinuance of Service), <https://www.greensboro-nc.gov/Home/ShowDocument?id=11420> (“After water has been cut for three (3) days at any occupied premises, the meter may be taken out and an additional fee for meter take out in accordance with Chapter 29-54 of the Greensboro Code of Ordinances imposed.”).
- 20 See N.J. Stat. Ann. §§ 40:14A-21 and 40:14B-41 (West), stating that 1.5 percent monthly interest must be charged until the bill is paid in full. The law provides an exception during states of emergency, when these utilities are allowed to waive interest.
- 21 Phoenix City Code, Ch. 37, Art. V, Section 37-88(A), <https://phoenix.municipal.codes/CC/37-88>.
- 22 Zamudio, “Drowning in Debt.”
- 23 Ibid.
- 24 Justin Engel, “As Saginaw Water Shutoffs Continue, Residents Face Dangers of Costly Fines and Condemned Homes,” *Saginaw and Bay City News*, June 24, 2021, <https://www.mlive.com/news/saginaw-bay-city/2021/06/as-saginaw-water-shutoffs-continue-residents-face-dangers-of-costly-fines-and-condemned-homes.html>.
- 25 National Housing Law Project, *HUD Housing Program: Tenants’ Rights*, section 11.2.4.2.6 (San Francisco: National Housing Law Project, 2018), <https://www.nhlp.org/products/green-book/>.
- 26 For example, a city ordinance in Phoenix stipulates that the water department “will send all delinquent accounts to a collection agency.” Phoenix City Code, Chpt. 37, Art. V, Section 37-88 (F), <https://phoenix.municipal.codes/CC/37-88>.
- 27 Zamudio, “Drowning in Debt.”
- 28 See, e.g., testimony of Chi Chi Wu, staff attorney, National Consumer Law Center (hereinafter NCLC), before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight and Investigations, “Consumer Credit Reporting: Assessing Accuracy and Compliance,” May 26, 2021.
- 29 For example, the Louisville Water Company requires a deposit from new customers with prior bad debt on a water account, a low credit score, or a water service disconnection for nonpayment within the last three years. Louisville Water Co. Serv. Rules & Regs. § 1.14.1, [https://www.louisvillewater.com/sites/louisvillewater.com/files/user\\_uploads/2020%20Service%20Rules%20final%20w%20page%20%23.pdf](https://www.louisvillewater.com/sites/louisvillewater.com/files/user_uploads/2020%20Service%20Rules%20final%20w%20page%20%23.pdf). The city of Greensboro, North Carolina, requires a \$150 deposit from tenants seeking to open an account in their own name. Rules & Regs. for the Operation of the Water and Wastewater System of the City of Greensboro § G.2, <https://www.greensboro-nc.gov/Home/ShowDocument?id=11420>; Greensboro Code of Ordinances, § 29-54, [https://library.municode.com/nc/greensboro/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH29WASEWADI\\_ARTIIIUSRACH\\_S29-54MIWASECH](https://library.municode.com/nc/greensboro/codes/code_of_ordinances?nodeId=COOR_CH29WASEWADI_ARTIIIUSRACH_S29-54MIWASECH).
- 30 NCLC, *Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs*, section 5.2: “Utility Service May Be Made Contingent Upon Payment of a Security Deposit” (Boston: NCLC, 2018), <https://library.nclc.org/aus>.



- 31 Washington State offers one such example. Steve Gross, “Utility Late Fee/Shutoff Moratorium Expires September 30: Now What?,” *Municipal Research and Services Center of Washington Blog*, Sept. 7, 2021, <https://mrsc.org/Home/Stay-Informed/MRSC-Insight/September-2021/Update-On-Utility-Late-Fee-Shutoff-Moratorium.aspx>.
- 32 *Ibid.*, section 5.5: “Challenging Late Charges.”
- 33 NCLC, *Access to Utility Service*, sections 5.5: “Challenging Late Charges” and 5.6: “Are Utility Late Charges Fair?”.
- 34 For example, as described above, one study found that reconnection fees charged by water utilities across Maryland ranged from \$35 to \$90. A survey of 18 water utilities in California found that “cumulative fees associated with shutoffs, from late charges through termination and reconnection, totaled as little as \$12 or as much as \$166 per household.” Laura Feinstein and Abbey Warner, “Water Service Disconnections in California,” fact sheet, Pacific Institute, October 2018, <https://pacinst.org/wp-content/uploads/2018/11/Water-Service-Disconnections-in-California-Fact-Sheet-Pacific-Institute.pdf>. Similarly, a 34 percent compounded annual late fee, such as an example described earlier in this module, bears no conceivable relationship to the actual costs a utility incurs due to a late payment. See also NCLC, *Access to Utility Service*, section 5.6.2, “Late Charges Should Only Cover Reasonable and Legitimate Expenses.”
- 35 Cal. Health & Safety Code § 116914 (West), [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=HSC&division=104.&title=&part=12.&chapter=6.&article=-](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=104.&title=&part=12.&chapter=6.&article=-). For eligible customers, reconnection fees are capped at \$50 during business hours and \$150 if reconnection is outside of normal business hours, but fees cannot exceed the actual cost to the utility.
- 36 Cal. SB 223 (2021), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB223](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223).
- 37 Mich. SB 348 (2021), <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/htm/2021-SIB-0348.htm>. The bill would also, among other things, bar these utilities from assessing “penalties” to all residential customers.
- 38 220 ILCS 5/8-201.7 (deposits), <https://www.ilga.gov/legislation/ilcs/documents/022000050K8-201.7.htm>; 220 ILCS 5/201.8 (late fees), <https://www.ilga.gov/legislation/ilcs/documents/022000050K8-201.8.htm>.
- 39 Ill. Admin. Code tit. 83, § 280.65 (late fees), <https://www.law.cornell.edu/regulations/illinois/IL-Admin-Code-83-280-65>; Ill. Admin. Code tit. 83, § 280.45 (deposits), <https://www.law.cornell.edu/regulations/illinois/IL-Admin-Code-83-280-65>). The regulations define low-income customers as those who qualify for the Low Income Home Energy Assistance Program, with some caveats.
- 40 “Phase I Decision Adopting Rules and Policy Changes to Reduce Residential Customer Disconnections for the Larger California-Jurisdictional Energy Utilities,” Cal. PUC Decision 20-06-003 (June 11, 2020) in Rulemaking 18-07-005, 42, <https://docs.epuc.ca.gov/PublishedDocs/Published/G000/M340/K648/340648092.PDF>. The legislation has also prompted the commission to take other actions, documented in the same rulemaking docket, including creation of an arrearage management program, a pilot percentage-of-income payment plan, and a disconnections cap, as well as a critical look at ways to improve the existing low-income assistance programs.
- 41 220 Mass. Code Regs. 27 (2004), <https://www.mass.gov/regulations/220-CMR-2700-elimination-of-the-practice-of-gas-and-electric-companies-of-requiring-a-deposit-from-residential-customers-as-a-condition-to-furnishing-utility-service>.
- 42 Cal. SB 222 (2021–2022), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB222](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB222). The bill is intended to implement a program design developed by the California Water Resources Control Board, which envisioned annual crisis assistance funding of an estimated \$185 million to help an estimated 350,000 households per year, as part of a wider assistance program that would also provide ongoing bill discounts to low-income households. California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*, 2020, 37–45, [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/docs/ab401\\_report.pdf](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf).
- 43 U.S. Environmental Protection Agency, *Drinking Water and Wastewater Utility Customer Assistance Programs*, April 2016, [https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww\\_utilities\\_cap\\_combined\\_508.pdf](https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww_utilities_cap_combined_508.pdf).
- 44 Congress allocated \$638 million to the states and Tribal lands through the Consolidated Appropriations Act of 2021 and additional \$500 million through the American Rescue Plan Act of 2021. See HHS, Office of Community Services, “LIHWAP Laws and Regulations,” March 1, 2021, <https://www.acf.hhs.gov/ocs/law-regulation/lihwap-laws-and-regulations>.
- 45 HHS, Office of Community Services, “Low Income Household Water Assistance Program (LIHWAP).”
- 46 Larry Levine and Olivia Wein, “Fact Sheet on Recent Federal COVID-19 Relief Funding to Help Consumers With Water and Sewer Bills,” NCLC and NRDC, last updated April 5, 2021, [https://www.nrdc.org/sites/default/files/media-uploads/fs\\_nrdc\\_covid\\_water\\_sewer.pdf](https://www.nrdc.org/sites/default/files/media-uploads/fs_nrdc_covid_water_sewer.pdf).
- 47 California State Water Resources Control Board, “California Water and Wastewater Arrearage Payment Program,” accessed May 19, 2022, [https://www.waterboards.ca.gov/arrearage\\_payment\\_program/](https://www.waterboards.ca.gov/arrearage_payment_program/) (see details found under the “Drinking Water Arrearage Program” subheading); California State Water Resources Control Board, “Wastewater Systems,” accessed April 12, 2022, [https://www.waterboards.ca.gov/arrearage\\_payment\\_program/wastewater\\_systems.html](https://www.waterboards.ca.gov/arrearage_payment_program/wastewater_systems.html); California State Water Resources Control Board, “Arrearage Relief to Water Systems for Customer Water Bill Debt,” accessed April 12, 2022, [https://www.waterboards.ca.gov/arrearage\\_payment\\_program/docs/211013-watersystemarrearagesprogram-app-phase.pdf](https://www.waterboards.ca.gov/arrearage_payment_program/docs/211013-watersystemarrearagesprogram-app-phase.pdf); California State Water Resources Control Board, “Wastewater Debt Assistance Information for Wastewater Agencies,” accessed April 12, 2022, [https://www.waterboards.ca.gov/arrearage\\_payment\\_program/docs/swb-arrearage-program-fact-sheet-wastewater-treatment-providers-2.pdf](https://www.waterboards.ca.gov/arrearage_payment_program/docs/swb-arrearage-program-fact-sheet-wastewater-treatment-providers-2.pdf). Under program rules, water and wastewater treatment providers and billing entities (such as counties, cities, and special districts) apply for funding; customers do not. Customers then receive written notice of a credit for eligible debt, including late fees and interest, from their wastewater agency within 60 days of the agency receiving funding. Residential and commercial debt, including debt transferred to a third-party collection entity, debt collected through property tax rolls, or debt offset by customer assistance programs, is covered in the program, according to the Water Boards. The program funded debt related to drinking water first. The Department of Community Services & Development also administered a Low-Income Household Water Assistance Program, as part of the temporary federal LIHWAP program, that provided emergency assistance to income-eligible Californians who needed additional relief for COVID-19 related water debt. The application window for drinking water agencies closed in December 2021. Wastewater agencies’ online application window ran from February 1 through April 1, 2022.
- 48 City of Buffalo, “Mayor Byron Brown Announces Continuation and Expansion of Water and Sewer Bill Amnesty Program,” press release, July 2, 2021, <https://www.buffalony.gov/CivicAlerts.aspx?AID=969>; Get Water Wise Buffalo, web home page, accessed May 20, 2022, <https://getwaterwisebuffalo.org/en/>.
- 49 Greater Cincinnati Water Works, “Help Is Available for Outstanding Water Bills as Utility Shutoffs Return May 2. Customers Can Sign Up for PromisePay & Emergency Utility Assistance,” March 10, 2022, <https://www.cincinnati-oh.gov/water/news/help-is-available-for-outstanding-water-bills-as-utility-shutoffs-return-april-4-customers-can-sign-up-for-promisepay-emergency-utility-assistance/>.

- 50 Virginia Department of Housing and Community Development, “Covid-19 Municipal Utility Relief Program,” accessed May 13, 2022, <https://www.dhcd.virginia.gov/utilityrelief>; Office of Former Virginia Governor Ralph S. Northam, “Governor Northam Signs Revised State Budget That Makes Key Investments, Provides Critical Relief During COVID-19 Pandemic,” press release, November 18, 2020, <https://www.governor.virginia.gov/newsroom/all-releases/2020/november/headline-861427-en.html>; Jackie DeFusco, “Most Virginia Utilities Can Resume Service Shut Offs Soon; New Debt Forgiveness Funding Available,” ABC 8 News Richmond, August 20, 2021, <https://www.wric.com/news/local-news/most-virginia-utilities-can-resume-service-shut-offs-soon-new-debt-forgiveness-funding-available/>.
- 51 US Environmental Protection Agency, *Drinking Water and Wastewater Utility Customer Assistance Programs*.
- 52 HHS, Office of Community Services, “LIHWAP IM-2022-02 Update to FAQs on LIHWAP FY2022,” information memorandum, January 13, 2022, <https://www.acf.hhs.gov/ocs/policy-guidance/lihwap-im-2022-02-update-faqs-lihwap-fy2022>.
- 53 For example, Pepco electric customers (in Washington, D.C.) can enroll every seven years. See DC Pepco AMP filing in DC PSC FC No.1119 (October 28, 2016). By contrast, the AMP run by California investor-owned energy utilities allows customers who successfully complete or fail to complete an AMP to re-enroll in a new AMP after a 12-month waiting period. “Phase I Decision Adopting Rules and Policy Changes,” Cal. PUC Decision 20-06-003, ¶¶ 63 and 66.
- 54 See Charlie Harak, *Helping Low-Income Utility Customers Manage Overdue Bills Through Arrearage Management Programs (AMP)*, NCLC, September 2013, 1, [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/consumer\\_protection\\_and\\_regulatory\\_issues/amp\\_report\\_final\\_sept13.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/amp_report_final_sept13.pdf).
- 55 During the COVID-19 pandemic, all major electric and gas utilities increased the maximum amounts of debt that could be eliminated under their AMP programs. Ma. Dep’t Pub. Util. D.P.U. 20-58-B, “Inquiry of the Department of Public Utilities Into Establishing Policies and Practices for Electric and Gas Companies Regarding Customer Assistance and Ratemaking Measures in Connection to the State of Emergency Regarding the Novel Coronavirus (COVID-19) Pandemic” (July 31, 2020). See also Charlie Harak, “New D.C. Study Shows How Arrearage Management Programs Are a Win-Win for Utilities and Customers Alike,” *NCLC Utilities & Telecom Blog*, accessed April 13, 2022, <https://www.nclc.org/issues/energy-utilities-a-communications/nclc-energy-utilities-telecom-blog/new-d-c-study-shows-how-arrearage-management-programs-are-a-win-win-for-companies-and-customers-alike.html>.
- 56 “Phase I Decision Adopting Rules and Policy Changes,” Cal. PUC Decision 20-06-003, 156–64.
- 57 See Penni McLean-Conner, “Arrears Management Can Be a Win-Win,” *Power Grid International*, October 27, 2015, <https://www.power-grid.com/energy-efficiency/arrears-management-can-be-a-win-win/>.
- 58 Harak, “New D.C. Study.”
- 59 McLean-Conner, “Arrears Management Can Be a Win-Win.”
- 60 New Jersey Board of Public Utilities, “NJBPUE Expands Utility Assistance Programs to Help Residents Financially Impacted by Pandemic,” press release, June 24, 2021, <https://www.state.nj.us/bpu/library/pdf/Utility%20Assistance%20Press%20Release%20624.pdf>.
- 61 Cal. SB 223 (2021), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB223](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB223). For a fact sheet on the bill, see Office of California Senator Bill Dodd, “SB 223 – Dodd: Strengthening Low-Income Residential Water Service Protections,” accessed May 13, 2022, <https://drive.google.com/file/d/1yD8cDcZc5FEt0NygORmjlBj7O6K-Er04/view>.
- 62 Community Legal Services of Philadelphia, “Saving Your Home and Water Service Through TAP,” April 12, 2019, <https://clsphila.org/utilities/saving-your-home-and-water-service-through-tap/>.
- 63 Phila. Water Dep’t Regs. Ch. 2 § 206.7(c), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>; City of Philadelphia Department of Revenue, Water Revenue Bureau, “Tiered Assistance Program (TAP) Debt Forgiveness,” May 12, 2021, <https://www.phila.gov/media/20210514135633/What-is-TAP-debt-forgiveness-flyer.pdf>.
- 64 Phila. Water Dep’t Regs. Ch. 2 § 206.7(d), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>.
- 65 Robert Ballenger, Director, Energy Unit Community Legal Services of Philadelphia, personal communication, April 27, 2022. Once finalized, the new rules will be available at: Philadelphia Water Department, “Regulations,” accessed May 18, 2022, <https://water.phila.gov/regulations/>.
- 66 Phila. Code § 19-1605(1) (2015), [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-214398](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-214398); Phila. Water Dep’t Regs. Ch. 2 § 206.7(b), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>.
- 67 Balt. City Code art. 24, § 2-13 (2022), <https://legislative.reference.baltimorecity.gov/city-codes>.
- 68 See Pascal Sabino, “Chicago Will Stop Shutting Off Water Service Due to Unpaid Bills: ‘Water Is a Basic Human Right,’” *Block Club Chicago*, November 1, 2019, <https://blockclubchicago.org/2019/11/01/chicago-will-stop-shutting-off-water-service-due-to-unpaid-bills-water-is-a-basic-human-right/>.
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- 73 N.Y. Comp. Codes R. & Regs. Tit. 16 § 14.10. New York’s DPA rules are partly codified in statute but are elaborated further in state utility commission regulations. The statutory requirements were enacted as part of the state’s Home Energy Fair Practices Act (HEFPA), a law that was later extended to cover commission-regulated water utilities. N.Y. Pub. Serv. L. § 37 (DPA requirements); N.Y. Pub. Serv. L. § 50 (extending HEFPA to water utilities). Accordingly, the implementing regulations for water largely mirror those applicable to electric and gas utilities. The commission’s rules for water utilities stipulate that the utility must offer a DPA at least five days before disconnection for nonpayment. N.Y. Comp. Codes R. & Regs. Tit. 16 § 14.10(a)(1)(i). The utility must “negotiate in good faith with a customer or applicant in order to arrange a payment agreement that the customer or applicant is able to pay, considering his or her financial circumstances.” Ibid. § 14.10(a)(3). Where necessary to be affordable to the customer, the installments can be as low as \$10 a month, with no down-payment. Ibid. § 14.10(a)(3)(ii). Further, a utility must “renegotiate and amend a payment agreement if the customer or applicant demonstrates that his or her financial circumstances have changed significantly because of conditions beyond his or her control.” Ibid. § 14.10(a)(4). (For comparison, the DPA rules for electric and gas utilities appear at N.Y. Comp. Codes R. & Regs. Tit. 16 § 11.10.)

- 74 New York Department of Public Service, “DPS Details Consumer Rights, Protections and Programs to Help Pay Utility Bills and Avoid Shutoffs,” press release, December 20, 2021, [https://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/F6DC4624A258627E852587B10074FE03/\\$File/pr21130.pdf](https://www3.dps.ny.gov/pscweb/WebFileRoom.nsf/ArticlesByCategory/F6DC4624A258627E852587B10074FE03/$File/pr21130.pdf) (explaining that “municipal water providers . . . must continue to offer deferred payment agreements that comply with HEFPA to customers financially impacted by the COVID-19 pandemic until June 30, 2022”); N.Y. Dep’t of Pub. Serv., Matter 20-01676, “Notice of Updated Department of Public Service Guidance to Municipal Water Providers Relating to Service Disconnections, Liens, and Deferred Payment Agreements,” December 17, 2021, [https://www3.dps.ny.gov/W/AskPSC.nsf/f5a9d1c8d68336618525769c0066d27f/d3bb77afe92d6fff852585ee0051a13e/\\$FILE/20-01676%20DPS%20Moratorium%20Guidance%202021-12.pdf](https://www3.dps.ny.gov/W/AskPSC.nsf/f5a9d1c8d68336618525769c0066d27f/d3bb77afe92d6fff852585ee0051a13e/$FILE/20-01676%20DPS%20Moratorium%20Guidance%202021-12.pdf).
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- 76 Water Equity Network and U.S. Water Alliance, “Modern, Effective, and Compassionate Billing: How Louisville Made an Overdue Upgrade to Assistance Programs and Improved the Utility Customer Relationship,” 2021, <http://uswateralliance.org/sites/uswateralliance.org/files/FINAL%20Louisville%20case%20study.pdf>. Among other things, Louisville’s payment program allows customers to customize their payment plans. Customers are in control of how frequently they pay and can easily request an extension or change the payment due date without going through a utility customer service representative. Also, the initial payment was lowered to \$5 to make it easy for customers to enroll. The utilities reported that in the past only 20 percent of customers stayed current on their payment plan, but with the switch to the more flexible platform 93 percent of customers are able to stay current on their plan. Other program design features such as self-certification of income helped to streamline customer enrollment into debt relief programs.
- 77 “Assigned Commissioner’s Ruling Revising Monthly Reporting Requirements” (April 28, 2022) in Rulemaking 17-06-024, 12, <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M471/K485/471485733.PDF>. The order requires reporting on the number of customers with specialized payment arrangements to manage their debt and customers not on specialized payment arrangements; the dollar amount of debt for these two groups and the average and mean dollar amount of debt for these two groups; and the number of disconnections and reconnections for these two groups. The Commission noted, “These reporting requirements will communicate the effectiveness of an important protection: specialized payment arrangements. The resulting standardized reporting will allow for course correction as necessary.”

## Billing Problems and Dispute Resolution

When a utility’s billing practices are inaccurate or unfair, residents can receive outside water bills that don’t reflect their actual usage. Incorrect bills can lead to shutoffs, liens, and other debt collection actions if the utility’s processes for disputing charges are not fair and accessible or if customers are unaware of the discrepancy.

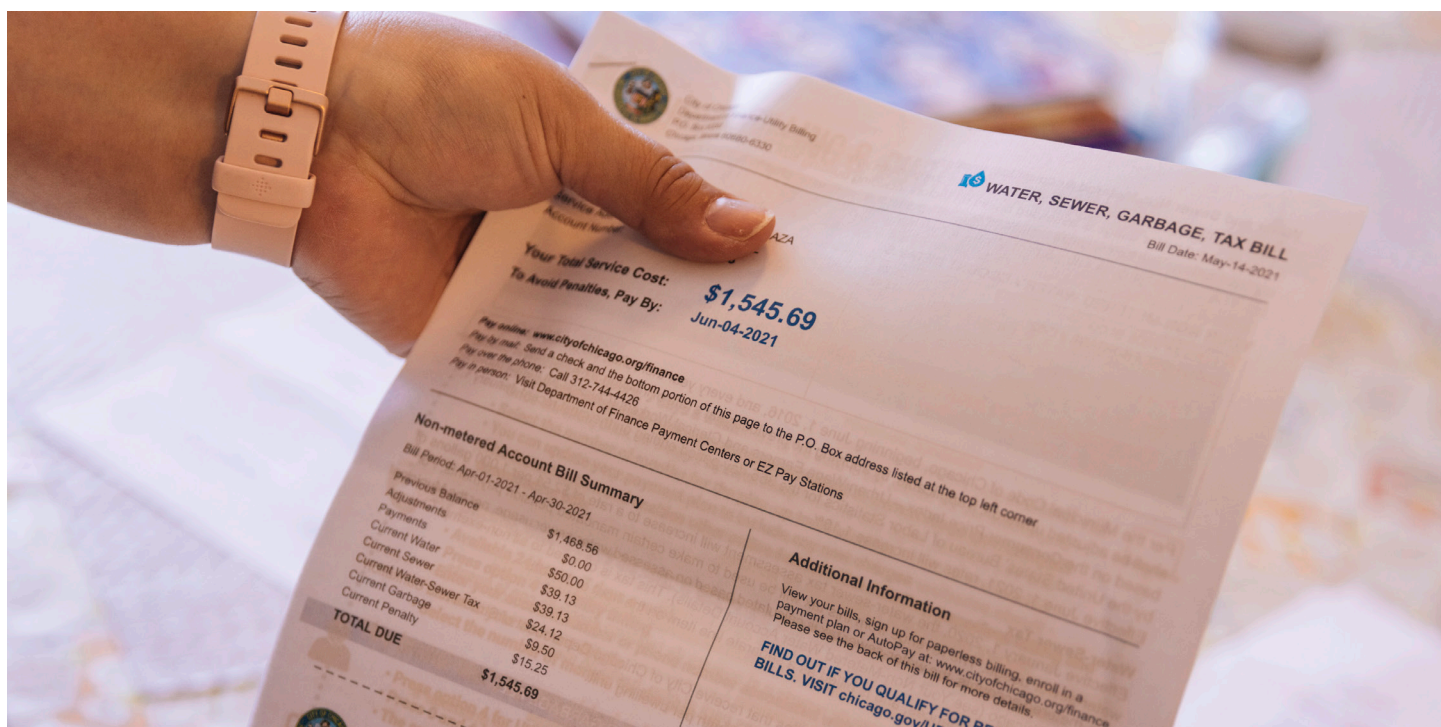
When many customers are receiving inaccurate bills, it is often a sign of deeper problems. Widespread billing issues can cause distress within affected communities and contribute to community-level unaffordability. They can also affect the utility’s ability to maintain a stable and predictable revenue stream and to continue providing safe and reliable service.

This module first identifies common billing issues and unfair practices. It explores problems an individual household may experience, including challenges related to inaccurate water meters; unmetered billing; billing that is “bundled” with other, non-water services; and billing issues of specific concern to tenants who are not direct customers of the water utility. Then, this module moves on to larger, systemic issues that can occur with water billing, with a focus on creating fair and accessible dispute resolution

processes. Throughout, the module identifies potential solutions and best practices to deal with specific water billing problems.

### SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Spotting common issues and unfair practices that can result in overbilling
- Preventing shutoffs when water bills are combined with billing for other city services
- Preventing abusive or unfair billing of tenants by landlords
- Fixing systemic billing problems that lead to excessive bills
- Creating clear, fair, and accessible dispute resolution processes



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## WHEN AN INDIVIDUAL WATER BILL SEEMS TOO LOW OR TOO HIGH

There are usually rules that govern what happens when water meters are inaccurate. State utility commissions may establish these rules for the utilities they regulate; for municipal or cooperative utilities, they may be set by local lawmakers or the utility itself.

Inaccurate meters may be too slow or too fast, both of which may cause problems for a household.

**Slow meters:** If a household hasn't reduced its water usage but a reading indicates that less water was used than in prior readings, the meter could be slow. The risk is that the utility will later back bill the water customer for the difference and the amount will be unaffordable. While utilities are usually allowed to back bill when a customer has been underbilled, there may be rules that limit how far back in time the billing can be adjusted. Water customers who face an unaffordable back-bill charge should ask for a reasonable payment plan. (See the Water Debt module for more information on payment plans.)

The water utility is responsible for ensuring accurate meters, so if the period allowed for back billing is unreasonable (say, several years) or there is no limit at all, this could be an area for advocacy. For example, advocates could push to shorten the period for back billing and to require the utility to offer affordable payment plans in those circumstances.

**Fast meters:** Similarly, if a household hasn't increased its usage since the last bill but the current one shows there has been an increase, the water meter may be fast. The risk here is that the consumer is being overbilled. Water customers can usually request that the water company test the meter. If the meter is fast, the customer should be credited for overpayments.

### PROTECTION FROM DISCONNECTION WHEN THERE IS A GOOD-FAITH DISPUTE

A standard practice in utility consumer protection is to exempt the customer from disconnection during a good-faith dispute over the bill. Otherwise, a customer may lose access to essential utility service only because of the utility's billing or metering mistake. Where this rule exists, consumers are often required to pay the portion of the utility bill that isn't under dispute. For more on disconnection protections, see the Water Shutoffs module.



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## PROBLEMS WHEN WATER ISN'T METERED OR IS ESTIMATED

There are still places where homes are not individually metered (issues specific to rental units are discussed later in this module). Unmetered households are still billed, but the bill is estimated instead of being tied to actual usage. This can result in an unfair situation in which bills are higher than if a home were metered. In Chicago, for example, non-metered accounts are charged a flat rate based on factors such as building size, lot size, and plumbing fixtures. The average unmetered single home in Chicago is estimated to pay 25 percent more than a metered home, and the difference is even greater for two-flat properties.<sup>1</sup> Chicago is restarting its program to install free water meters. The program was put on hold due to concerns that installation of the meters could exacerbate lead levels in the water by disturbing service lines.<sup>2</sup>

In addition, unmetered billing can inhibit water conservation efforts. There is less incentive to install water efficiency measures or invest in water-efficient appliances if these actions do not lead to lower water bills.

In some places, water service is metered, but the utility will read the meter only every few billing cycles (for example, quarterly). The utility will then "true up" the difference between the estimated bills and the household's actual usage. If the estimated bills are too low, this can create problems similar to those caused by slow meters, with the household back billed for an unaffordable amount. As with slow meters, this problem can be addressed through consumer protection rules that limit back billing and require the utility to offer affordable payment plans.

## QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify issues to address concerning billing problems and bill dispute resolution processes.

- Does your utility use estimated billing or actual meter readings (or both) to calculate bills?
- How does your utility deal with inaccurate bills? Can customers get a refund if overcharged?
- How far back can your utility back bill customers when it undercharges them? Can customers get a reasonable payment plan to pay back-billed charges?
- Does your utility bundle multiple charges together (e.g., water, electric, solid waste)? What happens if a customer can afford to pay only a portion of the bill?
- Does your state or city regulate how landlords bill their tenants for water?
- Have multiple people in the community received inaccurate bills? Have inaccurate bills led to disconnections or other hardships?
- What is the process for disputing a bill? Is it easy to find and fair to the customer? How does the utility notify customers about this process?
- Who decides the outcome of billing disputes? How do you appeal a determination?
- Do tenants have a way to appeal bills paid to a third party (such as a property management company that generates water bills using a formula)?

## AFFORDABILITY PROBLEMS WHEN THE WATER BILL INCLUDES OTHER UTILITIES AND SERVICES

One problem that is difficult to fix—but incredibly harmful for struggling households—can arise when a municipality bundles multiple services on one bill.<sup>3</sup> For example, the water bill might also include electricity service, natural gas service, solid waste disposal, or any other services provided by the municipality. (In some cases, it may not even be apparent what portion of the combined bill is for water and sewer service.) Because a combined bill is much larger than just a water bill, it may be more difficult for some customers to pay all charges at once, increasing the risk of losing water service.

For example, a white paper from Arizona State University reports that in Phoenix, “the average residential customer pays approximately \$55 per month for water and sewer services but is charged nearly double that on the City Services Bill because solid waste and various other services and taxes are included in the bill.”<sup>4</sup> In Phoenix, all city service charges are due when billed. When a customer fails to pay the bill in full, a 3 percent late fee is assessed and at some point a customer will be disconnected from water altogether if the combined bill is not fully paid.<sup>5</sup>

There are other places, too, where water has been disconnected for nonpayment of a bill for combined city services, or even where a city refuses to restore water service unless a customer pays off both an overdue water

bill and other, unrelated debt, such as parking tickets and library fines. In LaGrange, Georgia, the Georgia State Conference of the NAACP and others sued the city of LaGrange over the discriminatory impact of policies that put conditions on the ability to start or maintain water service if there were unrelated debts owed to the city (e.g., unpaid traffic tickets), arguing that the policy disproportionately harmed Black residents. The 11th Circuit held that the Fair Housing Act challenge could proceed, and the city settled soon thereafter.<sup>6</sup> The settlement removed the city’s ability to condition utility service on the payment of nonutility debt; it also removed all existing nonutility debt from all city bills and voided all payment arrangements for such debt as of September 9, 2020.<sup>7</sup> Previously, similar issues had been reported in San Diego.<sup>8</sup>

Perhaps the simplest way to address this problem would be to ban combined billing.<sup>9</sup> However, this may encounter stiff resistance from municipalities because billing systems can be expensive to purchase or modify. Or municipalities may want to maintain leverage to get residents to pay for other services, and threatening to disconnect water service serves this purpose. Short of an outright ban, one option is to limit the ability of the utility to terminate water service on the basis of non-water charges. A proposed law in California would prohibit utilities that use combined bills from terminating water service “if the customer has paid an amount equal to or greater than the monthly charge for water service.”<sup>10</sup>

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Systemic billing problems can lead to shutoffs, liens, and severe economic distress for water customers.

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## **SPECIAL PROBLEM FOR RENTERS AND CONDO OWNERS WHEN A THIRD PARTY GENERATES THE WATER BILLS**

Multifamily rental buildings, especially older ones, are less likely than single-family homes to have individually metered units for water service because submetering is often too expensive. (This can also be the case in some condominiums.) In this situation, the landlord/property owner is the customer of the water utility, not the renter. In some of these cases, the landlord may hire a third-party billing company to prepare water bills for the renters. Third-party billing companies base each renter's water bill on a formula rather than actual usage, a practice sometimes called ratio utility billing. The formula may be based on any number of factors, including the number of residents in the unit, the square footage, or the number of bathrooms and/or water fixtures.

The use of ratio utility bills (RUBs) can raise problems for renters.<sup>11</sup> First, depending on the formula, a renter who uses little water may be unfairly charged the same amount as (or potentially even more than) other renters who use much more. Second, if the formula for calculating bills is not transparent, it can be difficult to tell if the charges are reasonable—that is, if the landlord and third-party billing company are collecting only enough to cover the landlord's water bill plus a reasonable administrative fee. Third, renters may not be able to effectively dispute their bills. For example, they may not know basic information such as where to go to dispute a water bill, what remedies (if any) are available, or whether nonpayment of a water bill will be treated like nonpayment of rent.

Curbing abuse by landlords and third-party billing companies may require legislation or regulation to address the problem.<sup>12</sup> Some municipalities have passed ordinances that protect tenants from unfair and deceptive RUB practices and provide clear avenues for disputes.<sup>13</sup> Advocates helping renters who suspect their landlord may be abusing RUBs should consider seeking help from tenant advocacy organizations or legal services housing experts.<sup>14</sup>

## **WHEN THE BILLING PROBLEM IS SYSTEM-WIDE**

When multiple members of a community experience the same billing issue at the same time, this could be a sign that there are larger system-wide problems. Systemic

overbilling can also contribute to unaffordability at the community or utility-wide scale and lead to stress, economic hardship, and disconnections.

Large-scale billing problems are surprisingly common. In San Diego, years of unexplainably high bills affecting almost 2,750 customers led to an audit of the city water utility's metering and billing system. The 2018 audit report found that 10 meter readers accounted for 71 percent of the erroneous water bills.<sup>15</sup> In response, San Diego decided to move to "smart" water meters—also called advanced metering infrastructure (AMI)—to automate meter readings. However, the new meters the city purchased from Mueller Water Products, based in Atlanta, were defective.<sup>16</sup> As of May 2020, only about 6 percent of San Diego's water meters had been replaced by functional AMI meters, but the costs for the meter replacement had ballooned by tens of millions of dollars.<sup>17</sup>

Similarly, in Baltimore, the city water department struggled for more than a decade with serious billing problems. In 2018 the Baltimore Department of Public Works issued 566 "erroneous inflated" water bills, most for more than \$50,000. And this wasn't the first systemic issue in the city. In 2012 the local news highlighted the plight of outraged homeowners about to lose their homes over water debt of as little as \$530—even as the homeowners argued that the underlying water bills were erroneous.<sup>18</sup> After a comprehensive audit in 2012, the city refunded \$4.2 million to 38,000 households for overbilling between 2009 and 2012. (A subsequent audit found further errors, which were never refunded.) Since then, the city has invested more than \$130 million into developing an upgraded digital metering system. However, a recent audit report found that tens of thousands of the new water meters in the city and county were not fully functional, and the city had not resolved more than 8,000 open tickets about water account problems, many of which had been open for years.<sup>19</sup>

In Pittsburgh, cutbacks to the city water utility's account management staff and metering systems led to wide-scale billing errors, with some bills showing increases of 600 percent. The errors led to missed payments and shutoffs, particularly in majority-Black neighborhoods.<sup>20</sup> These large-scale billing problems have led to community-driven campaigns for change.

## CONFRONTING WATER BILLING ISSUES IN DEKALB COUNTY, GEORGIA

DeKalb's water utility replaced its water meters, and soon thereafter many water customers received dramatically larger water bills. In 2016 DeKalb water customers formed a Facebook group to compare high water bill experiences in an attempt to understand what was going on. Membership grew rapidly, from 450 to more than 2,000 within months. Patterns started to emerge as residents shared their stories about malfunctioning meters, billing anomalies (with bills as high as \$5,000 and \$22,000), and terrible customer service. Moreover, there was no functional and civil way to dispute a water bill. DeKalb Water Watch organized a town hall meeting on the water billing problems, and media coverage followed.<sup>21</sup> It turned out there were problems with the meters, and the utility imposed a five-year disconnection moratorium to address the meter and billing issues. An independent audit of the water metering and billing processes, technologies, controls, and personnel eventually identified numerous problems causing the inaccurate water bills, including lack of coordination among departments, manual processes prone to human error, poor oversight of the contractors installing the meters, overreliance on temporary workers with high turnover, and limited procedures for correcting bills, among others.<sup>22</sup>

As these examples suggest, systemic billing issues can be challenging to address. The root causes of inaccurate billing can be complicated and may include software or billing process errors, dysfunctional governance, staffing problems, equipment failure, and more. Fixing the issue may require the utility to make expensive investments in upgraded infrastructure or software systems, which can create entirely new problems if the process is not managed properly (as in the San Diego and Baltimore examples outlined above).

To begin to address systemic billing issues, advocates may first need to convince the utility and/or regulators that there is a problem. To do so, it can be immensely helpful to gather data on the number of billing complaints, the number of disconnection notices and shutoffs, and where they are occurring. (Ideas and tools for how to do this are covered in the module on Data Collection and Transparency.) Gathering stories about inaccurate billing and how disputes have been handled (or not) is also important. In Baltimore, for example, media reports covering a local church that was repeatedly and egregiously overbilled prompted outrage and helped get the issue on the City Council's agenda.<sup>23</sup>

Putting pressure on government officials to hire an independent auditor can be an effective tactic. This puts the onus on local officials to investigate the root causes of a billing problem. However, it is important to maintain public pressure and scrutiny during the audit process, to ensure that the audit is fair and that proposed solutions are responsive to community needs.

Community organizers can also consider demanding a prohibition on shutoffs while a problem is being investigated and fixed. Customers will likely be held accountable for any water arrearages or debt that grows while shutoffs are suspended, however, so paying what they are able during this time can help avoid a very large water bill once regular collection practices start again.

Sometimes, even repeated investigations and attempts at reform will fail to fix the problem. In such cases, making

progress may require creative advocacy. In Baltimore, for example, after investments in new metering infrastructure failed to fix longstanding billing issues at the city Water Department, advocates mounted a successful campaign to reform the department through legislation. Among other changes, the Baltimore Water Accountability and Equity Act, enacted in 2020, creates a new Office of Water-Customer Advocacy that is responsible for collecting data on billing issues and customer complaints, investigating systemic problems, and recommending reforms. The law also establishes an independent appeals process to handle billing disputes.<sup>24</sup>

### UTILITIES CAN OFFER BILL TIMING OPTIONS TO FACILITATE ON-TIME PAYMENT

Some water utilities offer billing options that are designed to make it easier for households to pay regular utility bills on time without reducing the total amount billed. For example, some utilities allow customers to change the timing and frequency of their bill, which can help consumers better match their expenses to their regular payday, avoiding cash flow problems.<sup>25</sup> In addition, leveled billing options allow a household to elect to receive a consistent water bill every month based on its average monthly usage, increasing predictability and helping to eliminate "bill shock" on a month-to-month basis.<sup>26</sup>

### DISPUTING A WATER BILL (NOTICE AND AN OPPORTUNITY TO DISPUTE A BILL)

The process for disputing a water bill will vary by utility. Unfortunately, some water utilities may not make it easy to find instructions on how to dispute a bill or may not even have specific rules or processes for doing so. This is especially common among utilities that are not commission-regulated, such as most municipal utilities. (Tips on finding your utility's consumer protection rules are provided in the Water Shutoffs module, in the text box "Finding Your Water Utility's Consumer Protection Rules.")





Having clear, fair, and accessible processes for disputing a water bill is a critical consumer protection. Furthermore, under the Due Process Clause of the U.S. Constitution, customers of publicly owned water utilities (e.g., municipal utilities) are entitled to adequate notice of a disconnection and an opportunity to fairly dispute the charges.<sup>27</sup> In some circumstances, these constitutional protections may also apply to privately owned utilities—for example, when the rules for dispute resolution are set by the state utility commission.<sup>28</sup>

If your water utility does not have specific rules and procedures for disputing a water bill, or if the process is inadequate, creating a fair and effective dispute resolution process could be an important advocacy goal. To start, it may be helpful to look at the dispute resolution rules for nearby water companies in the state, as well as the state public utility commission's rules for private, investor-owned water companies and/or electric and gas companies. Commission-regulated electric utilities are particularly likely to have long-standing dispute resolution rules that can be used as models by advocates seeking to institute a new or improved process.

## LITIGATING DUE PROCESS RIGHTS

In recent years, civil rights organizations have brought cases in several jurisdictions challenging utilities' poor notice procedures and lack of a meaningful opportunity to challenge a water bill and alleging disproportionate harm to communities of color from water utility debt collection policies and practices.<sup>29</sup>

In 2019, for example, the NAACP Legal Defense Fund filed a case on behalf of Black residents of Cleveland, Ohio who alleged that they had been overbilled for water service, leading to service disconnections. Among other claims, the lawsuit alleges that although Cleveland Water has a process for customers to dispute their bills before a Water Review Board, the utility does not typically notify customers of this right. As a result, the lawsuit alleges, the city did not provide a reasonable opportunity for the residents to dispute their water bills, a violation of their due process rights under the 14th Amendment. In a preliminary ruling, a federal district court denied the city's motion to dismiss, citing not only the city's own municipal code requiring 15-day advance notice of shutoffs, but also a 1987 consent decree that established certain shutoff notice and dispute resolution requirements in order to protect due process rights.<sup>30</sup>

Baltimore offers an example of a place where advocates secured a detailed dispute resolution process through adoption of a new local law. The process includes initial review by an Office of Water Customer Advocacy within the utility and an opportunity for appeal to an independent board.<sup>31</sup>

Advocates may want to consider not only a local approach to improving dispute resolution processes, but also a statewide legislative approach to establish uniform minimum requirements for all water utilities. For example, California's Water Shutoff Protection Act requires all water utilities with at least 200 service connections to make available (including on the utility's website, if one exists) a written policy on disconnection for nonpayment. Each utility's policy must include a "formal mechanism for a customer to contest or appeal a bill."<sup>32</sup> The law prohibits disconnection for nonpayment while an appeal of a bill is pending.<sup>33</sup> The law does not otherwise specify any required elements of a bill dispute process, however.<sup>34</sup>

Elements of a strong dispute resolution process include the following:

- Dispute resolution rules and policies should clearly state which department or person is responsible for handling water billing disputes.<sup>35</sup> Some utilities have a dispute resolution board that includes customers.<sup>36</sup> The process for appealing a dispute outcome should also be spelled out for customers.<sup>37</sup>

- To ensure customers are aware of their rights, the rules and procedures for disputing a bill should be included on the customer's regular bill and published online in an easy-to-find location. This information should also be provided on shutoff notices. Materials should be translated into appropriate languages and presented in accessible formats.<sup>38</sup>
- There should be multiple ways of submitting a dispute, including via toll-free phone number, in person at a customer service center, by mail, or online.<sup>39</sup>
- A common protection is to prohibit disconnection pending the resolution of a good-faith billing dispute.<sup>40</sup> For consumers, it is advisable to pay the non-disputed portion of the bill(s) pending the resolution of the good-faith billing dispute, if possible. Some jurisdictions explicitly require this. Paying the non-disputed portion will help keep water debt from growing, and it demonstrates good faith on the part of the customer.
- There should be a reasonable time frame for the dispute to be investigated and a result reported back to the consumer.

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## KEY RESOURCES:

National Consumer Law Center's "Access to Utility Service" (6th ed.).

*"Access to Utility Service" provides a breadth of coverage on utility (mainly energy) billing practices and shut-off protections. The online version of this manual requires a subscription, but you might be able to find a copy in a local law library or legal services office.*

ENDNOTES

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- 2 Fran Spielman, “Chicago to Restart Voluntary Water Meter Installations After Three-Year Pause Amid Concern About Elevated Lead Levels,” *Chicago Sun Times*, May 18, 2022, <https://chicago.suntimes.com/city-hall/2022/5/18/23125361/water-meter-installations-lead-levels-service-lines-chicago-city-program-jan-1-deadline-state-law>. See also Chicago Department of Water Management, “MeterSave Program.”
- 3 Kyl Center for Water Policy at Morrison Institute, *Ten Tenets of Water Equity: Considerations for Community Water Systems*, Arizona State University, April 2021, 9–11, [https://morrisoninstitute.asu.edu/sites/default/files/water\\_equity\\_2021.pdf](https://morrisoninstitute.asu.edu/sites/default/files/water_equity_2021.pdf).
- 4 Kyl Center for Water Policy, *Ten Tenets of Water Equity*.
- 5 Phoenix City Code, Ch. 37, Art. V, Section 37-88, <https://phoenix.municipal.codes/CC/37-87>; City of Phoenix Water Services Department, *Water Equity Initiative*, June 23, 2020, 5, [https://www.phoenix.gov/waterservicessite/MediaAssets/WSD%20Home%20Page/EquityPaper\\_2020-06-23\\_Final.pdf](https://www.phoenix.gov/waterservicessite/MediaAssets/WSD%20Home%20Page/EquityPaper_2020-06-23_Final.pdf).
- 6 Georgia State Conference of the NAACP v. City of LaGrange, 940 F.3d 627 (11th Cir. 2019); Hunter Riggall, “LaGrange Settles Utilities Lawsuit Alleging Discrimination,” *LaGrange Daily News*, November 2, 2020, <https://www.lagrangenews.com/2020/11/02/lagrang-settles-utilities-lawsuit-alleging-discrimination/>.
- 7 For a copy of the settlement agreement as well as other filings related to Georgia State Conference of the NAACP v. City of LaGrange, Georgia, see Relman Colfax, “Case Profiles: Georgia Conference of the NAACP v. City of LaGrange,” accessed May 12, 2022, <https://www.relmanlaw.com/cases-LaGrange>.
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## 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.<sup>1</sup>

### 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.

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## 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> Renters are also disproportionately Black, Indigenous, or other people of color.<sup>6</sup> These groups are also more likely to experience other forms of social vulnerability such as housing or energy insecurity or chronic health problems.<sup>7</sup> 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.”<sup>8</sup>

When water utilities raise their rates, landlords often pass those extra costs on to renters.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> That report also contains additional detail on some of the approaches to delivering bill assistance discussed below.

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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.<sup>13</sup></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.<sup>14</sup></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.<sup>15</sup></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.<sup>16</sup></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.<sup>17</sup></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.<sup>18</sup></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. <sup>19</sup> However, the city does not advertise this option to renters. <sup>20</sup>
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.<sup>21</sup></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.<sup>22</sup></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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

### 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.<sup>29</sup> 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.<sup>30</sup> 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.

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

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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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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

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.<sup>35</sup> (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.<sup>36</sup>

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.<sup>37</sup>

For both of these approaches, however, it may be practically challenging—or impossible—for renters in multifamily buildings to coordinate payments from all residents.<sup>38</sup> 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.<sup>39</sup>

## 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.<sup>40</sup>

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).<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup>

### 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.<sup>44</sup>

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.<sup>45</sup> In practice, protecting renters from retaliation also requires ensuring that they can readily access legal services to enforce their rights.<sup>46</sup>

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## 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](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](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](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](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](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](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](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](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](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](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](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&eomp=vgl\_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](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](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&sectn=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&sectionNum=116916](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=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&sectionNum=116916](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC&sectionNum=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](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>.

## *Affordability and Assistance Programs*

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Relatively few water or sewer utilities offer bill affordability or assistance programs to help households afford their monthly water bills. If adequately funded and thoughtfully designed, however, such programs can play a critical role enabling low-income households to pay their bills and stay connected to essential water service.

This module addresses affordability and assistance programs that directly reduce the size of the monthly water bill on an ongoing basis, typically through a discount or bill credit.

For purposes of this module, the term “affordability and assistance programs” refers only to programs that are targeted to a discrete subset of households, such as low-income households. Changes to underlying rates that affect the bills of *all* water users are discussed separately in the Equitable Rates module.

Other utility programs and policies may also be considered types of assistance but are covered elsewhere in this toolkit. Programs aimed at eliminating accumulated water debt are addressed in the Water Debt module, while water conservation and plumbing repair programs are addressed in the Water Efficiency and Plumbing Repair Assistance module. Additionally, “lifeline rates,” which are covered in the Equitable Water Rates module, can function similarly to a bill assistance program when they are offered only to low-income customers.<sup>1</sup> Although these topics are addressed separately in this toolkit, in practice they are closely interrelated. Affordability and assistance programs that directly reduce monthly bills are most effective when they are paired with debt relief, water efficiency and plumbing repair assistance, and equitable rate structures as part of a comprehensive approach to water affordability.

This module begins by highlighting a distinction that many utility affordability advocates draw between income-qualified “affordability programs” and “assistance programs.” Unlike traditional assistance programs, true water affordability programs cap participating households’ monthly bills at a level deemed to be affordable based on the individual household’s income.

Next, the module briefly describes the existing landscape of water affordability and assistance programs, which are relatively rare and often under-enrolled and underfunded. It then explores affordability and assistance programs

in detail, including key program design considerations and examples of existing programs. A checklist of best practices that apply to both types of programs is offered in Appendix A.

This module then explores the potential for state-level water affordability or assistance programs, as distinct from utility-level programs. There are currently no permanent state-level programs in operation. Therefore, this discussion draws on experience from the energy sector and also discusses state-level water programs that have been proposed or, in certain cases, that have been enacted in legislation but are not currently operational. A brief discussion of federal-level assistance is also included.

Finally, this module explores how to fund water affordability and assistance programs. Existing programs are rarely funded sufficiently to meet the needs of all eligible customers. We describe funding models that can be used at the local, state, and federal levels. The discussion includes a focus on how to overcome legal barriers to funding local programs.

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### **SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:**

- Distinguishing affordability programs from assistance programs
  - Using percentage-of-income payment plans (PIPPs) and traditional water assistance programs to help households struggling with their water bills through discounts or bill credits
  - Incorporating best practices to improve participation rates and make affordability and assistance programs more impactful and equitable
  - Using state and federal strategies to overcome barriers to local program implementation
  - Funding affordability and assistance programs at the local, state, and federal levels
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## AFFORDABILITY PROGRAMS VERSUS ASSISTANCE PROGRAMS: KNOWING THE DIFFERENCE

The terms “affordability program” and “assistance program” are often used interchangeably. For many water advocates, however, they mean quite different things.

As noted in the Background module, this toolkit approaches water affordability mainly from the point of view of individual residential households—in particular, low-income households. From this perspective, an affordable water bill is one that the household can regularly and successfully pay on time without compromising its ability to meet other essential needs. In keeping with that definition, this module uses “affordability program” to refer to programs that limit each participating household’s water bill to a predetermined percentage of household income deemed to be affordable.

Among utility affordability advocates, such affordability programs are commonly known as percentage-of-income payment plans, or PIPPs. These plans can be designed in various ways, as discussed further below. Philadelphia and Baltimore are currently the only cities with PIPPs for water; more PIPPs exist in the energy sector. The Philadelphia and Baltimore programs are discussed at length in this module.

By contrast, more traditional assistance programs include a range of approaches, none of which is designed to achieve an affordable bill for each participating household. These include programs that offer a flat dollar-amount discount or a percentage discount on all or part of the water bill. Unlike with PIPPs, the size of the benefit in a traditional assistance program is determined without regard to how large the individual household’s remaining bill will be, and without regard to whether the household can afford that amount based on its income. As a result, households participating in ongoing assistance programs may or may not end up with a water bill they can afford, depending on the amount of assistance offered, the size of the bill, and the household’s monthly income. In practice, existing water assistance programs tend to offer far less support than would be necessary to make bills affordable for many, and perhaps most, participating households.

Because PIPPs directly consider a household’s ability to pay when determining the amount of the benefit, they have clear advantages over traditional assistance programs from an affordability perspective. However, there is no one-size-fits-all solution. A utility’s ability to successfully implement any particular program can be affected by many factors, such as the size of the utility; its financial and administrative capacity; its legal authority (and the capacity of its customer base) to fund a program with rate revenues; the availability of outside funding; political will and leadership; and the willingness of utility officials to try out new program designs and strategies.

Some sections of this module discuss ways to overcome barriers to implementing PIPPs—for example, through best practices in program design that can ease administrative challenges, state-level approaches to program administration, or alternative funding options that can help surmount financial barriers.

Advocates should also be aware that the terms “PIPP,” “affordability program,” and “assistance program” are sometimes used to describe programs that don’t match the definitions that this toolkit and many water advocates use. No matter what a program is called, understanding precisely how it works is important to assessing its potential benefits for affordability.

## AFFORDABILITY AND ASSISTANCE PROGRAMS ARE RARE IN THE WATER SECTOR—AND OFTEN UNDER-ENROLLED AND UNDERFUNDED

True affordability programs—that is, PIPPs—are rare in the water sector. Only two water PIPPs exist anywhere in the United States, and both are relatively new. Philadelphia launched a PIPP in 2017 and Baltimore launched one in 2022. PIPPs have a longer history in the energy sector, dating back at least to 1983.<sup>2</sup>

Although some water utilities offer assistance programs, most still do not. A nationwide survey of 745 large and medium-size water and wastewater utilities, in 2016, found that under 30 percent offered any kind of assistance program.<sup>3</sup> Moreover, only about half of those programs

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Affordability programs limit household bills to a pre-determined percentage of household income.

Assistance programs provide a set amount of assistance regardless of the resulting bill size.

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were designed to provide ongoing bill reductions.<sup>4</sup> It is very likely that, among small water and wastewater utilities, assistance programs are even less common. Apart from utility-level programs, 49 states currently administer a temporary federal water assistance program, the Low Income Household Water Assistance Program (LIHWAP), which was established in 2021 as a COVID-19 relief measure.<sup>5</sup>

In the energy sector, low-income assistance programs have been available nationwide for at least 40 years via the federally funded Low Income Home Energy Assistance Program (LIHEAP). In most states, complementary state-funded or utility-funded energy assistance programs are also available.<sup>6</sup>

For those utilities that offer water affordability or assistance programs, enrollment is often a significant challenge. According to one estimate, most existing utility-level water assistance programs reach only around 10–15 percent of potentially eligible households.<sup>7</sup> This is a major

concern since, by their nature, targeted affordability and assistance programs benefit only those households that successfully enroll.

One notable exception is in California, where at least some investor-owned water utility assistance programs have achieved enrollment rates of around 50–60 percent. This is due in part to state-mandated data sharing between investor-owned water and energy utilities regarding their low-income customers.<sup>8</sup> However, even that participation rate falls far short of the state’s assistance program for investor-owned energy utilities, California Alternate Rates for Energy (CARE), which has a participation rate of over 90 percent of eligible households for most energy utility companies.<sup>9</sup>

Many existing assistance programs are also insufficiently funded to reach all households in need. We discuss this in the “Funding Affordability and Assistance Programs” section toward the end of this module.

**Need assistance with your water and/or wastewater bill?**

You may be eligible for the Low Income Household Water Assistance Program

**What is LIHWAP?**  
The Low Income Household Water Assistance Program (LIHWAP) is available statewide and provides Maryland households with financial relief toward water and/or wastewater bills. Eligible households may receive up to \$2,000. LIHWAP funding is limited and applications will be accepted on a first come, first served basis.

**Who is Eligible?**  
To be eligible for LIHWAP, an applicant must meet the following criteria:

- The applicant (or a member of the household) must be a U.S. citizen or qualified non-citizen.
- The applicant must be a Maryland resident who is responsible for a water and/or wastewater bill issued by a public water system or treatment works and must live at the property for which assistance is being provided.
- The applicant must submit a current water and/or wastewater bill showing accrued arrearages of at least \$100.
- The total household income (previous 30 days) may not exceed the gross income threshold which is 60% of the State Median Income.
- An applicant may be categorically eligible if they (or someone in their household) are receiving one of the following benefits at the time of application:
  - Low Income Household Energy Assistance (MEAP)
  - Supplemental Nutrition Assistance (SNAP)
  - Temporary Cash Assistance (TCA)
  - Temporary Disability Assistance (TDAP)
  - Supplemental Security Income (SSI)
  - Emergency Rental Assistance (ERAP)
  - Means Tested Veterans Benefits

**Maximum Monthly Gross (before taxes) Income Standards for Households**  
(Effective July 1, 2021 to June 30, 2022 based on 60% of the State Median Income)

1	\$3,121 / mo
2	\$4,081 / mo
3	\$5,041 / mo
4	\$6,002 / mo
5	\$6,962 / mo
6	\$7,922 / mo
7	\$8,102 / mo
8	\$8,282 / mo

For each additional household member add: \$180 / mo

**How Do I Apply?**  
You can apply for LIHWAP assistance safely and conveniently online using our consumer portal at [mythink.maryland.gov](https://mythink.maryland.gov). If you are unable to apply online, you may request an application be mailed to you through our service hotline at 1-800-332-6347 or by calling your local Department of Social Services or OHEP office. A printable paper application can be found at [dhs.maryland.gov/office-of-home-energy-programs/low-income-household-water-assistance-program](https://dhs.maryland.gov/office-of-home-energy-programs/low-income-household-water-assistance-program).

**Questions?**  
You can contact us Monday through Friday, 8:30am to 5:00 pm by calling our customer service hotline at 1-800-332-6347 or by calling your local Department of Social Services or Office of Home Energy Programs Office.

**Funding is Limited**  
Funding is limited and applications will be accepted on a first come, first served basis. In order for an applicant to receive LIHWAP assistance, the water/wastewater supplier has to agree to accept payment from the Department of Human Services on behalf of the customer.

DHS MARYLAND Water Assistance

© Maryland Department of Human Services

An informational flyer promoting the Maryland Department of Human Services’ Low Income Household Water Assistance Program (LIHWAP).

## QUESTIONS TO CONSIDER:

As you develop an advocacy plan, the following questions may help you identify needs and opportunities concerning affordability and assistance programs:

- What programs, if any, are currently offered by your water provider to help low-income customers reduce their monthly water bills?
- If a local program exists:
  - Who administers the program?
  - What are the eligibility requirements, and how much is the monthly benefit? How does that compare to a typical monthly bill? Is the discounted bill affordable, even for a very low income household?
  - What is the process to apply? Where can consumers find the application? Is it easy to understand and complete?
  - How does the utility advertise the program to its customers?
  - Is the program funded through rates, donations, or some other source? Are there sufficient funds for all households that are eligible?
  - How well is the program working? Are there data available to demonstrate participation levels and the impact on affordability? For instance, has the program helped to reduce shutoffs or outstanding debt?
- What programs, protections, and/or funding do nearby water and energy utilities have to address utility bill affordability? Are there good models from other utilities, municipalities, or states that could be persuasive to the decision makers you need to win over to create a local program?
- What real or perceived legal barriers exist to creating an effective program in your area?
- Do you want to focus on creating or improving a utility-level program, a state-level program, or both?

## DESIGNING AFFORDABILITY AND ASSISTANCE PROGRAMS

This section of the module explores the landscape of existing affordability and assistance programs, highlighting key considerations for advocates, utilities, and regulators interested in developing or improving local programs. First it explores the design of affordability programs and assistance programs, including examples of existing utility-level programs within the water sector. It then discusses best practice recommendations to improve the effectiveness and accessibility of both affordability and assistance programs. (A longer list of best practices is also provided in Appendix A.)

### Designing affordability programs (percentage-of-income payment plans)

Water affordability programs (i.e., percentage-of-income payment plans or PIPPs) aim to ensure that participating households can pay their bills by capping the monthly bill at a predetermined percentage of the household's income deemed to be affordable.

PIPPs have been used for years in the electric and gas sectors.<sup>10</sup> They are relatively new in the water context. However, the idea of using PIPPs to ensure water affordability has been around for a long time. In the early aughts, water advocates in Detroit worked with utility affordability specialist Roger Colton to develop a proposal for a local water affordability program based on percentage of income.<sup>11</sup> Although that proposal was not implemented, it laid the groundwork for the water PIPPs that have been created elsewhere.<sup>12</sup>

In designing a PIPP, a key choice is what percentage of income the bills should be capped at. There is no consensus on what percentage constitutes an “affordable” amount to spend on water costs.<sup>13</sup> The two existing examples of PIPPs in the water sector—Philadelphia’s Tiered Assistance Program and Baltimore’s Water4All program—use caps of 1–4 percent of household income.<sup>14</sup> (See below for more on these programs.) What counts as an affordable bill will also depend on whether the bill also includes wastewater, stormwater, and any non-water fees.

The simplest approach is to use a single percentage-of-income cap for all households. Some programs in the energy sector use this method.<sup>15</sup> However, the two existing PIPPs in the water sector both use a tiered approach to setting the maximum bill. In those programs, the cap varies according to household income, with lower-income households’ bills capped at a smaller percentage. This approach is more equitable than a single cap, since it recognizes that the lowest-income households have tighter budgets and can afford to spend a smaller percentage of their income on water.

There are also several possible ways to calculate the monthly bill. The most straightforward application of the PIPP concept is to simply multiply the household’s monthly income by the percentage-of-income cap and set the monthly bill at that amount. Philadelphia’s water affordability program takes this approach. Other programs, including Baltimore’s, use a different approach whereby a single fixed credit is calculated for the entire

year and apportioned across the household’s monthly bills. The differences between these methods, including the advantages and disadvantages of each approach, are discussed further in Appendix B.

PIPPs can and should incorporate the best practices in program design described below and in Appendix A. Coupling the PIPP with debt relief and conservation assistance is especially important to holistically addressing affordability needs.

### PIPPs in practice: The Philadelphia and Baltimore programs

As mentioned above, there are currently two water PIPPs, both administered by municipal utilities: Philadelphia’s Tiered Assistance Program (TAP) and Baltimore’s Water4All program. These programs are described below, and a chart comparing them is provided in Appendix C.

#### Philadelphia’s Tiered Assistance Program

Following years of advocacy by legal advocates and community activists, the Philadelphia City Council unanimously passed an ordinance in 2015 requiring the city to establish an income-based water affordability program for water and wastewater services.<sup>16</sup> The resulting Tiered Assistance Program was launched in 2017, at which time it marked the first percentage-of-income payment plan

for water services in the country.<sup>17</sup> (Note: although TAP’s name includes the words “assistance program,” it is in fact a PIPP, which qualifies as an affordability program by the definition used in this module.)

TAP aims to ensure a stable and affordable bill for qualifying households through a tiered, income-based billing structure.<sup>18</sup> Customers who meet certain household income thresholds may apply to receive a water, wastewater, and stormwater bill that is capped at a percentage of their monthly household income, with a minimum bill of \$12. In addition, customers whose household income exceeds the maximum threshold may participate in the program if they experience “special hardship,” such as a loss of employment or serious illness.<sup>19</sup>

The percentage-of-income cap for participating households varies depending on their income level, as shown in the following chart.

Household income threshold (percentage of federal poverty level)	Maximum bill amount (percentage of monthly household income)
0–50%	2%
51–100%	2.5%
101–150%	3%
>150% in cases of special hardship	4%

## REBUTTING UTILITY OBJECTIONS TO PIPPS

Advocates interested in getting their water utility to adopt a PIPP often encounter resistance from utilities. There is no one-size-fits-all solution for every community, and variables such as the size of a utility can affect whether a PIPP is feasible. But in the face of utility objections, persistence pays. The two existing PIPPs in the water sector were the result of years-long advocacy campaigns and extensive, sometimes adversarial negotiations with the utilities and key decision makers. And advocates are still fighting to improve those programs.

One common objection is that operating a PIPP is not administratively feasible. When weighing alternative approaches, a utility may argue that a traditional assistance program—using a uniform dollar amount or percentage discount on bills for all participants—is simpler and easier to implement than a PIPP. Claims such as these should be greeted with skepticism. Advocates should push the utility to articulate precisely what is more challenging about administering a PIPP, work on joint problem-solving, and bring in outside technical expertise.

Moreover, concerns about administrative challenges sidestep the question of whether any alternative approach under consideration will actually be effective. Utilities must do the work, in consultation with community representatives, to evaluate which approaches are likely to achieve affordable access to essential water services for all of its customers. For the reasons explained earlier in this module, traditional assistance programs may help move the needle but are unlikely to achieve the goal.

Utilities may also object to PIPPs on the basis of cost. The utility may claim that the program’s costs would burden nonparticipating customers, but this concern may rest on unfounded assumptions. One critical point, often overlooked, is that costs can be spread not only across residential customers but across all customers. For example, in Philadelphia, where the water utility’s PIPP takes this approach, the extra charge to fund the program as of September 2021 was a modest \$0.00009 per gallon for water and \$0.0001 for sewer service.<sup>20</sup> For the average residential household in Philadelphia using 500 cubic feet (3,740 gallons) of water each month, the charge amounts to around \$0.89 per month, or \$10.68 per year.<sup>21</sup>

Moreover, an effective affordability program can actually benefit a utility financially, since households receiving affordable bills are far more likely to pay those bills consistently and on time. Utilities also save on the cost of collecting unpaid bills and disconnecting/reconnecting households that are unable to pay. This argument is discussed later in this module, in the text box “The ‘Business Case’ for Water Affordability Programs: Financial Benefits to the Utility.”

Participation in TAP is limited to households that maintain an account with the Water Department and are billed directly. Renters who do not have an account can apply to receive water service in their own name, but this is subject to the landlord's consent.

Once a household has submitted a TAP application, shutoffs to the property due to nonpayment of the water bill are automatically suspended for 14 days. If water service has already been shut off for nonpayment, it must be restored.

Importantly, TAP also incorporates a pathway to debt relief for participating households.<sup>22</sup> The debt relief component of TAP is discussed in the Water Debt module.

Evidence suggests that TAP has improved water affordability in Philadelphia. Enrollment for TAP significantly exceeds that of the city's previous Water Repayment Assistance Program (17,148 households as of 2022 versus around 10,000 for WRAP).<sup>23</sup> Importantly, enrolled households receive a bill that is genuinely affordable in that it is limited to a percentage of monthly income. However, enrollment still lags far below the estimated number of eligible households (around 60,000).<sup>24</sup> The Water Department and advocates are engaged in ongoing efforts to improve outreach and recruitment.<sup>25</sup>

**Get help with water bills.**

**Unpaid Bills?**  
Grants and Debt Forgiveness could help reduce your debt.

**Special Hardships**  
Qualify after illness, job loss and much more!

**Don't Wait!**  
Shutoffs for unpaid bills will resume!

Customers in the **Tiered Assistance Program (TAP)** or receiving a **Senior Citizen Discount** are protected from enforcement and penalties.

[water.phila.gov/care](http://water.phila.gov/care) Scan to visit: Or call (215) 685-6300

PHILADELPHIA WATER DEPARTMENT CITY OF PHILADELPHIA DEPARTMENT OF REVENUE WATER REVENUE BUREAU

12/29/21

An informational flyer promoting the Philadelphia Water Department's (PWD) Tiered Assistance Program (TAP).

TAP will continue to evolve as advocates continue to push for improvements. A key focus in coming years will likely be expanding enrollment, especially of renter households, which are currently underrepresented in the program.<sup>26</sup>

### Baltimore's Water4All Program

Like Philadelphia's program, Baltimore's water affordability program was the result of years of advocacy by local water advocates, including the Baltimore Right to Water Coalition and its allies.<sup>27</sup> After a protracted legislative process, the Baltimore City Council enacted the Water Accountability and Equity Act in November 2019.<sup>28</sup> Among other reforms, the law directed the city's Department of Public Works to develop an income-based water affordability program. Water4All was launched in February 2022 after repeated delays.<sup>29</sup>

Water4All was directly modeled after Philadelphia's Tiered Assistance Program. Like Philadelphia's program, Water4All aims to ensure a stable and affordable bill for income-qualified households through a tiered, income-based billing structure. The income tiers and accompanying bill caps are provided below:

Household income threshold (percentage of federal poverty level)	Maximum bill amount (percentage of monthly household income)
0-50%	1%
51-100%	2%
101-200%	3%

Water4All also incorporates a debt relief component, discussed in the Water Debt module.

Unlike the Philadelphia program, Water4All is open not only to account-holding customers but also to renters who reimburse their landlord for water service in a payment separate from the rent.<sup>30</sup> The law that created the program required the city to provide direct payments to renters in this situation, currently offered via prepaid debit cards. Though important to allow renters to participate, this provision has proved controversial. Under the current approach, recipients may be required to report the payments as taxable income, which could potentially affect their eligibility for other government programs such as the Supplemental Nutrition Assistance Program (SNAP) or rental assistance.<sup>31</sup> As a temporary solution, advocates have urged the city to use flexible federal funds from the American Rescue Plan Act to supply the renter payments, which would not count as taxable income under Internal Revenue Service guidance.<sup>32</sup>

Water4All will undoubtedly continue to evolve in the coming years as administrators and advocates continue to troubleshoot and improve the program.



## Designing assistance programs

Water utilities offer a variety of monthly bill assistance programs that do not qualify as true affordability programs by the definition used in this toolkit. Many are targeted to low-income households, such as households with income under a certain percentage of the federal poverty level or area median income. Other programs are more narrowly targeted, for example to low-income seniors, people with disabilities, or veterans.

Most existing water assistance programs limit participation to households that are billed directly by the water utility, with some available only to owner-occupants of single-family homes. This approach excludes renters who pay for water and sewer service indirectly, either through their rent or through a separate payment to their landlord. Options to include renters (and, in some cases, their landlords) in assistance programs are discussed in the Protections and Support for Renters module.

Assistance programs can be designed in various ways, depending on how the water provider structures its rates and charges. For example, the discount may be calculated as a flat dollar amount or a percentage discount. It may be applied to a volumetric charge, a fixed charge, or the total bill. (A volumetric charge is a per-gallon charge for water usage. A fixed charge is a portion of the bill that is the same regardless of volume. Many water utilities use a rate structure that includes both variable charges and fixed charges.)

Sometimes a combination of discounts is used. For example, the Pittsburgh Water and Sewer Authority's Bill Discount Program offers a reduction on several fixed charges and, for very low income customers, a percentage discount on the volumetric charge.<sup>33</sup>

From an affordability perspective, the important question is whether the discount is large enough to reduce the final bill to an affordable level. A recent report examining ongoing assistance programs at 20 large U.S. drinking water utilities found that monthly discounts for typical households varied widely. The amount of the discount was

not correlated with the cost of water in a city, suggesting that assistance programs are often not designed to ensure affordability.<sup>34</sup> Another recent paper examined the assistance programs offered by 59 water and sewer utilities in California and Texas. It found that, for many low-income households served by those utilities, the available discounts were likely too small to make water bills affordable.<sup>35</sup>

Even where assistance programs provide a deep enough discount to reduce typical bills to an affordable level, they may not result in affordable bills for households with especially low incomes or especially high water usage. This is a fundamental challenge with assistance programs, as compared with PIPPs, which provide a customized maximum bill based on the household's individual financial situation.

One way an assistance program could better tailor benefit levels to household circumstances— though still falling short of a PIPP—is by offering different levels of assistance depending on which of several income brackets the household falls into. Income brackets could be, for example, based on percentage of the federal poverty level (0–50 percent of the federal poverty level, 50–100 percent of the federal poverty level, etc.). Compared with a flat discount, this approach can more effectively prioritize the use of program funds.

Some water assistance programs use this design. For example, DC Water provides three different levels of assistance, depending on whether a household qualifies as very low, low, or moderate income.<sup>36</sup>

A common barrier for assistance programs of all kinds is inadequate funding. Many assistance programs are supported solely through voluntary donations by the utility, its employees, or other customers and are chronically underfunded. The topic of funding is addressed further in the final section of this module, “Funding Affordability and Assistance Programs.”

Like PIPPs, assistance programs should consider the best practices described below and in Appendix A.

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A tiered approach to providing water assistance can better tailor benefit levels to household income, improving affordability.

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## A HYBRID MODEL? CALIFORNIA'S ENERGY PIPP PILOT PROGRAM<sup>37</sup>

In 2021 the California Public Utilities Commission ordered the state's four largest energy utilities to implement a limited-enrollment "PIPP pilot program." Actually, the program design could more accurately be described as an assistance program that borrows a central element of a PIPP—namely, an income-based cap on bills for participating households.

Under the California pilot, participating households will receive a maximum monthly energy bill that varies according to which of two income brackets the household falls into. Those with incomes between 0 and 100 percent of the federal poverty level will have their combined gas and electric bills capped at an amount equal to 4 percent of income for a household at 50 percent of the federal poverty level. Those with incomes of 101 to 200 percent of the federal poverty level will have their bills capped at amount equal to 4 percent of income for a household at 150 percent of the federal poverty level.

This program design is similar to a true PIPP in that it caps the monthly water bill using an affordability benchmark that considers utility costs as a percentage of income. However, rather than setting a customized maximum bill for each participating household based on its specific monthly income, the California program sets the maximum bill amount using a proxy household at the middle of the household's income bracket. Administering the program in this way is simpler than calculating a customized benefit for each household, but it forgoes the individualized approach that enables a PIPP to ensure affordable bills for each participating household. Within either income bracket, many households will have their bills capped at a level that exceeds, potentially by a large amount, 4 percent of their household income; conversely, many other households will end up with a bill that falls below 4 percent of their income.

### Best practices for effective and equitable programs

Experiences from both the water and the energy sectors point to numerous best practices that should be considered when designing and implementing both PIPPs and traditional assistance programs. Many of these considerations were noted by advocates interviewed for this toolkit. Some of the most important considerations are described briefly below. Appendix A provides more detail, along with additional best practices and illustrative examples.

The most fundamental considerations will be eligibility requirements and benefit levels. Both income eligibility thresholds and benefit levels should be set taking into account local factors including cost of living. Income eligibility thresholds should be set high enough to reach all water-burdened households.<sup>38</sup> Benefits should be sufficient to reduce bills to an affordable level for as many participants as possible. In addition, care should be taken not to exclude those households likely to be most in need of support, such as those without immigration documentation or lower-income renters who pay for water through their rent.

Program administration should be designed to maximize enrollment of eligible households. Effective approaches include streamlining the application process; providing multiple ways to apply (e.g., online, by mail, and in person); proactively marketing the program to the eligible population, especially to households with current water debt or a history of missed payments or shutoffs; and partnering with local organizations that are trusted in the community to do effective outreach. One of the most effective ways to increase enrollment is through "categorical eligibility," whereby proof that a household is

already receiving another income-qualified benefit (such as energy assistance or SNAP benefits) prequalifies it for water assistance.

It is critical for communities that are most severely impacted by water affordability-related issues to be meaningfully involved in the development and implementation of any new or improved program. People and communities that have faced unaffordable bills, lived with the threat or reality of water shutoffs, and struggled with mounting water debt have deep, firsthand knowledge of the problems with the current system—problems that utilities and other decision makers may poorly understand or be completely unaware of. Utilities must often be reminded that the perspectives of impacted individuals and grassroots, community-based organizations are essential to designing a successful program.

Utilities need to be accountable, too, for successful implementation of a program. Regular public reporting and independent program evaluation are important accountability measures.

Finally, programs that directly reduce monthly bills for low-income households must function as part of a holistic strategy that encompasses debt relief, improved water efficiency, and more equitable rate structures. For example, many households enter an assistance or affordability program carrying water debt from overdue bills as well as interest and penalties that may have accrued over time. A utility must offer an affordable way to eliminate that debt, in order to ensure that total monthly payments (for current usage plus any repayment of overdue bills) do not become unmanageable. (For more on these complementary strategies, see the Water Debt, Water Efficiency and Plumbing Repair Assistance, and Equitable Water Rates modules.)

## STATE AND FEDERAL APPROACHES TO DELIVERING AFFORDABILITY/ASSISTANCE PROGRAMS

With the exception of LIHWAP, the temporary federal program created as a COVID-19 relief measure, all currently operating affordability and assistance programs in the water sector are administered at the municipal or individual utility level. There are significant drawbacks to a purely local approach. Administering programs locally often results in a patchwork of programs across a state, with the ability to access assistance varying widely from place to place. In addition, small water utilities, which are the majority of water systems in the United States, may find it difficult to fund and operate robust affordability or assistance programs due to limited budgets and administrative capacities.

In theory, programs administered and funded at the state or federal level could help overcome some of these obstacles. A state-level approach, for example, can ensure that all households in a state have access to a water affordability or assistance program, providing a uniform, baseline level of assistance to customers throughout the state. A state-level approach can also help overcome the financial or political obstacles faced by struggling water and wastewater systems in establishing a program. There are also potential administrative advantages, since a state-level program can leverage existing administrative infrastructure (for example, a state agency that administers food assistance or heating assistance) to handle intake and enrollment.

This section provides a survey of recent efforts to create state- or federal-level water affordability or assistance programs and highlights examples from the energy sector that advocates can draw from. Issues related to funding, arguably the biggest challenge for any program, are dealt with separately in the final section of this module, “Funding Affordability and Assistance Programs.”

### State-level programs

No state currently operates a permanent, state-level, funded water affordability or assistance program.<sup>39</sup> In 2021 Illinois enacted a law that creates a state-level water assistance program, but it is not yet operational, and participation by utilities is voluntary.<sup>40</sup> This program is discussed further in the “Funding Affordability and Assistance Programs” section, below. A separate Illinois law, also enacted in 2021, creates a statewide assistance program applicable to customers of all utilities, but it becomes effective only when and if the legislature appropriates funds.<sup>41</sup>

On a temporary basis, almost every state and territory is operating an emergency water assistance program using federal funds provided under LIHWAP.<sup>42</sup> This program is a federal block grant for states to create a water affordability program per federal rules regarding design, administration, and implementation. In some states, this might provide

a logical starting point to build out a state-level water affordability or assistance program.

In several states, legislation has been introduced to create a permanent, statewide water affordability or assistance program. One of those, California, first passed legislation directing the state’s Water Resources Control Board to develop a plan for a statewide water assistance program. The plan, delivered in early 2020, discusses at length the various considerations involved in such an undertaking.<sup>43</sup> Legislation is now pending to authorize a statewide program based on the plan.<sup>44</sup> Bills to create state-level programs are also pending in New Jersey and Michigan.<sup>45</sup>

Short of a true statewide program, states can require water and wastewater utilities to implement affordability or assistance programs and establish minimum standards for those programs, or otherwise facilitate (without mandating) creation of local programs. For example, the California Public Utility Commission has encouraged the state’s nine largest investor-owned water utilities to develop low-income assistance programs. The commission has updated its expectations for those programs over the years to improve uniformity and respond to changing conditions.<sup>46</sup> In Ohio, legislation was introduced to require all water utilities, both investor-owned and publicly owned, to establish affordability programs.<sup>47</sup> States could offer planning grants to water and wastewater utilities to support the development of local affordability or assistance programs, as Michigan has done.<sup>48</sup> States could also attach strings to water or wastewater infrastructure funds they provide to utilities, requiring utilities receiving those funds to, for example, develop and/or implement local assistance or affordability programs.<sup>49</sup>

In contrast to the water sector, there are many state-level programs in the energy sector. These could provide inspiration for water programs. Several states operate state-level affordability programs (i.e., PIPPs) for electric and gas service. For example, Illinois has a state-level PIPP that caps combined electric and gas service bills at 6 percent of household income, with a minimum bill of \$10.<sup>50</sup> (If a household doesn’t pay for heat, then the bill is set at 2.4 percent of income, with a \$5 minimum bill.) Other states with state-level electric and gas PIPPs include Colorado,<sup>51</sup> New Jersey,<sup>52</sup> and Ohio.<sup>53</sup>

Some states have likewise taken a state-level approach to delivering electric and gas assistance (i.e., non-PIPP) programs.<sup>54</sup>

In some cases, state-level energy assistance programs have been established through laws passed by the state legislature. This was the case for the Illinois energy PIPP, for example.<sup>55</sup> By contrast, the Colorado, New Jersey, and Ohio energy PIPPs were established by state utility regulators. Even in the latter case, however, a legislative statement of policy can provide an impetus for a state agency to act. For example, New Jersey’s program relies on

a state law declaring “that it is the policy of this State to ... ensure universal access to affordable and reliable electric power and natural gas service.”<sup>56</sup>

Advocates looking to advance water affordability goals in the legislature or governor’s office should consider whether energy affordability or assistance programs in their state can offer good models to emulate. Advocates may want to consult with community-based organizations, agencies that administer those energy programs, and energy affordability advocates familiar with the strengths and weaknesses of those programs for insight into how they work.

State-level legislation can also be used to strengthen existing assistance programs. In Massachusetts, state utility commission–regulated electric and gas utilities have for decades had discount programs negotiated in rate case proceedings. A state electric restructuring law essentially locked in the electric discounts into law, and subsequent 2005 legislation expanded eligibility for the program.<sup>57</sup>

Sometimes the political dynamics in a state are not conducive to pressing for a full-blown assistance or affordability program. It may be strategic in those circumstances to see if there is a way to build a foundation for a future program. For example, state lawmakers could pass legislation or a resolution that recognizes a human right to safe, affordable water as a foundation to frame additional legislation, programs, and policy.<sup>58</sup> Advocates in California have achieved many successes over the last decade using this approach.<sup>59</sup> State legislatures could also require an agency to develop a plan for funding and implementing a statewide water affordability program, as in California.<sup>60</sup>

## Federal programs

The only time Congress has ever funded low-income water assistance was during the COVID-19 pandemic. A total of \$1.1 billion was distributed to states (and Tribes) to run the temporary Low Income Household Water Assistance Program (LIHWAP), similar to the long-standing Low Income Home Energy Assistance Program (LIHEAP).<sup>61</sup> States have until September 30, 2023 to spend these funds.<sup>62</sup> As of March 30, 2022, over 150,000 households had received LIHWAP assistance, including over 91,000 households for whom LIHWAP benefits enabled restoration of water service or prevented a water shutoff.<sup>63</sup> The U.S. Department of Health and Human Services maintains a “data dashboard” showing progress in each state, which is updated quarterly.<sup>64</sup>

Congress has also recently considered providing grants for local water affordability or assistance programs. (See the discussion below under “Funding Affordability and Assistance Programs.”) However, there is no pending legislation to create a permanent low-income water assistance program with nationwide reach. A proposed amendment to the 2021 Bipartisan Infrastructure Bill, which was not included in the final, enacted law, offers one possible template for such a program.<sup>65</sup>

In certain circumstances, federal guidelines under the Clean Water Act can be used to drive wastewater utilities to consider and adopt local affordability programs. Advocates should take full advantage of this when the opportunity arises—for example, when the utility is negotiating a state or federal consent decree or permit to reduce sewage overflows.<sup>66</sup>

## KEY CONSIDERATIONS FOR STATE-LEVEL AFFORDABILITY OR ASSISTANCE PROGRAMS<sup>67</sup>

- Determine which state agency should run the program.
- Make sure to provide funding to the responsible state agency for administrative costs, but consider placing a cap on those costs.
- Consider providing some funding to individual utilities (perhaps just small utilities) to help defray the startup costs of participating (e.g., modifying billing systems to be able to apply credits to customer accounts).
- Consider what types of assistance should (or must) be included in the program, such as bill discounts, debt relief, crisis assistance, or water efficiency assistance.
- Include water and wastewater (and ideally stormwater) assistance in the same program.
- Require the responsible state agency to develop annual program plans for how to spend funds, incorporating public input.
- Consider creating a stakeholder advisory committee.
- Consider how the program can coordinate with other state-run utility assistance programs (and other state-run social service programs for low-income households).
- Collect data on affordability metrics and consider a third-party independent evaluation



## FUNDING AFFORDABILITY AND ASSISTANCE PROGRAMS

Affordability and assistance programs—whether run at the local, state, or federal level—can be funded from local, state, or federal sources or a combination of these. Currently, apart from temporary COVID-related funds, there are no federal or state funding sources for program implementation.

Absent new federal or state funding, to offer a robust affordability or assistance program, a utility typically must use rate revenues to pay for it. Other local funding sources are inherently limited.<sup>68</sup> Or they are likely to be limited by competition with other essential city services for general local tax revenue.<sup>69</sup> Of course, relying on local ratepayer revenue also has its limitations, especially in a smaller system serving an area with high levels of poverty and a limited customer base. (Some utilities may also face real or perceived legal constraints on the use of ratepayer funds, as discussed below.)

When using rate revenues to fund a program, the best way to limit the cost to nonparticipating customers is to spread the cost across all residential *and* nonresidential customers. Philadelphia’s percentage-of-income program, for example, is funded in this way.<sup>70</sup> In the Detroit area, multiple communities spread out the costs of a modest assistance program among all retail customers by jointly funding a program through their regional, wholesale water and wastewater utility.<sup>71</sup>

Critically, program costs can be offset substantially by financial benefits that accrue to the utility. This can be described as the “business case” for low-income affordability or assistance programs. (See text box below.) Advocates should ensure that utilities account for these benefits in any financial assessment of a potential ratepayer-funded water assistance or affordability program.

More options become available when considering state-level funding sources. For many utilities—especially the small ones that make up the vast majority of water and sewer systems nationwide—it may be impractical to self-fund a program at the necessary scale. State-level sources can remove some or all of the funding burden from individual utilities.

States can rely on general annual appropriations to fund a statewide program or to provide grants to locally run programs. As noted above, no state currently does so. In Michigan, although the state does not fund local affordability or assistance programs, it has offered “planning grants” for the development of such programs.<sup>76</sup>

States could also use flexible federal dollars to support water assistance, where the rules permit. For example, states may use federal money from the Clean Water State Revolving Fund (which subsidizes local wastewater infrastructure projects) to support local low-income assistance programs, under certain limited circumstances.<sup>77</sup> In past years, Delaware offered communities participating in the revolving fund program the chance to apply for grants to support low-income customer assistance.<sup>78</sup> More recently, on a temporary basis, some cities elected to use a portion of funds provided by the federal American Rescue Plan Act to support emergency water debt relief programs. (A few examples are discussed in the Water Debt module.) A proposed bill in New Jersey would use \$75 million in American Rescue Plan Act funds as seed money for a permanent, state-wide water assistance program.<sup>79</sup> However, this is a one-time source of federal funding.

To sustain a statewide program, an alternative to general annual appropriations is to establish a dedicated source of funding. The California Water Resources Control Board, in its report to the state legislature proposing a statewide low-income assistance program, discussed

### THE “BUSINESS CASE” FOR WATER AFFORDABILITY PROGRAMS: FINANCIAL BENEFITS TO THE UTILITY

When low-income utility customers are billed an amount they can afford, they are much more likely to pay those bills voluntarily and on time, providing a more stable, predictable revenue stream for the utility.<sup>72</sup> This can also reduce the utility’s costs of collecting unpaid debts, disconnecting customers who fall behind on their payments, and reconnecting them when they have caught up.

As a result, in the energy sector, studies have shown that affordable bill programs help energy utilities improve their bottom lines, through increased customer revenues and/or increased “net back” (i.e., customer revenue minus the costs of collecting unpaid bills).<sup>73</sup>

It is not a novel idea to apply this business case to the water sector. Indeed, some national leaders in the water utility sector have come to embrace this concept.<sup>74</sup> It is even reflected, to some degree, in the water utility sector’s industry-standard rate-setting manual.<sup>75</sup> Yet it remains underappreciated by most water and wastewater utilities, which tend to view the financial implications solely in terms of the face value of discounts provided to participating customers.

Natural Resources Defense Council anticipates releasing, later in 2022, a spreadsheet-based tool for utilities to evaluate, based on utility-specific data, the business case for adopting water affordability or assistance programs. Look for that resource to be added to the same webpage that houses this Toolkit.

several possible funding sources.<sup>80</sup> These include dedicated revenues from specific taxes (on high personal income earners or businesses, bottled water taxes, or a soda tax) or surcharges on non-eligible households' water bills. A detailed appendix explored strengths and weaknesses of each approach.<sup>81</sup> Although the report did not recommend a specific funding source, it did recommend that revenue sources “be progressive . . . to avoid imposing additional financial burdens on low-income households,” and “have a nexus to water use and support consumption of tap water.”

The approach of including a small surcharge on noneligible households' water bills is used to fund state-level PIPPs in the energy sector. In those electric and gas PIPPs, the state uses the revenue from the surcharge to administer the program, with the same benefits available to all eligible households. In some states, the energy bill surcharges collected via each utility are used only to support households within the same utility's service area. (In effect, although these are state-run programs, they are still funded at the individual utility level.) Elsewhere, such as in Illinois, revenue from an energy bill surcharge is pooled statewide, to spread program costs more widely and to ensure that assistance reaches the locations most in need. In the water sector—where states often have hundreds of individual water and sewer systems, mostly with small service areas—pooling funds in this way would be very valuable.

Illinois recently authorized the only state water assistance program funded by bill surcharges, but it is not yet operational. The state's Water and Sewer Financial Assistance Act, enacted in 2021, offers a less robust variation on the above approaches. First, it creates a water assistance program, not a PIPP. Second, it makes utility participation optional. This means that the program likely will not be available statewide, even though it is state-run. Third, the statute fixes the amount of the surcharge at a level that is insufficient to deliver assistance statewide. Fourth, the state will use the proceeds from each utility to provide assistance only to low-income households served by that same utility, without pooling resources across the state.<sup>82</sup> As noted above, the law has not been implemented yet, so this approach is untested.

In several states, legislation introduced to create statewide water assistance programs does not specify any permanent, dedicated funding source.<sup>83</sup>

Finally, at the federal level, annual appropriations (from general tax revenues) would be the most likely funding source if Congress were to establish a permanent, nationwide program.<sup>84</sup> The federal government could also provide grants for local water affordability and assistance programs, again funded through general appropriations. Congress recently moved slightly in this direction. In the Bipartisan Infrastructure Law (formally known as the Infrastructure Investment and Jobs Act), Congress authorized but did not fund a small pilot grant program

at the U.S. Environmental Protection Agency.<sup>85</sup> An earlier version of the bill, which was not enacted, had included the grant program without limiting it to a pilot.<sup>86</sup>

### Legal issues with funding local programs

Although many local affordability or assistance programs are funded through rates, the law in many states is unclear as to water and wastewater utilities' authority to use rate revenue for this purpose. A 50-state study by the University of North Carolina (UNC), published in 2017, found that very few states either explicitly authorize utilities to do this or explicitly prohibit them from doing so. In most states the law is ambiguous. Further, in a particular state, the answer may differ for systems that are regulated by a state utility commission (typically investor-owned) and those that are not (typically publicly owned). Among publicly owned utilities, the answer may also differ depending on whether the utility is run by the local municipal government or by an independent entity such as a water authority or water district.<sup>87</sup>

Local utilities, particularly publicly owned systems, will often point to legal ambiguity as a reason not to adopt a rate-funded program.<sup>88</sup> Absent an express prohibition in state law, local advocates should not accept that as an answer. Some advocates have done (or commissioned) their own detailed legal analysis to build the case in favor of the utility's legal authority.<sup>89</sup>

Even where the law is ambiguous, when a utility has the *will* to create a rate-funded program, it can move forward and make the strongest legal case to support it. Atlanta took this approach, for example.<sup>90</sup> In most cases a lawsuit will never come. Moreover, if a utility is sued on this issue, state courts are typically very deferential to a local, publicly owned utility's decisions concerning rates.

Typically, the legal concern is that lower rates or discounts for low-income households amount to unlawful “cross-subsidization” of one set of customers by another, unlawful “discrimination” against some customers in favor of others, or an unlawful “tax” on customers whose rates will marginally increase to pay for the program. Therefore, the UNC report suggests one way to bolster legal arguments in support of ratepayer-funded programs: “Rather than framing [an assistance program] as a subsidized rate class, present it as an essential cost of running a utility that provides financial benefits to all customers.”<sup>91</sup> A utility-specific analysis of the business case for affordable bills, described above, can help support this legal argument.

Another legal argument can be based on the recognition that a utility's core functions include protecting a community's public health by providing essential water and sanitation services. Utilities can frame a legal argument that affordability programs are an essential cost of running the utility that provides health benefits to all customers—not only to participating customers—by enabling low-

income households to maintain service. (In the Equitable Water Rates module, see text box “A More Progressive View of Cost Allocation Can Support More Equitable Rates.”)

When a local government is unsure of its authority under state law, it may be able to ask the state’s attorney general to provide a formal legal opinion.<sup>92</sup> Before encouraging a local utility to do so, advocates should assess whether the state’s current attorney general is likely to opine in favor of the utility’s authority. It may even be possible to discuss the issue directly with the attorney general’s office before deciding whether to pursue this route.

Advocates can also seek new state legislation to explicitly authorize ratepayer-funded affordability or assistance programs. For example, as described above, Illinois enacted legislation providing each water or sewer utility the option to collect a surcharge on customer bills, with the state using the funds to run a program on the utility’s behalf.<sup>93</sup> As another example, legislation currently pending in New Jersey would authorize publicly owned water, wastewater, and stormwater utilities to offer their own low-income discounts.<sup>94</sup>

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## KEY RESOURCES:

City of Philadelphia, “Water Bill Customer Assistance,” <https://water.phila.gov/cap/>.

City of Baltimore, “Water4All,” <https://cityservices.baltimorecity.gov/Water4All>.

*Philadelphia’s Tiered Assistance Program and Baltimore’s Water4All program are leading examples of water affordability programs. They are the only two percentage-of-income payment plans currently offered by water or wastewater utilities anywhere in the United States.*

Environmental Protection Agency, *Drinking Water and Wastewater Utility Customer Assistance Programs*, April 2016, 6, [https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww\\_utilities\\_cap\\_combined\\_508.pdf](https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww_utilities_cap_combined_508.pdf).

*EPA’s 2016 report provides a high-level overview of the types of water assistance programs and catalogs examples from water utilities across the country. (Note: some terminology may differ slightly from this Toolkit.)*

Sridhar Vedachalam and Randall Dobkin, *H Affordability: How Water Bill Assistance Programs Miss the Mark*, Environmental Policy Innovation Center, May 2021, 19, <https://static1.squarespace.com/static/611cc20b78b5f677dad664ab/t/614ceba138df2542c1af1d70/1632431025551/Cap+Report-Final-May.20.2021.pdf>.

*This 2021 report takes a critical look at water affordability/assistance programs around the country, highlighting common shortcomings and best practice examples.*

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](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf). (The report’s appendices are available at [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/docs/ab401\\_appendices.pdf](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_appendices.pdf).)

*This 2020 report by California’s state water agency, with accompanying appendices, highlights key considerations for designing and implementing a statewide water assistance program. The report provides the agency’s recommendations to the state legislature and explains pros and cons for various alternatives. It was developed with extensive feedback from stakeholders. Public comments on the agency’s draft report are available here: [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/ab401\\_public\\_comments\\_20190201.html](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/ab401_public_comments_20190201.html).*

UNC Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, <https://efc.sog.unc.edu/resource/navigating-legal-pathways-rate-funded-customer-assistance-programs-guide-water-and/>.

*This University of North Carolina report summarizes legal authorities and barriers for funding water affordability/assistance programs with ratepayer dollars in each of the 50 states, plus the District of Columbia, Puerto Rico, and other territories.*

# Appendix A: Best Practices for Affordability and Assistance Programs

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Our research and interviews for this toolkit surfaced numerous best practices for program design and implementation that apply equally to water affordability programs (PIPPs) and more traditional assistance programs. We have compiled these below as a resource for advocates and decision makers developing new programs or seeking to improve existing ones.

## PROGRAM RULES

- **Set income eligibility thresholds high enough to reach all water-burdened households.** Ideally, the income threshold should be set at or above the local cost of meeting basic household needs, including housing, food, utilities, health care, and transportation.<sup>95</sup>
- **Consider locally relevant factors when setting benefit levels.** The size of the bill discount or percentage-of-income cap should take into account the local cost of living, how utility rates are structured (e.g., whether a bill includes stormwater fees or any non-water services), and how water debt may inflate monthly bills, among other locally specific factors. For assistance programs, the size of the discount should also consider the size of typical water bills, particularly for lower-income households.
- **Allow renters who lack a utility account to participate.** Renters and others who do not personally hold a water account are often excluded from affordability and assistance programs, even though they may pay for water through their rent or a separate payment to their landlord. (Options to include renters are discussed in the Protections and Support for Renters module.)
- **Don't limit participation on the basis of immigration status.** People lacking legal immigration status or documentation are among the most vulnerable water users and should be encouraged to participate in affordability and assistance programs.
- **Suspend disconnections and other collection actions while a program application is pending, and retroactively apply bill discounts or credits.** Submitting an application should automatically suspend all shutoffs, late fees, and further collection actions while the application is pending. The suspension should not be conditioned on the utility assessing the application as “complete.”<sup>96</sup> Once an application is approved, benefits should be retroactively applied to bills received while the application was pending.
- **Include costs necessary to ensure safe restoration of service following shutoff.** Especially after an extended period of disconnection, plumbing repairs may be necessary to safely restore service, and flushing of lines (using a significant amount of water) may be necessary to ensure safe water flows from the tap. When a program provides assistance to reconnect customers following a shutoff, it should include these costs as eligible expenses or enroll the customer in complementary programs that can cover these costs.

## ADMINISTRATION

- **Ensure that the best program “wins” for any individual household.** Where households are eligible for two benefits that cannot be combined, the best program for the household should be applied. For example, in Philadelphia, program administrators must consider whether applicants for the city’s water PIPP are eligible for any other discount programs and apply the “most affordable alternative” for the household. In certain circumstances, for example, the city’s senior discount results in a lower bill for a household than the PIPP; in those cases, the city enrolls the household in the senior discount.
- **Adequately staff programs to ensure rapid processing.** Long wait times for application processing can cause significant stress and exacerbate financial hardship, especially if regular rates continue to apply and late fees are not suspended.
- **Consider partnering with social service agencies on administration.** Water utilities that lack capacity to administer a program themselves should consider partnering with an established social service agency to administer the program. This can improve efficiency and allow utilities to access existing networks and resources. However, it can also distance the utility from program administration and participating households.<sup>97</sup>



## APPLICATION PROCESS

- **Streamline the application process.** For every additional step that applicants must take to enroll, more households in need will fail to complete the process. Application forms should be short and should require the fewest supplemental documents possible.<sup>98</sup> Households should have multiple ways to apply to the program, including online, by mail, and in person. Online applications should be designed for use on a mobile phone, and web information and design should be accessible for people with disabilities.<sup>99</sup>
- **Eliminate exclusionary application requirements.** Requiring certain information on the application form, such as a Social Security number, can present a barrier to households who lack legal status or who lack easy access to the relevant documents (such as people who have been forced from their homes due to domestic violence). Utilities should accept a broad range of documentation. For renters, rules that require landlord consent before they can open a water account can be a barrier to obtaining customer status, which is often a prerequisite for enrollment. (Barriers for renters are discussed further in the Protections and Support for Renters module.)
- **Allow categorical eligibility.** Proof that a household is already receiving some other income-qualified benefit (such as energy utility assistance or SNAP support) should be accepted as proof of income for purposes of applying for a water affordability or assistance program. Several leading affordability and assistance programs take this approach.<sup>100</sup>
- **Allow self-certification of eligibility.** Allowing households to self-certify as to their income status or other eligibility criteria (such as disability), subject to a later audit or request for documentation, can significantly reduce barriers to enrollment. This approach has been successfully used in the energy sector and to administer emergency relief during the COVID-19 pandemic.<sup>101</sup> Alternatively, households could be allowed to enroll immediately and submit documentation within a specified period. Seattle Public Utilities takes this approach.<sup>102</sup>
- **Enable and encourage data sharing with other utilities and social service agencies.** When a household applies for government benefits, the water utility should be notified so that the household can be informed of available assistance programs and encouraged to apply (or even automatically enrolled; see below). Utilities and government agencies administering other benefit programs should establish secure data-sharing protocols that allow disclosure of eligibility information without risk to the household.<sup>103</sup> Where legal barriers prevent data sharing, they should be revised.
- **Consider automatic enrollment wherever feasible.** Automatically enrolling households that are known to meet eligibility requirements (e.g., those that are already receiving other income-qualified benefits) can significantly boost enrollment. Concerns around privacy and consent can be addressed by providing notice and allowing households to opt out.
- **“Stack” or “braid” assistance program applications.** Low-income households may be eligible for more than one form of assistance. To the greatest extent possible, multiple assistance programs should share one application, and intake agencies should process a range of programs; this is often called braiding or stacking.<sup>104</sup> For example, in Chicago, households can apply for water assistance and federal energy assistance at the same time, and current recipients of federal energy assistance can apply for water assistance using only their utility account number.<sup>105</sup> The use of categorical eligibility and standardized eligibility criteria can facilitate this practice.
- **Remove unnecessary reapplication requirements.** People living on fixed incomes, such as the elderly and people with permanent disabilities, are not likely to experience a significant change in income and should not be required to reapply or recertify their income to maintain enrollment.<sup>106</sup> For all households, less frequent recertification requirements—ideally with certifications lasting longer than a single year—can decrease drop-offs in participation.

## OUTREACH AND RECRUITMENT

- **Ensure that clear, complete, up-to-date, accessible program information is available online and by phone.** Providing clear, complete, and current information about available programs and how to apply, both online and via an adequately staffed phone line, is important to ensure that interested households can readily access programs.<sup>107</sup> Program information and application forms should also be available in multiple languages, determined by the language needs of the population within the utility’s service area. Online materials should be accessible for people with disabilities and designed to be readable on a mobile phone.
- **Use modern methods to proactively advertise programs.** Utilities should proactively and consistently provide detailed information to the households they serve about available assistance programs, including on all monthly bills. Communication is more effective when utilities use methods such as phone, text, email, social media, and local media (such as radio or television) in appropriate languages, together with traditional methods such as bill inserts or door hangers.<sup>108</sup>

- **Focus outreach on households with arrearages or troubled payment histories.** Utilities should leverage customer databases to market programs to households with arrearages or histories of missed payments or previous disconnections. Target-marketing programs to neighborhoods with high numbers of arrearages or disconnections can also be effective.
- **Partner with trusted community-based organizations on outreach.** Many water utilities have low levels of public approval and trust, especially within communities impacted by unaffordable rates and shutoffs. Partnering with established community-based organizations can help overcome mistrust and allow utilities to leverage existing social connections and networks. Community partnerships can be especially effective in reaching otherwise hard-to-reach households, such as low-income renters and people lacking legal documentation.<sup>109</sup>

## COMMUNITY ENGAGEMENT

- **Engage the most impacted communities in the development and implementation of a program.** Communities that have faced unaffordable bills, lived with the threat or reality of water shutoffs, and struggled with mounting water debt have deep, firsthand knowledge of the problems with the current system—problems that utilities and other decision makers may poorly understand. Utilities must often be reminded that the perspective of impacted individuals and grassroots, community-based organizations is essential for a successful program. Ideally, utilities and/or regulators should provide compensation to under-resourced community-based groups for participating in program development and implementation processes.

## PROGRAM EVALUATION

- **Report regularly on program implementation.** Utilities need to be accountable for successful implementation of a program. In Philadelphia, for example, the local ordinance that created the Tiered Assistance Program requires annual reporting on program implementation to the City Council.<sup>110</sup> The city's formal rate-setting process also requires the utility to provide detailed data and has provided advocates with opportunities to push for improvements to the city's programs over time.<sup>111</sup> (For more on the importance of and best practices for data reporting, see the Data Collection and Transparency module.)
- **Commission independent evaluations.** Especially in the early years of a program, and periodically thereafter, independent evaluations have proved valuable to identifying program successes and challenges and making recommendations for improvement.<sup>112</sup>

## ***Appendix B: PIPP Design Issue: Fixed Versus Variable Credit***

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PIPPs aim to ensure affordability by limiting water bills to a fixed percentage of household income. Administratively there are several ways to achieve this goal. Two approaches are discussed below: the variable credit method and the fixed credit method. Both are already in use in the water sector: Philadelphia’s PIPP uses the variable method, while Baltimore’s uses the fixed. (For more on these programs, see the “PIPPs in Practice” section of this module.)

The variable credit method represents the most straightforward application of the PIPP concept. Under this approach, a participating household’s monthly bill is determined by multiplying its monthly income by the targeted percentage of income (e.g., 3 percent). Unless the household’s income changes, it will receive the same bill each month.

This approach is called the variable credit method because, although the *household’s* bill remains the same, from the *utility’s* perspective the credit provided to the household changes each month, depending on the household’s actual water usage.<sup>113</sup> The amount of this credit is the difference between the household’s nondiscounted bill and the bill under the PIPP program. This can be expressed in the following formula:

$$\text{Monthly Credit} = \text{Total Monthly Bill} - (\text{Monthly Household Income} \times \text{Percentage-of-Income Cap})$$

The variable credit method has the substantial benefit of ensuring that households will receive a stable monthly bill that does not exceed the affordability threshold. However, it also removes any incentive for conservation, since changes in consumption do not change the household’s final bill. Variable credits can also be more difficult for the utility to manage financially, since the amount the utility must “spend” on credits changes every month.

For this reason, some advocates prefer the fixed credit approach. With this method, the utility calculates a fixed credit for the entire year, based on the household’s annual income and estimated annual usage. This fixed annual credit is apportioned across the household’s monthly bills so that the household receives a portion of the annual credit each month.<sup>114</sup> The method of calculating the annual credit can be expressed in the following formula:

$$\text{Annual Credit} = \text{Estimated Annual Bill} - (\text{Annual Household Income} \times \text{Percentage-of-Income Cap})$$

Because the fixed credit approach provides the same credit each month regardless of the household’s actual usage, it preserves an economic incentive for households to conserve water. Reductions in water usage will result in a smaller monthly bill, while increases will result in a larger one. For the same reason, however, it is possible for bills to exceed the percentage-of-income cap during periods of high usage. This can be true on a monthly or even an annual basis if usage consistently exceeds the amount predicted when calculating the annual credit. Nevertheless, some advocates believe that the benefits of conservation outweigh the drawbacks.

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\* Instead of using actual monthly household income, utilities estimate monthly household income, for example by estimating annual income and dividing by 12. This approach is easier administratively for both the utility and the household. However, it may result in monthly bills that exceed the affordability threshold if a household’s actual income in a given month is lower than the estimated monthly amount.

# Appendix C: PIPP Comparison Chart: Philadelphia Versus Baltimore<sup>115</sup>

	Philadelphia – Tiered Assistance Program	Baltimore – Water4All
Income eligibility threshold/affordability threshold (i.e., percentage-of-income bill cap)	<p><b>Income threshold:</b></p> <p>0–50% of federal poverty level (FPL)</p> <p>51–100% FPL</p> <p>101–150% FPL</p> <p>&gt;150% FPL &amp; special hardship*</p> <p><b>Bill cap:</b></p> <p>2% of household income (HHI)</p> <p>2.5% HHI</p> <p>3% HHI</p> <p>4% HHI</p> <p>*Special hardship includes any “hardship condition” that threatens the ability to access basic necessities, including but not limited to an increase in household size, serious illness, death of the primary wage earner, domestic violence, age, disability, or veteran status.</p>	<p><b>Income threshold:</b></p> <p>0–50% of federal poverty level (FPL)</p> <p>51–100% FPL</p> <p>&gt;100–200% FPL</p> <p><b>Bill cap:</b></p> <p>1% of household income (HHI)</p> <p>2% HHI</p> <p>3% HHI</p>
Monthly credit calculation method (see Appendix B for an explanation of the variable credit and fixed credit approaches)	<p>Variable credit</p> $C_m = B_m - (I_m \times P)$ <p><math>C_m</math> = monthly credit</p> <p><math>B_m</math> = monthly bill</p> <p><math>I_m</math> = estimated monthly household income</p> <p><math>P</math> = Percentage-of-income bill cap</p>	<p>Fixed credit</p> $C_m = C_a / 12$ $C_a = B_a - (I_a \times P)$ <p><math>C_m</math> = monthly credit</p> <p><math>C_a</math> = annual credit</p> <p><math>B_a</math> = estimated annual bill</p> <p><math>I_a</math> = estimated annual household income (for current calendar year)</p> <p><math>P</math> = Percentage-of-income bill cap</p>
Minimum bill amount	\$12/month	N/A
Renter eligibility	Open only to renter households that are direct customers of the Water Department (i.e., have a water account).	Open to noncustomer renter households who pay their landlord for water service through a payment separate from the rent.
Method of application	Application allowed online, in person, or by mail. Applicants must use unique application form prefilled with their account information. <sup>116</sup>	Application allowed online, in person, or by mail.



	Philadelphia – Tiered Assistance Program	Baltimore – Water4All
Application requirements	<p>Application must include:</p> <ul style="list-style-type: none"> <li>■ Name, birth date, and monthly income amount for each household member (SSN or tax ID number are optional)</li> <li>■ Two proofs of residence, separate from income documentation</li> <li>■ Income documentation for each household member and source of income</li> </ul>	<p>Complete application must include:</p> <ul style="list-style-type: none"> <li>■ Name and age of each household member</li> <li>■ Income and identity documentation for each household member</li> <li>■ Certification statement(s) signed by applicant and all income-earning household members</li> <li>■ For non-account-holding tenants, a separate certification statement, name and address of landlord, and proof that the tenant pays the landlord for water service in a payment separately from rent (e.g., reimbursement)</li> </ul>
Income verification requirements	Proof of income (e.g., tax return, pay stubs) OR benefit award letter from another income-qualified program. <sup>117</sup>	Proof of income (e.g., tax return, pay stubs) OR proof of participation in any state program requiring income up to 200% of the federal poverty level.
Recertification requirements	Recertification of income, special hardship, or other eligibility required upon written request of the Water Department and no more than once per year.	Households must reapply at the end of each calendar year.
Debt relief component	<p>An enrolled household's water debt is eliminated after paying 24 TAP bills in full. If household's enrollment lapses prior to 24 months because it is no longer income-eligible, the amount of debt eliminated is prorated to the number of complete bill payments made while enrolled.</p> <p>Pending changes to the program as of spring 2022 would instead eliminate 1/24 of the household's debt each time it paid a TAP bill. (In other words, the debt would be forgiven incrementally each month, rather than all at once after 24 months.)<sup>118</sup></p> <p>Note: Under a separate Philadelphia law, all water arrears older than 15 years are automatically forgiven.</p>	For each on-time payment made by a household enrolled in the program, an equivalent amount is credited toward existing debt. For example, if a household's Water4All bill is \$30 and the household pays that amount, then \$30 of pre-existing debt is eliminated.
Conservation component	Households enrolled in TAP must agree to accept and maintain any free conservation measures offered by the Water Department.	Fixed credit approach to calculating bill credit preserves conservation incentive for participating households (see Appendix B).
Cost recovery mechanism	TAP program costs are recovered through a "rate rider" (surcharge) for non-TAP customers. The surcharge is volumetric (i.e., per gallon). Separate surcharges are calculated for water and sewer rates.	Program costs are recovered in general rates (exact mechanism TBD).

## ENDNOTES

- 1 Additional approaches, which are also sometimes labeled “assistance” programs, are designed to make it easier for households to pay regular utility bills on time without reducing the total amount billed to the household. For example, flexible billing policies allow households to change the timing and frequency of their bill, which can help some customers better match their expenses to their regular payday, avoiding potential cash flow problems. Levelized billing options allow households to elect to receive a consistent water bill every month, based on average monthly usage, which can also benefit lower-income customers by increasing predictability and eliminating “bill shock.” This toolkit does not offer a detailed discussion of these approaches, though they can be a useful complement to other types of assistance. See U.S. Environmental Protection Agency (hereinafter EPA), *Drinking Water and Wastewater Utility Customer Assistance Programs*, April 2016, [https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww\\_utilities\\_cap\\_combined\\_508.pdf](https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww_utilities_cap_combined_508.pdf); National Consumer Law Center (hereinafter NCLC), *Surviving Debt: Expert Advice for Getting Out of Financial Trouble* (Boston: NCLC, 2021), <https://library.nclc.org/surviving-debt-links> (paywalled) (see the discussion in chapter 15, “Level Payment Plans, Dealing With Quarterly and Bi-Monthly Bills, Changing Your Due Dates”).
- 2 The Public Utility Commission of Ohio opened a proceeding in 1983 that began as a proceeding to address reconnecting customers for the winter heating season who had been disconnected for nonpayment. Interestingly, the PIPP was considered in response to a utility’s objection that the commission had failed to take into consideration a customer’s ability to pay before the commission imposed a shutoff moratorium. See In re Investigation Into Long-Term Solutions Concerning Disconnection of Gas & Elec. Serv. in Winter (Phase I) Emergencies, No. 83-303-GE-COI (Ohio Pub. Util. Comm’n Nov. 23, 1983); NCLC, “7.2.3.2.2: The Ohio PIPP” in *Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs* (Boston: NCLC, 2018), <https://library.nclc.org/aus>.
- 3 EPA, *Drinking Water and Wastewater Utility Customer Assistance Programs*, 6.
- 4 About half focused on assisting households already in arrears or in imminent danger of falling into arrears by offering temporary assistance and flexible payment plans. The other half provided ongoing bill reductions, primarily through bill discounts and, much less frequently, through water efficiency assistance or lifeline rates. See EPA, *Drinking Water and Wastewater Utility Customer Assistance Programs*, 6.
- 5 U.S. Department of Health and Human Services (hereinafter HHS) Office of Community Services, “Low Income Household Water Assistance Program (LIHWAP),” accessed May 11, 2022, <https://www.acf.hhs.gov/ocs/programs/lihwap>.
- 6 LIHEAP Clearinghouse, “Energy Ratepayer Funded Programs,” accessed May 11, 2022, <https://liheapch.acf.hhs.gov/dereg.htm>. See also NCLC, “Utility Affordability Programs,” chapter 7 in *Access to Utility Service*, 149–226.
- 7 Sridhar Vedachalam and Randall Dobkin, *H<sub>2</sub>O Affordability: How Water Bill Assistance Programs Miss the Mark*, Environmental Policy Innovation Center, May 2021, 19, <https://static1.squarespace.com/static/611cc20b78b5f677dad664ab/t/614ceba138df2542c1afld70/1632431025551/Cap+Report-Final-May.20.2021.pdf>.
- 8 Laura Feinstein, “Keeping the Water On: Addressing rising water-bill debt during the COVID-19 economic crisis,” *SPUR*, January 2021, 4, [https://www.spur.org/sites/default/files/2021-03/spur\\_keeping\\_the\\_water\\_on.pdf](https://www.spur.org/sites/default/files/2021-03/spur_keeping_the_water_on.pdf).
- 9 Low Income Oversight Board et al., “Joint IOU Report of the CARE and ESA Programs,” Low Income Oversight Board Meeting, Compton, California, June 24, 2019, <https://liob.epuc.ca.gov/wp-content/uploads/sites/14/2020/12/Item-8.-Joint-IOUs-Report-of-CARE-and-ESA.pdf>.
- 10 Illinois, Colorado, New Jersey, and Ohio have PIPPs for electric and gas customers. See Illinois Department of Commerce, “PIPP: Percentage of Income Payment Plan and Budget Billing,” accessed May 11, 2022, <https://www2.illinois.gov/dceo/CommunityServices/UtilityBillAssistance/Documents/PIPP%20brochure-2019.pdf>; John Howat, Karen Lussion, and Olivia Wein, *Utility Bill Affordability in Colorado: Reforms to Protect Low-Income Consumers from Increasing Rates*, NCLC, October 2020, <https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/codoraholdharmreportfin.pdf>; State of New Jersey Board of Public Utilities, “Universal Service Fund,” accessed May 11, 2022, <https://www.state.nj.us/bpu/residential/assistance/usf.html>; Ohio Department of Development, “Percentage of Income Payment Plan Plus (PIPP),” accessed May 11, 2022, <https://development.ohio.gov/individual/energy-assistance/2-percentage-of-income-payment-plan-plus>.
- 11 See Roger Colton, *2005 Water Affordability Program*, Fisher Sheehan & Colton, January 2005, <http://www.fsconline.com/downloads/Papers/2005%2001%20Detroit%20Water.pdf>.
- 12 Colton also played a significant role in developing the Philadelphia and Baltimore PIPPs described in this module. He served as a consultant and expert witness to advocates in Philadelphia and as a consultant to advocates in Baltimore.
- 13 Although there is no *national* consensus on a water affordability standard, some states or localities may be closer to alignment. In Pennsylvania, for example, there is no official statutory or regulatory standard for water/wastewater affordability, but there is an emerging consensus that the combined cost for water and wastewater service should not exceed 2.5–4 percent of household income, according to local utility advocates.
- 14 Philadelphia’s program includes water, wastewater, and stormwater costs, while Baltimore’s covers water and wastewater only.
- 15 305 Ill. Comp. Stat. 20/18 (Illinois electric and gas PIPP); Ohio Admin. Code 122:5-3 (Ohio electric PIPP). See also Ohio Public Utilities Commission, *Energy Assistance Resource Guide 2020–2021*, accessed May 11, 2022, <https://ocean.ohio.gov/OCEAN/Help/EA%20Guide%20Final.pdf>.
- 16 Phila. Bill No. 140607-AA (2015), <https://phila.legistar.com/LegislationDetail.aspx?ID=1821444&GUID=EE8B7A07-A75F-4EBD-A0BF-4D71FEB5919B&FullText=1>.
- 17 For an overview of advocacy efforts leading to the enactment of the ordinance and program launch, see Robert W. Ballenger and Thu B. Tran, “Uncharted Waters: The Emergence of Low-Income Water Affordability in Philadelphia,” *Clearinghouse Review*, February 16, 2016, <https://www.nrdc.org/sites/default/files/uncharted-waters-affordability-philadelphia-20160216.pdf>. See also Elizabeth A. Mack et al., “An Experiment in Making Water Affordable: Philadelphia’s Tiered Assistance Program (TAP),” *Journal of the American Water Resources Association* 56, no. 3 (June 2020): 431–49, <https://par.nsf.gov/servlets/purl/10219789>.
- 18 For the regulations establishing the TAP program, see Water Dep’t Regs. ch. 2, <https://water.phila.gov/pool/files/pwd-regulations-chapter-2.pdf>. For key program documents, see City of Philadelphia, “Water Bill Customer Assistance Application and Documents,” accessed May 11, 2022, <https://www.phila.gov/documents/water-bill-customer-assistance-application-and-documents/>.
- 19 The city’s regulations define a “special hardship” as a “hardship condition that *may include, but is not limited to*, the following: (i) an increase in the Customer’s number of dependents in the household; (ii) a seriously ill household member; or (iii) circumstances that threaten the household’s access to the necessities of life if payment of a delinquent bill is required.” Phila. Water Dep’t Regs. ch. 2, § 206.1(k), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>. The regulations also specify that the following will be accepted as evidence of special hardship: proof of a job loss extending more than four months; proof of a serious illness extending more than nine months; proof of death of the primary wage earner; domestic abuse order or program enrollment determination; and proof of additional dependent children, elderly persons, disabled persons, or returning veterans in the household. A customer may also request an individual financial assessment to determine eligibility. Phila. Water Dep’t Regs. ch. 2, § 206.2(2), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>.
- 20 See Phila. Water Dep’t Rates and Charges (eff. Sept. 1, 2021), <https://water.phila.gov/pool/files/rates-and-charges-2021-09-01.pdf>.

- 21 These figures reflect the current per-Mcf (thousand cubic feet) charges of \$0.69/Mcf for water and \$1.09/Mcf for sewer, multiplied by average residential monthly usage of 0.5 Mcf. (Note: This differs from the result of multiplying the per-gallon rates cited previously by the average usage of 3,740 gallons, due to additional decimal values cut off in the per-gallon rates.) A proposed settlement agreement between the Philadelphia Water Department and the designated public advocate for water consumers in Philadelphia would update the surcharge to \$1.03/Mcf for water and \$1.63/Mcf for sewer. The updated surcharge reflects the estimated cost of enrolling approximately 7,000 additional households in the program in 2022–23 (from 17,148 to 24,199 households out of an estimated total eligible population of around 60,000). See Philadelphia Water Department, Re: Philadelphia Water Department Proposed Charges in Rates and Charges, 2022 TAP-R Adjustment Proceeding, Joint Petition for Settlement of TAP-R Proceeding, <https://www.phila.gov/media/20220425205927/PWD-2022-TAP-joint-settlement-final-Combined.pdf>. If approved by the city’s Water, Sewer, and Storm Water Rate Board, the new surcharge would result in an estimated charge for the typical residential household of \$1.33 per month or \$15.96 per year.
- 22 See Water Revenue Bureau, “Tiered Assistance Program (TAP) Debt Forgiveness Flyer,” City of Philadelphia Department of Revenue, May 12, 2021, <https://www.phila.gov/media/20210514135633/What-is-TAP-debt-forgiveness-flyer.pdf>.
- 23 Mack et al., “An Experiment in Making Water Affordable,” 439; Robert Ballenger, Director, Energy Unit, Community Legal Services, personal communication, April 27, 2022.
- 24 Mack et al., “An Experiment in Making Water Affordable,” 439.
- 25 See, e.g., Phila. Water Dep’t, 2021 Gen. Rate Proceeding, Settlement Term Sheet, <https://www.phila.gov/media/20210430162106/Settlement-Term-Sheet.pdf>.
- 26 See 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, 64–70, <https://www.phila.gov/media/20210324163618/PA-St-3-Colton.pdf>.
- 27 Baltimore Right to Water Coalition page, “Baltimore Right to Water Coalition,” Facebook, accessed May 11, 2022, <https://www.facebook.com/BaltimoreRightToWaterCoalition>.
- 28 Balt. Bill No. 18-0307 (2019), <https://baltimore.legistar.com/LegislationDetail.aspx?ID=3769175&GUID=4A3F24AF-7CC7-442B-86C5-B01AF0A148F7>. The ordinance was modified in 2020 to clarify tenant protections and the role of the Office of Water-Customer Advocacy. Balt. Bill 20-0626 (2020), <https://baltimore.legistar.com/LegislationDetail.aspx?ID=4659246&GUID=092BF89E-736E-40A9-9849-8C2D84E44852&Options=&Search=>.
- 29 See City of Baltimore, “Water4All Discount Program,” accessed May 11, 2022, <https://cityservices.baltimorecity.gov/Water4All>.
- 30 The ordinance that created the program also required landlords whose residential tenants reimburse them for water service to include a provision in the lease stating the calculation method and the average monthly cost of water. This allows the tenant to more easily establish proof of eligibility for Water4All. See Balt. City Code art. 13, § 7-3(a-1), [https://legislative.baltimorecity.gov/sites/default/files/Art%2013%20-%20Housing\\_\(rev%2004-08-22\).pdf](https://legislative.baltimorecity.gov/sites/default/files/Art%2013%20-%20Housing_(rev%2004-08-22).pdf).
- 31 Households with incomes up to 150 percent of the federal poverty level are eligible for a 100 percent reduction in the fixed monthly water and wastewater charges and an 85 percent reduction in the fixed monthly stormwater charge. Households with incomes up to 50 percent of the federal poverty level also receive 20 percent off the volumetric charges. See Emily Sullivan, “Activists, Tax Experts Say Water Affordability Program Meant to Help City Residents May Burden Them Instead,” WYPR News Baltimore, August 2, 2021, <https://www.wypr.org/wypr-news/2021-08-02/activists-tax-experts-say-water-affordability-program-meant-to-help-city-residents-may-burden-them-instead>.
- 32 See Rianna Eckel, Amy Hennen and Jaime Lee, “Use ARPA funding to ensure water affordability in Baltimore,” *Baltimore Sun*, March 18, 2022, <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0321-water-affordability-baltimore-20220318-krkiem5su5b7hjpt764g65ymu4-story.html>; Internal Revenue Service, “Frequently asked questions for states and local governments on taxability and reporting of payments from Coronavirus State and Local Fiscal Recovery Funds,” accessed June 8, 2022, <https://www.irs.gov/newsroom/frequently-asked-questions-for-states-and-local-governments-on-taxability-and-reporting-of-payments-from-coronavirus-state-and-local-fiscal-recovery-funds>. For more on options for delivering assistance payments to renters, see the Protections and Support for Renters module.
- 33 Pittsburgh Water and Sewer Authority, “Customer Assistance Programs,” accessed May 11, 2022, <https://www.pgh2o.com/residential-commercial-customers/customer-assistance-programs>.
- 34 Vedachalam and Dobkin, *H<sub>2</sub>O Affordability*, 26.
- 35 Lauren A. Patterson, et al., “Customer Assistance Programs and Water Affordability,” *Journal AWWA* 114, no. 5 (June 2022): 46-57, <https://awwa.onlinelibrary.wiley.com/doi/10.1002/awwa.1921>.
- 36 DC Water’s Customer Assistance Program, open to very low income households, provides a discount on the first 400 cubic feet (3,000 gallons) of water and sewer services used each month, plus discounts on several fixed fees and charges. The utility estimates that the combined discount amounts to around \$80 per month. The Customer Assistance Program II is open to slightly higher income customers and provides a discount on the first 300 cubic feet (2,250 gallons) of water and sewer service used per month, plus a discount on one monthly charge. The combined benefit is estimated at around \$52. The Customer Assistance Program III is open to moderate-income customers and offers a discount on one monthly charge, for a benefit of around \$14. See District of Columbia Department of Energy & Environment, “Water Affordability Programs,” accessed May 11, 2022, <https://doee.dc.gov/service/wateraffordability>.
- 37 See California Public Utilities Commission, “CPUC Acts to Ensure Essential Utility Services for Consumers at Risk of Disconnections,” press release, October 7, 2021, <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-acts-to-ensure-essential-utility-services-for-consumers-at-risk-of-disconnections>; Decision Authorizing Percentage of Income Payment Plan Pilot Programs, Cal. PUC Decision 21-10-012 (Oct. 7, 2021) in Rulemaking 18-07-005, Order Instituting Rulemaking to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs, Attachment A, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M413/K823/413823568.PDF>.
- 38 Some assistance programs are specifically for seniors or people with disabilities, without regard to income. This module does not address unique issues that may arise with such programs.
- 39 Massachusetts previously operated a Low-Income Water and Sewer Assistance Program. However, this program has not been funded since 2003. When it was running, it was implemented in coordination with the Low Income Home Energy Assistance Program and offered a maximum discount of 25 percent on water and sewer bills. See Ma. Gen. Laws ch. 23B, § 24B; Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, *Turning Off the Tap: Massachusetts’ Looming Water Affordability Crisis*, December 2020, 10, <https://www.usccr.gov/files/2021-01-27-MA-SAC-Water-Affordability-Report.pdf>. See also California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program: Appendices*, February 25, 2020, 7, [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/docs/ab401\\_appendices.pdf](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_appendices.pdf).
- 40 Water and Sewer Financial Assistance Act, Ill. Pub. Act 102-262 (2021), codified at 305 Ill. Comp. Stat. 21/51 through 21/99, <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0262>. For an in-depth profile of this legislation, see River Network Deep Dive, “Lessons From Illinois,” River Network, accessed May 11, 2022, <https://www.rivernetwork.org/state-policy-hub/water-affordability/deep-dive-water-affordability/#lessons-from-il>.

- 41 This was included in a 2021 law requiring utilities to remove all lead service lines. Lead Service Line Replacement and Notification Act, Ill. HB3739 § 5, codified at 20 Ill. Comp. Stat. 605/605-870, <https://www.ilga.gov/legislation/fulltext.asp?DocName=10200HB3739enr&GA=102&SessionId=110&DocTypeId=HB&LegID=132788&DocNum=3739&GAID=16&SpecSess=&Session=>. River Network has published a helpful profile of this legislation. As it notes, it is unclear how this program would interact with the program created under the Water and Sewer Financial Assistance Act. River Network Deep Dive, “Lessons From Illinois.”
- 42 HHS Office of Community Services, “Low Income Household Water Assistance Program”; HHS Office of Community Services, “LIHWAP Map Tribal Contact Listing” accessed May 11, 2022, <https://www.acf.hhs.gov/ocs/map/lihwap-map-tribal-contact-listing>.
- 43 California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*, February 2020, [https://www.waterboards.ca.gov/water\\_issues/programs/conservation\\_portal/assistance/docs/ab401\\_report.pdf](https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/docs/ab401_report.pdf).
- 44 Cal. SB 222 (2021–2022), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB222](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB222).
- 45 N.J. S.291 (2022), <https://www.njleg.state.nj.us/bill-search/2022/S291> (proposed bill requiring the New Jersey Department of Community Affairs to establish a low-income water, sewer, and stormwater assistance program, with consideration of a percentage-of-income approach, and appropriating \$75 million to fund the program); Mich. SB 344 (2021), [http://www.legislature.mi.gov/\(S\(1deqimh1uaude3n4mhtgl4vz\)\)/mleg.aspx?page=GetObject&objectname=2021-SB-0344](http://www.legislature.mi.gov/(S(1deqimh1uaude3n4mhtgl4vz))/mleg.aspx?page=GetObject&objectname=2021-SB-0344) (proposed bill requiring Mich. Dep’t of Health and Human Sers. to establish income-based water affordability program).
- 46 In 2005 the California Public Utilities Commission adopted a Water Action Plan that included the development of low-income rate assistance programs as one of its policy objectives for Class A water utilities (utilities with more than 100,000 customers). This plan was updated in 2010 to respond to severe drought conditions and standardize the eligibility criteria for the programs. In 2017 the commission looked at further standardizing the low-income rate assistance programs and explored the possibility of pooling the programs for a more comprehensive approach. The Class A low-income water assistance programs now have a common name, Customer Assistance Program (CAP). However, the commission is leaving broader changes to the funding or structure of the CAP to an ongoing statewide process related to implementation of a state law that required the California State Water Resources Control Board to develop a plan for a statewide low-income rate assistance program. For now, modification to the Class A CAP occurs in each water utility’s general rate case. See Cal. PUC Decision 20-08-047 (Aug. 27, 2020) in Rulemaking 17-06-024, Order Instituting Rulemaking Evaluating the Commission’s 2010 Water Action Plan Objective of Achieving Consistency Between Class A Water Utilities’ Low-Income Rate Assistance Programs, Providing Rate Assistance to All Low-Income Customers of Investor-Owned Water Utilities and Affordability, 3–4, <https://docs.epuc.ca.gov/PublishedDocs/Published/G000/M346/K225/346225800.PDF>.
- 47 Ohio HB 639 (2020), <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-639> (proposed bill requiring each water system to establish an income-based water affordability program that “prevents the violation of the human right to water”).
- 48 According to the state’s 2020 “Michigan Clean Water Plan,” these “affordability and planning grants,” using \$7.5 million appropriated by the state legislature, “support communities in developing sustainable water rate plans and implementing affordability pilots. Grants will be capped at \$500,000 for water supplies applying individually. Multiple supplies partnering to develop a regional plan can receive up to \$2 million.” See Michigan Department of Environment, Great Lakes, and Energy, “MI Clean Water Plan Fact Sheet,” September 30, 2020, <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Funding/WIFS/Michigan-Clean-Water-Plan-Fact-Sheet.pdf?rev=80459f476b71427984969a960f711c21&hash=3C51BC22785473A1F5DBBE0198E3FEFD>. For an overview of one grant recipient’s efforts to develop an affordability plan, see Water Resources Commissioner Jim Nash, “Affordability and Planning Grant Overview and Objectives Narrative,” February 22, 2022, <https://www.oakgov.com/water/water/Documents/2022-02-22%20Affordability%20and%20Planning%20Grant%20Overview%20and%20Objectives%20Narrative.pdf>.
- 49 Such requirements would have an ample connection to the underlying purpose of the funds. When investing in local water infrastructure improvements, the federal government and states have an interest in ensuring that the utility provides affordable access to essential water services to everyone in its service area.
- 50 305 Ill. Comp. Stat. 20/18; Illinois Department of Commerce, “PIPP: Percentage of Income Payment Plan and Budget Billing.” The Illinois program applies only to utilities with more than 100,000 customers, however.
- 51 Colorado has an affordable percentage-of-income payment plan for electric customers with payments set at 3–6 percent of income if electricity is the primary heating fuel, and 2–3 percent if it is not. Minimum payments range from \$10 to \$20 per month. See 4 Colo. Code Regs. § 723–3.3412. Colorado also has an affordable percentage-of-income payment plan for natural gas customers with payments set at 2–3 percent of income if natural gas is the primary heating fuel; the minimum payment is capped at \$10/month. See 4 Colo. Code Regs. § 723-4.4412. A 2020 report by the NCLC highlighted some of the strengths and weaknesses of the Colorado PIPP. See Howat, Lusson, and Wein, *Utility Bill Affordability in Colorado*.
- 52 New Jersey’s Universal Service Fund (USF) program is designed so that households at or below 185 percent of the federal poverty level pay no more than 6 percent of their annual income on electric and natural gas service combined (3 percent electric and 3 percent natural gas). USF households that have at least \$60 in arrears are also automatically enrolled in Fresh Start, an arrearage management plan that forgives one-twelfth of the customer’s debt for each on-time payment of their monthly bills going forward. See State of New Jersey Board of Public Utilities, “Universal Service Fund,” accessed May 11, 2022, <https://www.state.nj.us/bpu/residential/assistance/usf.html>; Kevin Randolph, “NJ Board of Public Utilities Expands Access to Low-Income Energy Assistance,” *Daily Energy Insider*, August 12, 2019, <https://dailyenergyinsider.com/news/21082-nj-board-of-public-utilities-expands-access-to-low-income-energy-assistance/>; State of New Jersey Board of Public Utilities, “NJBPUE Expands Utility Assistance Programs to Help Residents Financially Impacted by Pandemic,” press release, June 24, 2021, <https://www.nj.gov/bpu/newsroom/2021/approved/20210624.html>.
- 53 The Ohio Public Utilities Commission created a natural gas and electric PIPP for customers of commission-regulated, investor-owned utilities. Ohio PIPP customers pay natural gas bills set at 5 percent of the household’s income and electric bills also set at 5 percent (unless the house heats with electricity, in which case the bills are set at 10 percent of household income). The minimum bill is \$10. See Ohio Department of Development, “Percentage of Income Payment Plan Plus (PIPP),” accessed May 11, 2022, <https://development.ohio.gov/individual/energy-assistance/2-percentage-of-income-payment-plan-plus>; Ohio Admin. Code 122:5-3-01 through 122:5-3-10.
- 54 For example, New Hampshire passed legislation that directed the state utility commission to design low-income electric assistance programs that are efficient and targeted to low-income households. N.H. Rev. Stat. Ann. § 369-B:1. A working group process led to a report to the commission on the structure of an Electric Assistance Program. The working group recommended a PIPP, but that design was modified to a sliding-scale bill discount due to concerns about administrative efficiency. The discounts range from 8 percent to 76 percent of the electric bill. See NCLC, “7.2.2.2.3: Straight Discount Programs in Other States” in *Access to Utility Service*. See also New Hampshire Department of Energy, “Electric Assistance Program,” accessed May 11, 2022, <https://www.energy.nh.gov/consumers/help-energy-and-utility-bills/electric-assistance-program>. In 1999 Wisconsin passed a law establishing an energy assistance program and created a public benefits fund (funded through a system benefits charge, fees on electric bills, funds from participating munis and coops, LIHEAP, weatherization assistance, and voluntary contributions). See 1999 Assembly Bill 133, 199 Wis. Act 9, § 109 (Wis. eff. Oct 29, 1999). See also NCLC, “7.2.7.3: Wisconsin’s System Benefits Charge Program” in *Access to Utility Service*.
- 55 See 305 Ill. Comp. Stat. 20/18. See also New Hampshire Department of Energy, “Electric Assistance Program.”
- 56 New Jersey Electric Discount and Energy Competition Act, Pub. L. 1999, ch. 23, §§ 2, 12, codified at N.J. Stat. Ann. 48:3-50, 48:3-60 (West), [http://www.njcleanenergy.com/files/file/23\\_.pdf](http://www.njcleanenergy.com/files/file/23_.pdf).
- 57 Mass. Gen. Laws ch. 164, § 1F(4). See NCLC, “7.2.2.2.3: Straight Discount Programs in Other States” in *Access to Utility Service*.



- 58 California's 2012 "right to water" law is the most prominent example of this approach. More recently, in 2021, Virginia's legislature adopted a similar resolution. See International Human Rights Law Clinic, *The Human Right to Water Bill in California: An Implementation Framework for State Agencies*, University of California, Berkeley, School of Law, May 2013, [https://www.law.berkeley.edu/files/Water\\_Report\\_2013\\_Interactive\\_FINAL\(1\).pdf](https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL(1).pdf); Va. HJR No. 538 (Spec. Sess. 2021) (2021), <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+HJ538ER+pdf> (recognizing that access to clean, potable, and affordable water is a human right).
- 59 In 2012 California water affordability advocates secured the passage of a law recognizing "that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." Cal. AB 685 (2011-2012), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120AB685](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB685). The law required state agencies to "consider" the human right to water when making policy decisions but did not provide any mechanism for enforcement. In the years that have followed, the law has had a significant impact, including by bolstering the case for further legislation to address the issue. For example, since 2012 California has passed laws to require the development of a low-income affordability plan for the state, to strengthen shutoff protections for water users, and to create a Safe and Affordable Drinking Water Fund with dedicated annual funding for water systems. See Cal. AB 401 (2015-2016), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB401](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB401); Cal. SB 998 (2018-2018), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB998](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB998); Cal. SB 200 (2019-2020), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB200](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB200). The "right to water" law has provided a legal justification for state agencies to consider affordability in their decision making and has encouraged agencies to take a more coordinated and ambitious approach to tackling water affordability issues. See, e.g., Cal. PUC Decision 20-08-047 (Aug. 27, 2020) in Rulemaking 17-06-024. California Public Utilities Commission, *Environmental & Social Justice Action Plan Version 2.0*, April 7, 2022, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf>.
- 60 Cal. AB 401 (2015-2016), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB401](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB401); California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*.
- 61 HHS Office of Community Services, "Low Income Household Water Assistance Program." For the legislative language establishing and funding this emergency COVID-19 relief program, see HHS Office of Community Services, LIHWAP Laws and Regulations, <https://www.acf.hhs.gov/ocs/law-regulation/lihwap-laws-and-regulations>.
- 62 HHS Office of Community Services, "Low Income Household Water Assistance Program (LIHWAP)," accessed June 8, 2022, [https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM\\_OCS\\_LIHWAP%20FactSheet\\_FY2022.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocs/COMM_OCS_LIHWAP%20FactSheet_FY2022.pdf).
- 63 Ibid.
- 64 HHS Office of Community Services, "The Low Income Household Water Assistance Program Data Dashboard," accessed June 8, 2022, <https://lihwap-hhs-acf.opendata.arcgis.com>.
- 65 Amendment to Rules Committee Print I17-9 (offered by Tlaib of Mich), [https://amendments-rules.house.gov/amendments/TLAIB\\_035\\_LIDWAP210628110017323.pdf](https://amendments-rules.house.gov/amendments/TLAIB_035_LIDWAP210628110017323.pdf).
- 66 Becky Hammer and Larry Levine, "EPA Rethinks Water Affordability, Reverses Trump Approach," NRDC *Expert* blog, February 17, 2022, <https://www.nrdc.org/experts/becky-hammer/epa-re-thinks-water-affordability-reverses-trump-approach>. When a municipality is required to upgrade its wastewater system to meet clean water requirements, the utility will often argue that the effects of rate increases on low-income customers limit how much they can invest and how fast they can do it. When these concerns arise, the EPA's "Financial Capability Assessment Guidance" provides guidelines for determining a long-term compliance schedule or reconsidering underlying clean water goals. In February 2022, at the urging of environmental justice and clean water advocates, EPA proposed updates to the guidance, directing utilities in this situation to consider options to mitigate cost burdens on low-income households. In the proposed updates, Appendix C provides a long list of options to consider. Many of those options (such as percentage-of-income payment plans, bill discounts, equitable rate structures, and water efficiency assistance) are also explored in this toolkit. For EPA's 2022 draft guidance, see EPA, *Proposed 2022 Clean Water Act Financial Capability Assessment Guidance*, February 2022, [https://www.epa.gov/system/files/documents/2022-02/2022-proposed-fca\\_feb-2022.pdf](https://www.epa.gov/system/files/documents/2022-02/2022-proposed-fca_feb-2022.pdf).
- 67 A proposed bill in California that would establish a statewide Water Rate Assistance Fund includes provisions addressing most or all of these elements. See Ca. SB 222 (2021-2022), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB222](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB222).
- 68 For example, some utilities have funded modest assistance programs with revenues from leasing space for cellular equipment on utility property; voluntary contributions from customers (solicited by such means as giving customers the option to "round up" their bills); voluntary contributions through employee programs; or donations from external nonprofits.
- 69 For example, in Raleigh, North Carolina, the City Council in 2016 established a water customer assistance program using general municipal tax revenue. The program provides grants of \$240 to customers in financial distress, with no ongoing assistance to help people afford future bills. The program was initially funded at \$240,000 per year. Today, presumably because the City Council's funding does not meet the full need, the program's website invites charitable contributions to supplement its funding. See University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, 146-47, <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Nagivating-Pathways-to-Rate-Funded-CAPs.pdf>. See also City of Raleigh, "Assistance Program for Water and Sewer Utility Customers," accessed May 11, 2022, <https://raleighnc.gov/water-and-sewer/assistance-program-water-and-sewer-utility-customers>.
- 70 All customers not participating in the program pay a marginal per gallon surcharge to fund the program. As of September 2021, the charge was approximately \$0.00009 per gallon for water and \$0.0001 for sewer. See Phila. Water Dep't, Rates and Charges (eff. Sept. 1, 2021), <https://water.phila.gov/pool/files/rates-and-charges-2021-09-01.pdf>.
- 71 The Great Lakes Water Authority (GLWA), a wholesale water and sewer utility, uses a portion of its revenues to fund a Water Rate Assistance Program for communities in its service area. GLWA itself is funded by contractual payments from the communities it serves. Those communities generate revenue to cover their expenses, including their contract payments to GLWA, through rates they charge to their own retail water and sewer customers. See University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*, 132-33.
- 72 A high rate of customer nonpayment due to unaffordable bills—even after all attempts at bill collection have been exhausted—means either that the costs of filling budget gaps will be reallocated to paying customers or that the system will not generate sufficient revenues to provide clean, safe water and sewer services. It can also increase the utility's cost of borrowing, as credit rating agencies take into account a utility's collection rates. S&P Global Ratings, "Affordable for Now: Water and Sewer Rates at U.S. Municipal Utilities," October 24, 2018, <https://www.spglobal.com/ratings/en/research/articles/181024-affordable-for-now-water-and-sewer-rates-at-u-s-municipal-utilities-10740499>.
- 73 Studies from Indiana, Colorado, and New Jersey are cited in the following reports: Roger D. Colton, *Water Bill Affordability for the City of Philadelphia*, April 9, 2015, [https://www.michigan.gov/-/media/Project/Websites/mpsc/workgroups/eaac/Colton\\_City\\_Council\\_comments--April\\_8\\_2015--Final.pdf?rev=33f7913f3d2248ccab30993f3c1b8cdf](https://www.michigan.gov/-/media/Project/Websites/mpsc/workgroups/eaac/Colton_City_Council_comments--April_8_2015--Final.pdf?rev=33f7913f3d2248ccab30993f3c1b8cdf); Roger D. Colton, *Baltimore's Conundrum: Charging for Water/Wastewater Services That Community Residents Cannot Afford to Pay*, Food & Water Watch, November 2018 (Revised), <https://www.foodandwaterwatch.org/wp-content/uploads/2022/02/BaltimoreWater-RogerColton.pdf>.

- 74 A 2010 report by the Water Research Foundation and the EPA stated that “customer assistance programs have been shown to be capable of producing more total revenue for the dollars expended.” See John Cromwell et al., *Best Practices in Customer Payment Assistance Programs*, Water Research Foundation, January 2010, 91, [https://aquadoc.typepad.com/files/water\\_affordability\\_4004.pdf](https://aquadoc.typepad.com/files/water_affordability_4004.pdf). Similarly, in 2017 the American Water Works Association’s executive director for government affairs noted that “frequent service shutoffs and resolving bad debt from customers who cannot afford their rates can be more expensive for a utility than instituting a [customer assistance program] and assisting customers in paying their bills . . . The benefit to the utility of having discounts or lower rates for low-income customers is the increased likelihood of collecting payment from these customers.” G. Tracy Mehan and Ian D. Gansler, “Addressing Affordability as a Necessary Element of Full-Cost Pricing,” *Journal AWWA* 109, no. 10 (October 2017): 46-50 (internal citation omitted), [http://aquadoc.typepad.com/files/affordability\\_full-cost\\_pricing\\_jawwa20o2017.pdf](http://aquadoc.typepad.com/files/affordability_full-cost_pricing_jawwa20o2017.pdf). The U.S. Environmental Protection Agency’s Environmental Financial Advisory Board has urged solutions to household-level affordability problems because these problems “often result in increased costs and decreased revenues for water and wastewater utilities, impacting all customers, rich and poor alike.” Environmental Financial Advisory Board letter to U.S. Environmental Protection Agency Administrator, “Affordability Rate Design for Households,” February 22, 2006, <https://nepis.epa.gov/Exe/ZyPDF.cgi/90060J00.PDF?Dockey=90060J00.PDF>.
- 75 The American Water Works Association’s “MI Manual,” the industry standard for water rate setting, outlines the ways that *not* having affordability programs can hurt a utility’s bottom line. University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*, 18.
- 76 See note 48.
- 77 The Clean Water State Revolving Fund is the main source of federal funds for wastewater and stormwater infrastructure projects. Most project funding is provided as loans. States can offer grants (known as “additional subsidization”) for infrastructure projects to communities that, according to affordability criteria set by the state, would struggle to pay back a loan. For communities eligible only for loans for infrastructure projects, states can offer grants to support discounts to low-income customers, if those customers would be burdened by rate increases needed to pay back a loan. 33 U.S.C. § 1383(i)(1)(A). The EPA recently called attention to this provision in a memorandum concerning implementation of the 2021 Bipartisan Infrastructure Law, noting that “EPA expects states to work with EPA and stakeholders to identify how this provision can be implemented.” See Radhika Fox, “Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law,” memorandum to EPA Regional Water Division Directors and State SRF Program Managers, March 8, 2022, 26, [https://www.epa.gov/system/files/documents/2022-03/combined\\_srf-implementation-memo\\_final\\_03.2022.pdf](https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf). Federal law does not authorize states to do this for drinking water projects under the Drinking Water State Revolving Fund.
- 78 Delaware Department of Natural Resources and Environmental Control, “DNREC Environmental Finance, DPH Office of Drinking Water, Water Infrastructure Advisory Council Announce Additional Subsidization Assistance Program for Low-Income Subgroups,” press release, June 15, 2016, <https://news.delaware.gov/2016/06/15/dnrec-dph-announce-additional-subsidization-assistance-program/>. These grants were also available in connection with the Drinking Water State Revolving Fund program.
- 79 N.J. S.291 (2022), <https://www.njleg.state.nj.us/bill-search/2022/S291>.
- 80 California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*, chapter 5, 46–48; California State Water Resources Control Board, *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program Appendices*, Appendix G, 73–80.
- 81 Political feasibility is likely the biggest constraint on funding sources. This will, of course, vary from state to state.
- 82 Water and Sewer Financial Assistance Act, Ill. Pub. Act 102-262 (2021), codified at 305 Ill. Comp. Stat. 21/51 through 21/99. For an in-depth profile of this legislation, see River Network Deep Dive, “Lessons From Illinois.”
- 83 In California, legislation introduced to authorize a statewide program based on the State Water Board’s report does not provide any funding or specify a future source of funding. Cal. SB 222 (2021-2022), [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=20210220SB222](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB222). Legislation pending in New Jersey to create a water assistance program would provide \$75 million in seed money from the state’s American Rescue Plan Act funds, though it does not provide an ongoing funding source. N.J. S.291 (2022), <https://www.njleg.state.nj.us/bill-search/2022/S291>. Illinois has actually enacted a law to create a statewide water assistance program—separate from the Water and Sewer Financial Assistance Act—though it becomes effective only when and if the legislature appropriates funds. This was included in a 2021 law requiring utilities to remove all lead service lines. Lead Service Line Replacement and Notification Act, Ill. HB3739 § 5, codified at 20 Ill. Comp. Stat. 605/605-870.
- 84 LIHEAP, for example, is funded through annual appropriations. Historical funding levels give an idea of the order of magnitude at which Congress has funded utility assistance. The highest annual LIHEAP appropriations occurred during the national financial crisis in 2009–11, peaking at \$5 billion in 2010. From 2017 to 2021, the average annual appropriation was about \$3.6 billion (including a spike in 2020 due to the COVID-19 pandemic). At the program’s peak, it served 22 percent of eligible households; from the late 2000s to the present, it has served approximately 15 percent of eligible households each year. See Scott Bechler, “How a Decades-Old Federal Energy Assistance Program Functions in Practice: A Deep Dive Into LIHEAP,” Duke University Nicholas Institute for Environmental Policy Solutions, April 2021, <https://nicholasinstitute.duke.edu/sites/default/files/publications/How-a-Decades-Old-Federal-Energy-Assistance-Program-Functions-in-Practice-A-Deep-Dive-into-LIHEAP.pdf>.
- 85 Public Law 117-58, § 50109, 135 Stat. 1148 (2021), <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>.
- 86 H.R. 3684, 117th Congress, §§ 13302–13303, as passed by the House on July 1, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3684/text/eh?r=1>.
- 87 UNC Environmental Finance Center, *Navigating Legal Pathways*.
- 88 *Ibid.* State law on this question often differs depending on whether a utility is regulated by the state’s utility commission. Where the law is ambiguous, a commission-regulated utility can resolve the question by seeking permission in a rate case and getting a ruling from the commission.
- 89 Nick Leonard, Erin Mette, and Oday Salim, *Legal Pathways to Income-Based Drinking Water Rates in Michigan*, Great Lakes Environmental Law Center & National Wildlife Federation, April 2020, <http://nwf.org/-/media/Documents/PDFs/NWF-Reports/2020/Legal-Pathways-to-Income-Based-Drinking-Water-Rates-in-Michigan.ashx?hash=5EC45917D701F8A1EE7052BD2CFC552FCC5F7B1&la=en>. Over the years, the Detroit Water and Sewer Department has often raised this objection. In years past, advocates worked with pro bono counsel and with the City Council to develop legal memos countering the utility’s position.
- 90 Before launching its program, to help avoid legal challenges, Atlanta adopted an ordinance with findings that describe “how assisting low-income customers provides a ‘direct and substantial benefit to the drinking water and wastewater system’ by retaining customers, reducing bad debt, and so forth. [The ordinance] states that this low-income [assistance program] enhances the city’s ability to operate utilities in ‘an economical manner and on a revenue producing basis.’” See University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*, 123–24.
- 91 University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*, 9, 17–18.
- 92 While such attorney general opinions do not have a binding legal effect, they can help allay a utility’s concerns about legal challenges.
- 93 Water and Sewer Financial Assistance Act, Ill. Pub. Act 102-262 (2021), codified at 305 Ill. Comp. Stat. 21/51 through 21/99. For an in-depth profile of this legislation, see River Network Deep Dive, “Lessons From Illinois.”
- 94 N.J. Bill A.1961 (Session 2022–2023), <https://www.njleg.state.nj.us/bill-search/2022/A1961>.

- 95 One nonprofit research organization’s report on water affordability suggests the Economic Policy Institute’s Family Budget Calculator and the Department of Housing and Urban Development’s list of Fair Market Rents as starting points for understanding the local cost of living. See Feinstein, “Keeping the Water On,” 9. One national water affordability study, which evaluated water bills as a share of household disposable income, proposes another approach to determining the cost of living. Manuel P. Teodoro, “Water and Sewer Affordability in the United States,” *AWWA Water Science* 1, no. 2 (March 2019): 1–10, <https://doi.org/10.1002/aws2.1129>.
- 96 For example, in New Jersey, as a water shutoff moratorium was about to expire in March 2022, the state legislature provided continued shutoff protections for any residential customer who initiates an application for the Low Income Household Water Assistance Program by June 15, 2022. The law provides the same protection to energy utility customers applying for assistance. N.J. Pub. L. 2022, ch. 4, [https://pub.njleg.state.nj.us/Bills/2022/AL22/4\\_.PDF](https://pub.njleg.state.nj.us/Bills/2022/AL22/4_.PDF). A state agency notice to municipalities further explains the law’s provisions. N.J. Dept. of Community Affairs, Division of Local Government Services, “Treatment of Residential Water, Sewer & Electric Arrearages; Residential Ratepayer Assistance,” Local Finance Notice 2022-11, April 29, 2022, <https://www.nj.gov/dca/divisions/dlgs/lfns/22/2022-11.pdf>.
- 97 Vedachalam and Dobkin, *H<sub>2</sub>O Affordability*, 7.
- 98 A report by SPUR compared bill discount programs operated by four major California water utilities and found that the most highly enrolled programs had “simple applications that require no additional documentation.” See Feinstein, “Keeping the Water On,” 5.
- 99 A 2021 survey of 20 large utility programs by the Environmental Policy Innovation Center found that “easy-to-access [assistance programs] are an anomaly among water utilities.” Most programs required applicants to submit multiple documents, and only 6 of 20 programs allowed online submissions. See Vedachalam and Dobkin, *H<sub>2</sub>O Affordability*, 15.
- 100 Phila. Water Dep’t Regs. ch. 2, § 206.2(e), <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>.
- 101 The California energy discount program, CARE, allows self-certification, subject to audit. This approach has resulted in participation rates that average 90 percent for investor-owned energy companies. Self-certification was also used by several utilities to administer relief during the COVID-19 pandemic, with excellent results. See, e.g., Water Equity Network and US Water Alliance, “Modern, Effective, and Compassionate Billing: How Louisville Made an Overdue Upgrade to Assistance Programs and Improved the Utility Customer Relationship,” 2021, 4, <http://uswateralliance.org/sites/uswateralliance.org/files/FINAL%20Louisville%20case%20study.pdf>.
- 102 Seattle Public Utilities customers have up to six months to submit their proof of income and state-issued ID after applying. See Vedachalam and Dobkin, *H<sub>2</sub>O Affordability*, 35.
- 103 California’s large water utilities maintain a data exchange with the energy utilities for the purpose of enrolling households in their low-income water assistance programs. The exchange, which includes privacy protocols, occurs four times a year, and capability has been expanded to allow municipal water utilities to participate. This is possible in part because state law allows public utilities to share certain customer information with local governments (name, address, telephone, and email). See Cal. Gov’t Code § 8593.4 (West). Customers authorize the sharing of their data, including information about their participation in assistance programs, when applying for energy or water assistance. See Cal. PUC Decision 21-07-029 (Jul 20, 2021) in Rulemaking 17-06-024.
- 104 A recent report found that only 4 of 20 large utility assistance programs surveyed linked the water assistance application with another utility or social assistance program. Vedachalam and Dobkin, *H<sub>2</sub>O Affordability*, 17.
- 105 Ibid.
- 106 Feinstein, “Keeping the Water On,” 8.
- 107 Vedachalam and Dobkin, *H<sub>2</sub>O Affordability*, 19.
- 108 A case study of Louisville’s COVID-19 relief program by the US Water Alliance provides an example of an effective, modern approach to customer outreach. See Water Equity Network and US Water Alliance, “Modern, Effective, and Compassionate Billing.” For an example of social media promotional materials, see HHS Office of Community Services, Director of the Division of Energy Assistance, “Low Income Household Water Assistance Program,” letter to LIHWAP grant recipients, May 9, 2022, <https://www.acf.hhs.gov/ocs/policy-guidance/lihwap-social-media-and-renters-toolkit-fy2022>.
- 109 Janet Clements et al., *Customer Assistance Programs for Multi-Family Residential and Other Hard-to-Reach Customers*, Water Research Foundation, 2017, 73–78, [https://www.waterrf.org/system/files/resource/2019-07/4557\\_1.pdf](https://www.waterrf.org/system/files/resource/2019-07/4557_1.pdf).
- 110 City of Philadelphia Department of Revenue, *Annual Report to the Mayor on the Tiered Assistance Program (TAP)*, March 31, 2021, <https://www.phila.gov/media/20210412104452/Tiered-Assistance-Program-TAP-2020-annual-report.pdf>.
- 111 Conor Morris, “What Can Cleveland Learn From Philadelphia’s Ambitious Experiment in Water Billing?” *The Land*, May 2, 2022, <https://www.thelandcle.org/stories/water-has-increasingly-become-more-expensive-for-the-people-struggling-to-make-ends-meet>. For more on Philadelphia’s formal rate-setting process, see this toolkit’s module on Accountability and Public Participation in Decision Making.
- 112 For a library of reports from one firm that has done many evaluations of energy affordability and assistance programs, see Applied Public Policy Research Institute for Study and Evaluation, “Resource Library,” accessed May 12, 2022, <http://www.appriseinc.org/resource-library/selected-reports/bill-payment-assistance/>.
- 113 Sometimes the utility may calculate the credit every month and apply it to the customer’s bill so that it shows up on the bill. Other times, it may be calculated only later, for the purpose of cost accounting.
- 114 Under a fixed credit approach, the annual credit may be apportioned evenly across the household’s monthly bills, so that the households receives one-twelfth of the annual credit each month. Alternatively, it may be apportioned unevenly, for example to correspond to fluctuations in seasonal usage.
- 115 Phila. Water Dep’t Regs. ch. 2, §§ 206.0–206.10, <https://water.phila.gov/pool/files/pwd-regulations-2021-08-27.pdf>; Balt. City Code art. 24, §§ 2-6 to 2-15, [https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water\\_\(rev%2004-11-22\).pdf](https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water_(rev%2004-11-22).pdf). See also City of Baltimore, “Water4All Discount Program.”
- 116 This requirement creates some challenges around outreach. For example, the Philadelphia Water Department cannot simply hand out generic forms to community organizations, since each applicant must use a unique form. However, this does enable the Water Department to automatically suspend shutoff activities while the household completes the application.
- 117 The application website includes the following examples of proof of income: unemployment compensation printout, workers’ compensation award, Social Security letter, pension letter, or welfare benefits statement. See City of Philadelphia, “Water Customer Assistance,” accessed May 12, 2022, <https://water.phila.gov/cap/>.
- 118 Robert Ballenger, Director, Energy Unit, Community Legal Services, personal communication, April 27, 2022. Once finalized, the new rules will be available at Philadelphia Water Department, “Regulations,” accessed May 19, 2022, <https://water.phila.gov/regulations/>.

## *Equitable Water Rates*

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People often think of utility rates as a function of the total amount of money the utility needs in order to cover its operating costs, capital costs, and, for investor-owned utilities, its profit margin. The more a utility spends to produce clean water and treat wastewater, the higher the rates will be—at least without funding from other, non-ratepayer sources, such as local taxes or state or federal grants. That’s all true, generally speaking, but it’s not the entire story.

Just as important as the total amount of revenue a utility seeks to generate from ratepayers is how that revenue need is *divvied up among ratepayers*. For the purposes of this module, the term “rate structure” refers to how the utility allocates costs among different categories of ratepayers and, within each category, among individual customers.

This module explores how rate structure reforms that apply to *all* ratepayers can be used to produce lower bills specifically for low-income households.<sup>1</sup> Equitable rates should be combined with other approaches discussed in this toolkit that specifically target a discrete subset of

households, such as low-income households and others struggling to pay. (See the Affordability and Assistance Programs, Water Debt, and Water Efficiency modules.)

More equitable rate structures alone will not ensure that rates are affordable for all low-income households. But they can ameliorate affordability challenges for many, reducing the size of the problem that must be tackled with means-tested programs. This module provides technical background on the elements of rate-setting and identifies rate structure reforms that can help advance affordability goals.

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### **SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:**

- Understanding the elements of ratesetting
  - Avoiding diversion of rate revenues for nonutility purposes
  - Challenging cost allocations that place an unfair burden on residential customers
  - Reducing reliance on fixed charges or declining block rates that effectively subsidize higher-income customers’ water use
  - Adopting inclining block rates or “lifeline” rates—which, if carefully designed, tend to reduce costs for low-income households
  - Establishing separate rates for wastewater and stormwater that ensure residential customers do not subsidize stormwater services for nonresidential property owners
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## RATE STRUCTURES SIGNIFICANTLY AFFECT HOUSEHOLDS' BILLS

The choices a utility makes regarding its rate structure can have a profound impact on the cost of water service for low-income households. A utility can design rates in ways that reduce bills for those households even without considering any individual customer's income—that is, without adopting a means-tested affordability or assistance program.

Setting water or sewer rates traditionally consists of three steps: determining the utility's total costs of providing service (the "revenue requirement"), allocating costs across customer categories, and designing rates that will generate the allocated amounts from each customer category. As explained below, each of these steps has major implications for household-level affordability.

### QUESTIONS TO CONSIDER:

The following questions may help you identify opportunities to push for a more equitable rate structure in your community:

- Is a "rate schedule" readily available on your water or sewer utility's website or elsewhere? When, how, and by whom are the rates set, and what opportunities exist to participate in the rate-setting process? (See the module on Accountability and Participation in Decision Making for further discussion.)
- Do residential water or sewer bills include fixed charges, which do not vary according to how much water a customer uses? If so, how do these charges vary between residential and nonresidential customers?
- Are residential water or sewer bills based, in whole or in part, on the customer's water usage? If so, do low-volume users and high-volume users pay the same per-gallon rate? Do residential and nonresidential customers pay the same per-gallon rate?
- Does the utility have a "lifeline rate," which keeps the cost low for an initial amount of water intended to cover a household's basic needs? If so, does the amount of water covered by the lifeline rate vary with the size of the household?
- Does the sewer system manage both sewage from buildings (wastewater) and runoff from storms (stormwater)? If so, does your sewer utility ensure that nonresidential properties pay their fair share of stormwater costs, for example by having separate rates for stormwater based on a property's impervious surface area?
- Does all of the money customers pay go toward running the utility, or is some of the money diverted for other purposes?

## REVENUE REQUIREMENT

**What is it?** The revenue requirement refers to the total amount of money the utility needs to cover its operating and capital costs.<sup>2</sup> For investor-owned utilities or public-private partnerships, it also includes the company's profit margin.<sup>3</sup> In many systems, a large portion of the revenue requirement may be the costs of paying off debt—interest on bonds or other loans that finance capital improvements, which are secured by a legally binding promise of future ratepayer revenue.<sup>4</sup> (For more on factors that contribute to variation in rates, see the Background module.)

**Why does it matter?** If any portion of a publicly owned utility's revenues are diverted to nonutility local government purposes, this would artificially inflate the revenue requirement beyond the actual cost of providing water and sewer service (see text box, "Diversion of Ratepayer Funds Drives Up Bills"). Conversely, if the utility receives any non-ratepayer revenue—for example, funding from local property or sales taxes, or state or federal infrastructure grants—this would be deducted from the amount of revenue that needs to be recovered through rates.



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## DIVERSION OF RATEPAYER FUNDS DRIVES UP BILLS

The purpose of a water utility is to provide water service. So 100 percent of the money collected from customers should go toward the costs of operating, maintaining, and improving the water system, right? In many systems, it doesn't.

In too many cases, the steady revenue generated by publicly owned systems is too tempting for local officials to resist as a funding source to meet other local government needs.<sup>5</sup> Transfers of rate revenue to a municipal general fund unfairly force water customers to subsidize, through their water bills, other local government functions. In Chicago, investigative reporting found that an estimated \$775 million in rate revenues had been used to cover the city's municipal employee pension liabilities.<sup>6</sup> Sometimes these raids on utility funds are essentially hidden to customers when they pay their bill.<sup>7</sup> In the case of Chicago, however, the city explicitly imposed a "water-sewer tax" to fund the pension liabilities. Combined with increasing water and sewer rates, this tax contributed to a water debt crisis among residential customers.<sup>8</sup>

Many cities impose taxes on municipal water and sewer bills— or taxes on the utility's revenue, which get passed on to customers through rates—to fund other local government functions. A recent blog article from an academic expert on water rates and affordability provides a helpful primer on this issue, including examples from around the country. The author emphasizes that such taxes are "profoundly regressive ways to raise revenue" and states that "in some places, 10–50% of water/sewer revenue goes to general government taxes."<sup>9</sup> A companion piece by the same expert offers some recommendations on stopping this practice as a way to improve water affordability for low-income households.<sup>10</sup> Likewise, the U.S. Water Alliance, an influential voice in the water utility sector, recently called for an end to taxes on public water service, arguing that they "can contribute to putting essential services out of reach for low-income customers and should not be allowed."<sup>11</sup>

## COST ALLOCATION

**What is it?** Cost allocation refers to the method a utility uses to apportion its total revenue requirement to particular retail and wholesale customer categories, based on the cost of serving each category. For retail customers (i.e., individual accounts billed directly by the utility), these categories may distinguish between residential and nonresidential retail customers; in turn, nonresidential customers may be divided into commercial, industrial, institutional, and other categories. When a municipal system serves some retail customers beyond the municipal boundaries, those customers may be treated as a separate category for purposes of rate-setting.

Additionally, for systems that provide wholesale service, cost allocation includes apportioning costs among wholesale customers. For example, some drinking water utilities, serving as a wholesale supplier, deliver under contract some or all of the water they produce to other, nearby water utilities, which in turn provide water service to their own retail customers. Similarly, some regional wastewater treatment utilities, operating as a wholesale supplier of treatment services, receive and treat wastewater from sewer systems owned by individual communities; those communities, in turn, provide wastewater collection services to individual retail customers. Some water or wastewater utilities function as retail providers (directly serving individual users) in some areas and as wholesale utilities in other communities; in that case, cost allocation also includes determining the share of the system's total revenue requirement that will be assigned to wholesale customers and the share that will be assigned to retail customers.

**Why does it matter?** Cost allocations determine how much total revenue needs to be generated from each customer category. For retail utilities, the greater the cost allocation is to a customer category, the higher the rates will be for those customers, and vice versa. Traditionally, cost allocation has been conceived of as a technical question—a determination (or, more realistically, an approximation) of the discrete costs of providing service to each customer category.

## A MORE PROGRESSIVE VIEW OF COST ALLOCATION CAN SUPPORT MORE EQUITABLE RATES

Public health can be broadly impacted—for example, by a spreading disease—when some households lack water for proper hygiene and sanitation. Given this, some academics and utility consultants have recently been promoting a more progressive view of cost allocation that recognizes a utility's core function of protecting public health across its service area, and not simply providing water as a commodity to discrete, individual customers. In effect, they argue that because providing the service of public health protection requires universal service to all households sufficient to meet essential household needs the cost of providing that essential level of service should be widely shared among everyone in a community, across all customer categories. This can provide a rationale for more equitable rate designs, such as lifeline rates (discussed further below) that reduce the cost burdens placed on low-income households, and for using rate revenues to support other low-income affordability and assistance programs.<sup>12</sup>

When cost allocations are not done fairly and reasonably, one group of customers can end up unfairly subsidizing another. Sometimes policy choices are made not to charge a certain category of users at all; for example, some municipal systems do not charge local government buildings (schools, municipal offices, etc.) for the water they use, which means that the costs of providing that water are shifted to other customers. Other choices regarding cost allocation can be hidden in discounted rates for certain classes of nonresidential customers. For example, Philadelphia provides a 25 percent discount to universities—some of which have multi-billion-dollar endowments—which shifts part of their water costs onto other categories of customers.<sup>13</sup>

In communities that contract with a wholesale utility for water or wastewater service, the community's costs under the wholesale contract get passed along in rates to individual residential and nonresidential customers. Arrangements governing wholesale prices are often complex and difficult to influence. Yet wholesale cost allocation can make a huge difference in rates for individual customers. For example, Detroit is a wholesale customer of a regional wastewater utility; the regional sewage treatment plant, located in the city, receives wastewater both from the city and from many surrounding municipalities. Under a formula developed more than 20 years ago, the city and its retail customers are responsible for paying 83 percent of the costs of system upgrades needed to address sewage overflows.<sup>14</sup> The city and many residents believe this and other aspects of the regional system's cost allocation formulas unfairly burden the city, contributing to high wastewater rates for city residents.<sup>15</sup> (Although in-depth discussion of wholesale rate allocation issues is beyond the scope of this toolkit, the endnote below offers some further considerations.<sup>16</sup>)

## RATE DESIGN

**What is it?** Rate design refers to a utility's pricing structure. After the utility has determined its revenue requirement and made its cost allocations, it has to decide how to set prices to recover the targeted amount of revenue from each category of customers. (This discussion focuses on retail, not wholesale, rate design.) The U.S. Environmental Protection Agency's website offers a clear, concise primer on the most typical water rate designs.<sup>17</sup>

**Why does it matter?** A utility's rate design choices can have an enormous impact on how much a customer pays for water or wastewater service. Depending on how they design their residential rates, two hypothetical utilities with the same number of customers, same revenue requirement, and same cost allocation could charge very different amounts to customers using the same quantity of water. For example, as discussed further below, some utilities charge all residential customers a flat amount regardless of how much water they use. Others base charges on usage, at least in part, but may charge all residential customers the same per-gallon rate or impose per-gallon higher rates (or even lower rates) on customers who use more water.<sup>18</sup>

## MORE EQUITABLE RATE DESIGNS CAN REDUCE BILLS FOR LOW-INCOME CUSTOMERS

For any given community, in determining how alternative rate designs would affect affordability for low-income households, it is very important to understand both the utility's current rate design and the consumption levels of low-income households in the utility's service area.

Outdoor water use, such as landscape irrigation, makes up a large share of average residential water use.<sup>19</sup> Therefore, to the extent that low-income households are likely to have lower-than-average outdoor water use in a particular community, they are also likely to use less water than the average household. For example, wealthier families in suburban houses with large, irrigated lawns will use much more water than families in smaller homes in denser neighborhoods with minimal outdoor space, where lower-income families are more likely to live.

However, not all communities and all low-income households are the same, even when one focuses specifically on indoor water use to meet essential needs. Some households may use more water than average because they have more people than average—for example more children in the family, multiple generations living together, or multiple families living in the same housing unit. Further, low-income housing is more likely than most homes to have old, inefficient fixtures and leaky plumbing, which can drive up per capita indoor water use relative to other customers. (For more, see the Water Efficiency and Plumbing Repair Assistance module.)

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When utilities have high fixed charges, flat rates, or declining block rates, lower-income customers often subsidize higher-income ones.

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In light of household-level variation in water use, the following discussion of rate design alternatives should be considered as a generalization. It should not be taken as a prescription for rate designs that reduce costs for all low-income households, much less designs that ensure affordable water for all. For example, some of the options discussed below focus on reducing costs for lower-volume residential users relative to higher-volume residential users; these approaches would better support low-income households if a utility adjusts its rates based on household size and provides water efficiency assistance to low-income households.<sup>20</sup>

Rate design options that may tend to reduce bills for lower-income households include:

- **Avoiding overreliance on fixed charges:** A fixed charge refers to a portion of the bill that is the same regardless of level of water consumption. In contrast, a volumetric charge refers to a per-gallon charge for water usage. Where rate designs rely on fixed charges to generate a large share (or even all) of a utility's revenue, low-income customers who use water primarily to meet essential indoor water needs end up subsidizing the water use of higher-income customers who have large volumes of discretionary outdoor water use.<sup>21</sup> "Flat" rates are the most extreme example of a fixed charge, where a low-income household with no outdoor water use pays the same amount as a wealthy household with a one-acre lawn.<sup>22</sup> However, many water and wastewater utilities have rate designs that include both a fixed charge and a volumetric charge; for these utilities, high fixed charges tend to disfavor low-income households.
- **Using tiered, inclining block rates:** The most common volumetric rate designs are uniform rates (the same per-gallon charge regardless of total usage), inclining block rates (a per-gallon rate that increases for larger increments of use, often used to incentivize water conservation), and declining block rates (a per-gallon rate that decreases for larger increments of usage).<sup>23</sup> Of these three rate designs, declining block rates tend to put the greatest burden on low-income customers who use water primarily to meet essential indoor water needs who end up subsidizing higher-use, higher-income residential customers.

Inclining block rates, on the other hand, can result in the lowest bills for many low-income customers; they tend to shift costs away from low-income households by increasing costs for higher-volume residential users.<sup>24</sup> The impacts of any particular inclining block rate design depend, however, on how the usage tiers are defined (e.g., the level of water consumption that makes up the lowest tier) and on the relative differences in pricing among the tiers.

- **Adopting lifeline rates:** Rates can be designed to be affordable for an initial amount of water deemed sufficient to cover a household's basic indoor needs, including drinking, cooking, and sanitation. This approach is often known as a lifeline rate. When considering lifeline rates, it is important to take into account unintended consequences for low-income households that may need higher-than-average amounts of water to meet basic needs.<sup>25</sup> (See the text box below for more on lifeline rates.)
- **Establishing separate rates for wastewater and stormwater:** Hundreds of communities in the United States (mostly older cities in the Northeast, Midwest, and Pacific Northwest) are served by combined sanitary and storm sewer systems—that is, systems that handle sewage from buildings and runoff from streets in the same pipes. When these utilities rely on wastewater charges to fund both wastewater and stormwater services, as is often the case in these communities, residential customers tend to subsidize stormwater services for nonresidential property owners. For example, when rates are based on water usage (as wastewater service often is), customers pay for stormwater service based on how much water they use. But water usage bears no relationship to the amount of stormwater runoff a customer contributes to the sewer system. Therefore, properties with lots of impervious surface area but relatively low water use, such as nonresidential properties with large parking lots and rooftops, end up being undercharged for stormwater services, while residential customers with little impervious area are overcharged.

In combined sanitary and storm sewer systems, residential customers (including low-income residential customers) can benefit from a restructuring of rates so that stormwater services are charged separately, based on impervious area or some other surrogate for the amount of runoff a property contributes to the public sewer system. In Pittsburgh, a community-based coalition—as part of its water affordability advocacy—successfully fought for this change as “a more equitable way to fund the improvements we need to manage stormwater in Pittsburgh.”<sup>26</sup>



## LIFELINE RATES

Lifeline rates aim to provide an affordable rate for an initial amount of water deemed sufficient to cover all or most of a household's basic needs, such as drinking, cooking, and sanitation.<sup>27</sup> Water consumption above the lifeline amount is charged at a higher rate. The aim is to ensure that households can afford enough water for their basic daily needs while maintaining price incentives that reduce excessive water consumption. (Note: Some utilities may also use the term "lifeline rate" for programs that are not based on usage, such as flat discounts.<sup>28</sup>)

Some water utilities, such as the one in Washington, D.C., apply a lifeline rate to an initial increment of usage for all residential customers.<sup>29</sup> Others, such as in Norman, Oklahoma, offer theirs only to low-income households.<sup>30</sup> Lifeline rates can also be designed in various ways. For example, in Norman, low-income customers get a lower rate for the first 5,000 gallons of water consumed, as well as a discounted fixed charge.<sup>31</sup> Alternatively, under an inclining block rate structure, the volume of water included in the first block could be sized to correspond to a lifeline amount and priced at a level intended to ensure affordability.<sup>32</sup> The important point is that the rate should be calculated to allow households to access enough water for their essential needs at an affordable price.

Lifeline rates can improve affordability for many households. However, they may fall short if the lifeline water usage amount is unrealistically low or if the utility defines "affordable" unrealistically (for example, on the basis of an average rather than a low-income household). In addition, lifeline rates may negatively impact customers whose usage exceeds the lifeline amount for reasons beyond their control, such as customers who have large households or live in older housing with inefficient fixtures and leaky plumbing. To avoid these effects, the size of the lifeline amount should ideally be adjusted to reflect household size, and lifeline rates should be paired with water efficiency assistance to help customers keep their usage within the lifeline amount.

### UTILITIES MAY RAISE CONCERNS ABOUT CERTAIN RATE DESIGNS

Water utilities will often raise concerns about the financial implications of, or potential legal impediments to, some of the rate structures discussed above. Some of these concerns are described below.

***Will reduced reliance on fixed charges undercut revenue stability?*** A major reason why utilities like fixed charges is because they offer a hedge against changes in demand—for example, reduced demand when water-use restrictions are imposed during a drought, or when an especially wet year means less need for landscape irrigation. When shifting allocations between fixed and volumetric charges, utilities can use various complementary strategies to limit revenue fluctuations. There is a rich and growing body of literature and practice in this field.<sup>33</sup> With electric rate design, environmental and consumer perspectives align on numerous strategies to avoid overreliance on fixed charges.

***Why are tiered rates (or "conservation rates") needed in areas with abundant water supplies?*** Tiered rates promote equity as well as efficiency. Nearly every water utility in the United States sees water usage rise during the summer months, due primarily to lawn watering and other landscape irrigation. Even in areas with ample water supplies, high summer usage drives extra costs for the utility because conveyance and treatment infrastructure has to be built to meet peak demand. High summer usage pushes up costs for all customers, so it is only fair that rates be designed to recover extra costs during peak summer usage. This is what tiered rates are designed to do.

***Does state law authorize lifeline rates?*** In some cases, state law may raise questions about whether setting a low rate for an initial increment of water use, specifically to make that basic use affordable, violates a principle that rates should correspond to the "cost of service." State laws are unlikely to explicitly address the permissibility of lifeline rates, but utilities should not assume this means they lack the authority to adopt one; advocates can also commission their own legal research.<sup>34</sup> Moreover, as discussed above, when water and sewer services are understood to provide public health and other essential-to-life benefits to all members of a community, this may help legally justify lifeline rates that spread the costs of basic, universal service more equitably across all ratepayers. Finally, lifeline rates that apply equally to all residential customers, regardless of income, should at least avoid the concern that low-income discounts may be unlawful "discrimination" in rates.

***Does state law authorize charging separately for stormwater services?*** Many municipalities have faced court challenges to stormwater fees, with challengers arguing that they are not authorized under state law. Historically, municipalities have tended to fare well in these cases, and utility associations have developed resources to help utilities work through the legal issues.<sup>35</sup> When necessary, advocates can seek amendments to state law to explicitly provide legal authority. For example, in 2019 New Jersey enacted legislation authorizing municipalities to charge for stormwater services based on impervious area.<sup>36</sup>

## HOW DID THEY COME UP WITH THOSE RATES? ASK FOR A RATE STUDY.

As part of the formal process used to set rates, some utilities must provide an explanation of why rates were set (or proposed) at a particular level. (For more information on the rate setting process, see the Accountability and Participation in Decision Making module.) But what if the utility can't point to any supporting analysis when you ask? A well-managed utility should periodically conduct a "rate study" that identifies total revenue needs, explains the selected rate structure, and quantifies rate increases needed to generate the necessary revenue. If your utility hasn't done a rate study recently, you can push it to undertake one. You can also urge the utility to actively engage advocates and ratepayers in a new rate study. For example, a formal advisory group could be convened to explore how to make the rate structure more equitable or how to use low-income affordability or assistance programs to mitigate the impact of future rate increases. Here, too, connecting with legal advocacy organizations or academics who may offer pro bono expertise in this area should be considered.

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### KEY RESOURCES:

WaterSense, "Understanding Your Water Bill," U.S. Environmental Protection Agency, accessed April 11, 2022, <https://www.epa.gov/watersense/understanding-your-water-bill>.

*This webpage provides a useful primer on various water rate structures.*

## ENDNOTES

- 1 This module focuses on equitable rates for households that are direct customers of the water utility, mostly residents of single-family homes. It does not consider how rate structures affect renters who are not direct customers of the utility, such as those in multifamily buildings where the landlord is the direct customer.
- 2 Utility-specific factors contributing to operating and capital costs are discussed briefly in the Background module.
- 3 Public-private partnerships include arrangements in which a private company operates a water or sewer system under contract with a publicly owned utility. They can also include situations in which a private company leases a system by making annual payments to the local government and in return receives the right to retain ratepayer revenue. Despite the central role of private, investor-owned companies, these arrangements typically are not subject to state utility commission oversight because they do not involve actual private ownership of the utility. In some cases, these arrangements have resulted in rate increases far in excess of those anticipated when contracts were negotiated, due to the need to generate a guaranteed level of profit for the private company and its investors. Danielle Ivory, Ben Protes, and Griff Palmer, “In American Towns, Private Profits From Public Works,” *New York Times*, December 24, 2016, <https://www.nytimes.com/2016/12/24/business/dealbook/private-equity-water.html>.
- 4 In some cases, financially struggling systems may also incur significant debt for operating costs.
- 5 Stacey Isaac Berahzer, “Fund Transfer Workarounds,” *UNC Chapel Hill Environmental Finance Blog*, September 27, 2013, <https://efc.sog.unc.edu/fund-transfer-workarounds/>.
- 6 María Inés Zamudio, “Drowning in Debt,” *WBEZ Chicago*, November 8, 2021, <https://interactive.wbez.org/waterdebt/>.
- 7 For example, New Jersey law allows water and wastewater authorities to transfer up to 5 percent of any “surplus” revenues in a given year to a local municipal or county budget. N.J. Stat. Ann. § 40A:5A-12.1 (West). Accordingly, in 2020 the Evesham Municipal Utilities Authority transferred \$779,000 to Evesham Township’s general fund. Evesham Municipal Utilities Authority, Resolution 2020-72, <http://www.eveshammua.com/wp-content/uploads/2020/05/Resolution-2020-75-Appropriation-to-Twp-w-letter.pdf>; Evesham Municipal Utilities Authority, “Meeting Minutes From May 13, 2020,” accessed May 13, 2022, <http://www.eveshammua.com/wp-content/uploads/2020/05/minutes-5-13-2020.pdf> (showing approval of resolution).
- 8 Zamudio, “Drowning in Debt.”
- 9 Manny Teodoro, “Stop Taxing Tap Water,” *Manny Teodoro Blog*, June 21, 2021, <https://mannyteodoro.com/?p=2707>.
- 10 Manny Teodoro, “(Un)taxing the Tap,” *Manny Teodoro Blog*, August 10, 2021, <https://mannyteodoro.com/?p=2738>.
- 11 Mami Hara, Renée Willette, and Emily Simonson, “Making Water a Public Good: The Bigger Picture of Water Affordability,” *U.S. Water Alliance*, 2022, <http://uswateralliance.org/sites/uswateralliance.org/files/Making%20Water%20a%20Public%20Good.pdf>.
- 12 Rick Giardina and Manny Teodoro, “Human Health and Functional Cost Allocation for Water Utility Rates,” white paper, February 16, 2020, [https://mannyteodoro.com/wp-content/uploads/WhitePaper-Two-COS-Human-Health\\_2.16.20.pdf](https://mannyteodoro.com/wp-content/uploads/WhitePaper-Two-COS-Human-Health_2.16.20.pdf); Eric Rothstein et al., “Affordability and Equity Considerations for Rate-Setting,” *Journal AWWA* 113, no. 7 (September 2021): 36–47, <https://doi.org/10.1002/awwa.1766>.
- 13 Phila. Water Dep’t, Rates and Charges (eff. Sept.1, 2021) § 5.2, <https://water.phila.gov/pool/files/rates-and-charges-2021-09-01.pdf>.
- 14 Joey Horan, “Paying to Get Flooded: Understanding Detroiters’ Sewerage Costs,” *Planet Detroit*, July 16, 2021, <https://planetdetroit.org/2021/07/paying-to-get-flooded-understanding-detroiters-sewerage-costs/>. The 83 percent rule was codified in a federal court consent decree in 1999. That provision of the decree expired in 2011, but it continued in the contracts between Detroit and the suburbs served by its wastewater system. *United States v. City of Detroit*, 2:77-cv-71100-SFC, ECF No. 2393 (E.D. Mich. August 31, 2011, Order to Incorporate Rate Settlements Into Wastewater Contracts and Dismiss All Prior Rate Settlements).
- 15 Horan, “Paying to Get Flooded.”
- 16 When an investor-owned utility is a wholesale purchaser, or when a community is a wholesale purchaser from an investor-owned utility, wholesale prices are subject to utility commission regulation in connection with the utility’s rate cases. For publicly owned systems, however, the process for negotiating or fixing wholesale prices is rarely transparent; the formulas for calculating prices may have been determined years or even decades ago without being updated to account for changes in the water or sewer system; and the underlying contracts may be very difficult to change. For example, changes may require agreement by a large number of wholesale customers that jointly are parties to a single contract, or the financial arrangements may be codified in legislation. Even in these cases, however, the wholesale utility may need to make certain calculations or financial or technical analyses to apply an agreed-upon formula; therefore, it may be possible to identify and remedy inequities in wholesale cost allocations, even without changing any underlying contracts.
- 17 WaterSense, “Understanding Your Water Bill,” U.S. Environmental Protection Agency, accessed April 11, 2022, <https://www.epa.gov/watersense/understanding-your-water-bill>.
- 18 Although wastewater utilities do not measure how much a residential user discharges into the sewer system, wastewater rates can be, and often are, based on the volume of water a customer uses. The premise is that water that is used (at least indoors) ultimately becomes wastewater, so therefore the volume of water used is a reasonable proxy for the relative cost of collecting and treating wastewater; some systems base the wastewater charge specifically on winter water use, which is meant to approximate indoor-only water use. See Michelle Mehta, “Volumetric Pricing for Sanitary Sewer Service in California Would Save Water and Money,” NRDC, January 2012, <https://www.nrdc.org/sites/default/files/Volumetric-Wastewater-FS.pdf>.
- 19 William B. DeOreo et al., *Residential End Uses of Water, Version 2: Executive Report*, Water Research Foundation, April 2016, [https://www.circleofblue.org/wp-content/uploads/2016/04/WRF\\_REU2016.pdf](https://www.circleofblue.org/wp-content/uploads/2016/04/WRF_REU2016.pdf).
- 20 Gregory Pierce et al., “Solutions to the Problem of Drinking Water Service Affordability: A Review of the Evidence,” *WIREs Water* 8, no. 4 (July/August 2021), <https://doi.org/10.1002/wat2.1522>.
- 21 John Cromwell et al., “Shrink the Bills: Alternative Rate Structures,” chapter 10 in *Best Practices in Customer Payment Assistance Programs*, Water Research Foundation, January 2010, <https://www.waterrf.org/research/projects/best-practices-customer-payment-assistance-programs>; Lisa Wood et al., *Recovery of Utility Fixed Costs: Utility, Consumer, Environmental and Economist Perspectives*, Future Electric Utility Regulation, report no. 5, June 2016, 19–46, <https://eta-publications.lbl.gov/sites/default/files/lbnl-1005742.pdf>.

- 22 Although metering of water use is very widespread, some water systems still are not fully metered and charge some or all customers a flat rate that does not vary by usage. Additionally, flat rates are likely more prevalent for wastewater than for water. For example, a 2018 study of 323 New Jersey municipalities found that more than two-thirds of them relied entirely on a fixed charge for residential sewer service, with no consideration at all of usage. Daniel J. Van Abs and Tim Evans, *Assessing the Affordability of Water and Sewer Utility Costs in New Jersey*, Jersey Water Works, September 2018, <https://www.jerseywaterworks.org/wp-content/uploads/2018/09/Van-Abs-and-Evans-2018.09.09-Assessing-Water-Sewer-Utility-Costs.pdf>. In California, a 2012 report found that 70 percent of California households served by a public water supplier paid for sewer service through a flat, non-volumetric charge. Michelle Mehta, “Volumetric Pricing for Sanitary Sewer Service in California Would Save Water and Money,” NRDC, January 2012, <https://www.nrdc.org/sites/default/files/Volumetric-Wastewater-FS.pdf>. Where water and wastewater services are provided by separate utilities, the wastewater utility may not have access to current water usage data for billing purposes. Advocates could consider state legislation to require water utilities to provide those data when wastewater utilities request it for the customers they have in common.
- 23 The term “tiered rates” is sometimes used to refer to both inclining block rates and declining block rates.
- 24 Cromwell et al., “Shrink the Bills”; Pierce et al., “Solutions to the Problem of Drinking Water Service Affordability.”
- 25 Cromwell et al., “Shrink the Bills.”
- 26 Pittsburgh United, “Stormwater Fee Information,” February 4, 2022, <https://pittsburghunited.org/stormwater/>. As described by Pittsburgh United, “The way we currently charge for stormwater is not equitable—many people pay too much compared to how much stormwater their property generates, while other properties that contribute a large amount of runoff pay very little or nothing at all. The new billing system will be based on the amount of impervious surface area—hard surfaces such as driveways, patios, parking lots, and walkways that don’t absorb water.”
- 27 U.S. Environmental Protection Agency, *Drinking Water and Wastewater Utility Customer Assistance Programs*, April 2016, [https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww\\_utilities\\_cap\\_combined\\_508.pdf](https://www.epa.gov/sites/default/files/2016-04/documents/dw-ww_utilities_cap_combined_508.pdf).
- 28 Contra Costa Water District, “Lifeline Rate Information,” accessed April 11, 2022, <https://www.ccwater.com/237/Lifeline-Rate-Information>.
- 29 District of Columbia Water and Sewer Authority, “Lifeline Rate,” accessed April 11, 2022, <https://www.dcwater.com/lifeline-rate>. DC Water offers a “steeply discount[ed]” per-gallon rate to all customers for the first 300 cubic feet (approximately 3,000 gallons) of water consumed. The utility also offers a separate, deeper discount for low-income customers through its Customer Assistance Program.
- 30 The City of Norman, Oklahoma, “Utility Rates and Information,” accessed April 11, 2022, <https://www.normanok.gov/your-government/departments/finance/utility-rates-and-information>.
- 31 Ibid.
- 32 This approach is often seen in the electric and gas sectors.
- 33 For example, see Pacific Institute, *Water Rates: Conservation and Revenue Stability*, August 2013, [http://www.pacinst.org/wp-content/uploads/2013/01/water-rates-conservation\\_and\\_revenue\\_stability.pdf](http://www.pacinst.org/wp-content/uploads/2013/01/water-rates-conservation_and_revenue_stability.pdf); Shadi Eskaf, “Base Charges Customized Based on Customer Water Use,” *UNC Chapel Hill Environmental Finance Blog*, July 31, 2014, <http://efc.web.unc.edu/2014/07/31/base-charges-customized-based-customer-water-use/>. For a description of an innovative “consumption-based fixed charge” that achieves more equitable recovery of fixed charges based on customer usage, see Bartle Wells Associates, *City of Davis: Water Rate Cost of Service Study*, March 12, 2013, <https://www.cityofdavis.org/home/showpublisheddocument/1251/635614413632600000>.
- 34 A 50-state study by the University of North Carolina Environmental Finance Center examined whether state laws allow utilities to use ratepayer revenue to fund means-tested, low-income assistance programs. Some of the state-by-state laws it describes (concerning the permissible bases for setting water and wastewater rates) may also be relevant as a starting point for a legal analysis of lifeline rates. See University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Navigating-Pathways-to-Rate-Funded-CAPs.pdf>.
- 35 See National Association of Clean Water Agencies, *Navigating Litigation Floodwaters: Legal Considerations for Funding Municipal Stormwater Programs*, 2016, [https://www.nacwa.org/docs/default-source/default-document-library/2016-12-08stormwaterwhitepaper.pdf?sfvrsn=e2f6e961\\_0](https://www.nacwa.org/docs/default-source/default-document-library/2016-12-08stormwaterwhitepaper.pdf?sfvrsn=e2f6e961_0).
- 36 New Jersey Department of Environmental Protection, “Stormwater Utility Guidance,” accessed April 11, 2022, [https://www.nj.gov/dep/dwq/SWU\\_stormwaterutility.html](https://www.nj.gov/dep/dwq/SWU_stormwaterutility.html).



## Water Efficiency and Plumbing Repair Assistance

Nearly everywhere, the more water you use, the more you pay on your water bill.<sup>1</sup>

Anything that helps improve water use efficiency (that is, conserve water) in the home can reduce water bills. It can also reduce wastewater bills if you live in a community where sewer fees are based on the amount of water you use.<sup>2</sup>

Products that save water are widely available, and the replacement of inefficient plumbing and appliances with today's efficient products can provide enduring savings. For example, taking just one action—replacing an old toilet with an efficient new one—can save a family of four about \$100 per year in Milwaukee, \$300 per year in Los Angeles, and more than \$400 per year in Atlanta.<sup>3</sup> Replacing showerheads, faucets, and clothes washers would save even more.

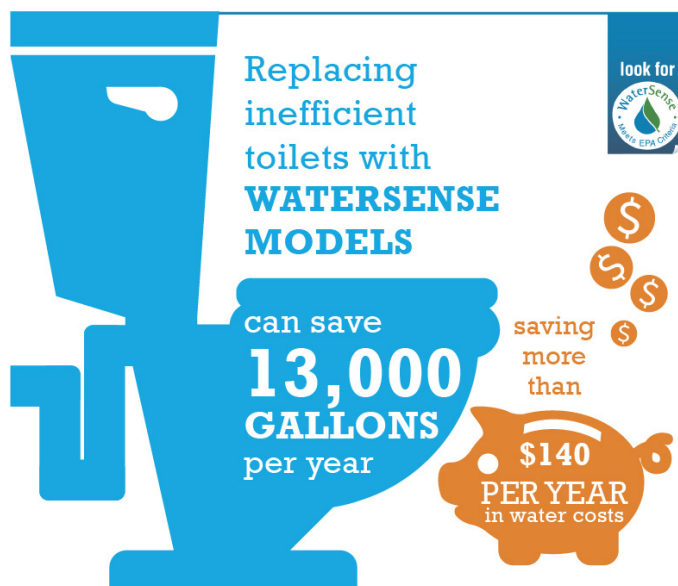
Low-income households are often in the most need of help with replacing outdated plumbing fixtures and repairing leaks. But they are also the least likely to receive it. Even where programs exist to help residents upgrade to water-efficient products, they typically fail to reach low-income households.

Limited access to water efficiency assistance not only keeps low-income households from reducing their bills. In the long run, it can actually drive *increases* in their bills. As higher-income households reduce their per capita water use, low-income households can be left to bear a greater share of the cost of operating a community's water system.

For all of these reasons, a comprehensive approach to water affordability must include water efficiency and plumbing repair assistance designed to reach low-income households.

### SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:

- Reducing water bills through “direct install” programs that upgrade plumbing fixtures and repair leaks
- Targeting programs effectively to reach low-income households that can benefit the most
- Integrating water efficiency assistance into low-income energy efficiency programs
- Seeking opportunities to reach multi-family housing
- Offering plumbing repair assistance as needed to ensure safe restoration of service following a shutoff



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## QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions may help you identify opportunities for new or improved water efficiency assistance programs.

- Do your water and/or sewer utility bills include a charge based on how much water is used? In other words, if customers use less water, will their bills go down?
- Does your utility offer help replacing old fixtures and appliances with new ones that use less water? If so, is this assistance in the form of a rebate or voucher? Or is it a direct installation paid by the utility?
- Does your utility offer programs to help with leak detection and/or plumbing repairs? If so, what assistance is offered?
- Are your utility's programs focused specifically on reaching low-income households? Is the utility successful at reaching low-income households?
- Does your utility track customer water usage in ways that can help prioritize customers for assistance? If not, could it do so with current metering and billing systems, or would future upgrades to those systems be needed?
- Do energy efficiency programs in your area offer improvements that reduce water use? Could they do more?

### LOW-INCOME HOUSEHOLDS ARE MORE LIKELY TO HAVE INEFFICIENT PLUMBING, AND LESS LIKELY TO BE ABLE TO RETROFIT

Since the mid-1990s, state and federal water efficiency standards have required new household plumbing products to use much less water.<sup>4</sup> And over the last 10 years, many states have adopted standards for new plumbing that are even more water-efficient than the federal minimums, which have remained unchanged since 1994.

Low-income residents disproportionately live in older, unrenovated housing stock, which is more likely to have outdated, inefficient fixtures still in use. Toilets account for nearly 30 percent of an average home's indoor water use, and older toilets can use about five times as much water as newer ones.<sup>5</sup> Other old fixtures and appliances also use more water to get the job done. Further, older houses are more likely to have leaky pipes, which can lose huge amounts of water over time.<sup>6</sup>

The widespread availability of water-efficient fixtures and appliances, and, in some cases, state and national standards for these products, have reduced per capita indoor water use nationally by 15 percent during the last two decades.<sup>7</sup> These reductions have been largely in newer housing and in other homes where residents have disposable income to spend on new toilets and appliances and repair of plumbing leaks.

Without effective assistance programs, low-income households cannot afford water efficiency improvements that would reduce their water bills, just as they are often unable to afford home energy efficiency improvements that would reduce their energy bills.

In the energy sector, long-standing federal programs—including the Weatherization Assistance Program (WAP) and Low Income Home Energy Assistance Program (LIHEAP)—provide billions of dollars' worth of home upgrades aimed specifically at making energy bills more affordable for low-income households. Many state and local energy efficiency programs similarly include components focused on low-income customers.

Energy efficiency programs sometimes provide water savings as well. But there are no federal or state programs specifically designed to help low-income households retrofit their homes to be more water efficient.<sup>8</sup>

In the limited number of places where *local* water efficiency assistance programs exist, they rarely focus on low-income households specifically. As a practical matter, these programs are often inaccessible to low-income households because of the way they are designed. For example, a common approach is to offer rebates to customers who purchase a water-efficient toilet to replace their old one. But low-income households may lack the resources to buy first and get reimbursed later—or to buy at all, even at a discounted price.

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Where they exist, water assistance programs are often inaccessible to the low-income households most in need of bill savings.

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No-cost “direct install” programs offer the best opportunity for low-income households to access water efficiency assistance.

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## UTILITIES SHOULD NOT CHARGE RESIDENTS TO REPLACE DANGEROUS LEAD SERVICE LINES

When people cannot afford expensive plumbing repairs or upgrades, the result can be more than just high water bills. It can also leave people with contaminated drinking water from lead pipes.

Water service lines connecting homes to the water mains under the street are a critical part of the water utility’s infrastructure. As many as 12 million of these service lines—and possibly more—carrying drinking water to the homes of up to 22 million more people in the United States, contain lead. These pipes can leach toxic contamination into drinking water as it flows to the tap.<sup>9</sup>

While efforts are underway around the country to replace these lead service lines, many water utilities are charging residents for replacing the portion of the line under private property and skipping over their homes—or completing dangerous partial replacements—if they are unable to pay. The cost can be several thousand dollars, putting lead pipe replacement out of reach for low-income homeowners and leaving them at continued risk of drinking contaminated water.<sup>10</sup> Moreover, when utilities replace only the section of pipe running from the curb to the water main because a homeowner can’t afford to pay for the rest, this can actually increase the amount of lead in water at the tap.<sup>11</sup> A federal civil rights complaint is pending against one city that has continued to charge customers for replacing the portion of the lead service line running from the curb to the home.<sup>12</sup>

To ensure that no one is asked to bear a cost that he or she cannot afford for safe water, advocate for your utility to fund full lead service line replacement from the water main to the home, just as it would pay for any other water infrastructure improvement. In other words, the costs of a system-wide lead service removal program should be spread across the entire customer base. This is the case in Michigan, where all water utilities must replace all lead service lines within 20 years and cover the full cost of replacement.<sup>13</sup>

State and federal funds should be used to the greatest extent possible to reduce the costs borne by the utility’s customers as a whole. Notably, the Bipartisan Infrastructure Law passed in 2021 provides \$15 billion for lead service line replacement, to be disbursed as grants and loans to local water systems.<sup>14</sup> Utilities using these funds must replace the entire lead service line, including the portion running under a homeowner’s property, at no cost to the homeowner.<sup>15</sup> The U.S. Environmental Protection Agency (EPA) also encourages states to supplement this support with American Rescue Plan funds.<sup>16</sup>

## TARGETED WATER EFFICIENCY ASSISTANCE CAN HELP REDUCE BILLS

In short, low-income households need access to no-cost or low-cost water efficiency retrofits—especially through “direct install” programs—as well as leak detection and repair.

Advocates should start by considering whether any existing water efficiency or plumbing repair programs offered by their local utility can be improved to include or prioritize low-income households. Many utilities already have programs to help residents reduce water usage. Although this is most common in the western and southeastern United States, where limited water supplies drive utilities to invest in water efficiency programs, utilities elsewhere may have programs too. Even some wastewater utilities have water conservation programs, since reducing household water use helps manage flow into overburdened sewage systems.

In places where there are currently no water efficiency programs, advocates can seek to create programs specifically for low-income households as part of an overall water affordability strategy. As with low-income affordability and assistance programs generally, programs could be established not only at the local level but at the state level as well. Advocates can also push for existing *energy* efficiency programs—which exist nearly everywhere—to offer more help with water efficiency.

Many useful lessons for program design can be drawn from a set of case studies recently published by the EPA.<sup>17</sup> Other lessons can be drawn from the experience of contributors to this toolkit and from the Water Now Alliance, which has published several additional case studies.<sup>18</sup> For example:

- **Establish Income Eligibility Criteria:** Few existing water efficiency assistance programs are geared specifically toward low-income households. To develop programs specifically with these households in mind, appropriate income eligibility criteria are needed. These can match eligibility criteria for other water bill affordability or water assistance programs, where they exist. Alternatively, such criteria could be borrowed or adapted from other low-income programs, including energy bill and energy efficiency assistance programs as well as other offerings (for example, the Supplemental Nutrition Assistance Program) to limit paperwork burdens on applicants. In the Affordability

and Assistance Programs module, Appendix A includes additional best practices on eligibility and enrollment in low-income water affordability and assistance programs. (Also regarding eligibility, programs should avoid requiring the participating customer to have name-on-deed property ownership. Some advocates report that these requirements have unnecessarily made programs inaccessible to customers with tangled title—a situation that can happen, for instance, when a person has lawfully inherited a family home but his or her name was never put on the deed.)

- **Prioritize direct installation rather than rebates:**

Programs that provide direct installation of new fixtures and appliances with no upfront cost to the customer offer the best opportunity for low-income households to participate. Unfortunately, the most common model for water efficiency programs to date has been to offer a partial reimbursement for the cost of water-efficient products such as toilets. But this effectively excludes low-income households that lack discretionary income to make a purchase (and wait for a partial rebate) or cannot afford even the discounted price.

- **Improve outreach:** The best-intentioned program won't succeed if it is not effectively marketed to the target audience. In addition to basic steps like advertising through bill inserts, approaches can include partnering with other organizations and programs that serve low-income populations, prioritizing neighborhoods with older housing stock for outreach, focusing on vulnerable or disadvantaged communities within the utility's service area, and doing outreach to landlords when tenants may qualify but landlord approval is needed to participate.

- **Engage with those who will benefit the most:**

Encourage households to examine their water bills or bring them in to trusted organizations for review. A few simple calculations should be able to determine the amount of water used per person per day. Looking at bills from the winter months will be the best indicator of indoor water use. If the average daily indoor water use is consistently above 60 gallons per person per day, that household is likely to have very good opportunities for water savings and bill reduction. Those below this level may still have worthwhile savings opportunities, and of course those with higher billed usage are likely to save even more.

- **Identify possible leaks based on metering, billing, and on-site audits:** Utilities can flag accounts that have unusual spikes in metered usage, either on a regular billing cycle or, where remote meter reading exists, in something closer to real time. On-site water efficiency and leak detection audits could also be offered in conjunction with other site visits (e.g., visits for meter replacement or in connection with free home energy efficiency audits offered by WAP or by a local energy utility).

- **Integrate water efficiency assistance into other water affordability or assistance programs:** Other portions of this toolkit explore various types of water affordability and water assistance programs specifically intended for low-income households. Water efficiency assistance should be integrated into those programs as part of a holistic approach to reducing water bills, just as energy efficiency is often part of a low-income energy assistance program. In some cases, water efficiency assistance can be critical to the success of other affordability strategies; for example, it can help customers keep their water usage below the level that qualifies for a low lifeline rate. (See the Equitable Water Rates module for a discussion of lifeline rates.)

- **Piggyback on existing energy efficiency programs:** Low-income energy efficiency programs, such as WAP and local programs sponsored by an energy utility, can fund home improvements that reduce both energy and water usage. For example, efficient showerheads, faucet aerators, and clothes washers and insulation of hot water pipes reduce the amount of hot water used and the energy needed to heat it. Advocates can urge the entities that manage energy assistance programs to maximize the availability of water efficiency assistance in their offerings. Further, water and wastewater utilities can be encouraged to partner with those existing energy programs to administer new water efficiency programs, with funding from the water utility. (Keep in mind that, although energy programs are typically administered locally, they often rely on federal or state funds and on fees collected from energy customers, with program rules set by the state. So the targets for advocacy may include state agencies or legislatures that control energy program rules and offerings, as well as local water and energy utilities and energy assistance providers.)

- **Look for opportunities in multifamily housing:** Although renters in multifamily housing often are not the direct customers of a water utility, a landlord's water bill, like other operating costs, may nonetheless contribute to the cost of rent. Several pilot programs and other research suggest that there are opportunities for significant water efficiency gains, and associated savings, in multifamily residential buildings.<sup>19</sup> The EPA's recent case study report includes several examples of local water efficiency and leak detection programs focused on multifamily buildings.<sup>20</sup>

- **Provide assistance with plumbing repairs as needed to ensure safe restoration of service following a water shutoff:** Plumbing repairs may be necessary to safely restore service after a household has experienced shutoff for nonpayment.<sup>21</sup> Just as programs should be available to help households that cannot afford their bills maintain service, plumbing repair assistance should be available to help those same households safely restore service following a shutoff.



## CAUTION: UTILITY-SPONSORED WARRANTY PROGRAMS MAY NOT BE WORTH THE MONEY

In many cities, residential customers receive offers to purchase water and sewer line warranties—insurance against breakage of the pipes connecting the home to the public water or sewer system. These warranties are offered by private companies but often marketed in partnership with local utilities that take a portion of the premiums. According to the independent, nonprofit Consumers' Checkbook, these warranties are typically a bad deal for consumers, as compared to the benefits of the warranty. Consumers' Checkbook found that the more than seven million water customers who purchase these warranties pay \$4 to \$13 per month on top of their ordinary water or sewer bill.<sup>22</sup>

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### KEY RESOURCES:

WaterSense, *Assistance That Saves: How WaterSense Partners Incorporate Water Efficiency Into Affordability Programs*, U.S. Environmental Protection Agency, July 2021, <https://www.epa.gov/system/files/documents/2021-07/ws-assistance-that-saves-efficiency-and-affordability.pdf>.

*This report provides case studies of water efficiency assistance programs focused on low-income households, along with lessons learned and recommendations.*

## ENDNOTES

- 1 Most drinking water utilities have meters that record the volume of water used by customers and collect revenue through rates that are based at least in part on the volume of water used. Utilities that have not installed meters may instead base water bills on flat charges that do not vary by use. Households on private wells also do not receive a volumetric water bill, though their water use may influence the cost of electricity used for pumping.
- 2 Most households receiving sewer service are billed in part on the basis of the volume of water recorded by the water meter. However, it is quite common for water service and sewer service to be provided by different utilities; in such cases the sewer utility may base its charge on the assumed use of an average household (an “equivalent household unit”) and charge all residences the same regardless of actual water use. And of course, homes on septic tanks rather than public sewers do not receive a sewer utility bill.
- 3 A typical toilet installed in the 1980s uses about 3.5 gallons per flush, while a modern, high-performance toilet uses 1.1 gallons per flush. Assuming 20 flushes per day in a five-person household, a new toilet would save 1,440 gallons per month. Based on local water and sewer rates in three sample cities, toilet replacement would reduce the monthly bill by about \$8 in Milwaukee, \$25 in Los Angeles, and \$36 in Atlanta. Current per-gallon rates for typical levels of residential water usage were taken from the following sources: Milwaukee Water Works, “Milwaukee Municipal Services Bill Charges,” City of Milwaukee, accessed May 14, 2022, [https://city.milwaukee.gov/ImageLibrary/Groups/WaterWorks/Customer-Service/MilwaukeeMuniSvcBillEnglish\\_1.19.22.pdf](https://city.milwaukee.gov/ImageLibrary/Groups/WaterWorks/Customer-Service/MilwaukeeMuniSvcBillEnglish_1.19.22.pdf); Los Angeles Department of Water and Power, “Water Rates,” accessed May 14, 2022, [https://www.ladwp.com/ladwp/faces/wcnav\\_externalId/a-fr-schedul-a-res](https://www.ladwp.com/ladwp/faces/wcnav_externalId/a-fr-schedul-a-res); LA Sanitation, “Sewer Service Charge,” City of Los Angeles, accessed May 14, 2022, <https://www.lacitysan.org/san/faces/home/portal/s-lsh-au/s-lsh-au-r/s-lsh-au-r-b/s-lsh-au-r-b-ss; Department of Watershed Management, “Water and Sewer Bill Rates,” City of Atlanta, accessed May 14, 2022, https://drive.google.com/file/d/1KdbWluTS5iHjwtp4Vr3dYGvyv4v7DTTm/view>.
- 4 Mikelann Scerbo, “Congress Set Toilet Standards In 1992. Here’s The Data Showing They’re Saving Water And Energy,” Alliance to Save Energy blog: *Let’s Save Energy*, Dec. 11, 2019, <https://www.ase.org/blog/congress-set-toilet-standards-1992-heres-data-showing-theyre-saving-water-and-energy>.
- 5 WaterSense, “Residential Toilets,” U.S. Environmental Protection Agency (hereinafter EPA), accessed May 14, 2022, <https://www.epa.gov/watersense/residential-toilets>.
- 6 Department of Watershed Management, “How to Request an Account Adjustment,” City of Atlanta, accessed April 18, 2022, <https://www.atlantawatershed.org/account-review-request/>. See the section titled “What Are Leaks?” which describes different kinds of leaks and the leak rate.
- 7 William B. DeOreo et al., *Residential End Uses of Water, Version 2*, Water Research Foundation, April 2016, [https://www.circleofblue.org/wp-content/uploads/2016/04/WRF\\_REU2016.pdf](https://www.circleofblue.org/wp-content/uploads/2016/04/WRF_REU2016.pdf). Indoor residential water use declined between 1999 and 2016 by 15 percent on a per capita basis and by 22 percent on a per household basis.
- 8 The Bipartisan Infrastructure Law, passed by Congress in 2021, directed the EPA to establish a pilot grant program to support local low-income assistance programs. The law identifies water efficiency assistance as an eligible use of funds under the pilot. However, the pilot is currently not funded or operational. Pub. Law No. 117-58, § 50109, 135 Stat. 1148 (2021), <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>.
- 9 NRDC, “Lead Pipes Are Widespread and Used in Every State,” accessed April 18, 2022, <https://www.nrdc.org/lead-pipes-widespread-used-every-state>.
- 10 Tom Neltner, “An Environmental Justice Case Study: How Lead Pipe Replacement Programs Favor Wealthier Residents,” Environmental Defense Fund *EDF Health* blog, January 4, 2022, <http://blogs.edf.org/health/2022/01/04/an-environmental-justice-case-study-how-lead-pipe-replacement-programs-favor-wealthier-residents/>.
- 11 EPA Science Advisory Board, *SAB Evaluation of the Effectiveness of Partial Lead Service Line Replacements*, September 28, 2011, [https://www.epa.gov/sites/default/files/2015-09/documents/sab\\_evaluation\\_partial\\_lead\\_service\\_lines\\_epa-sab-11-015.pdf](https://www.epa.gov/sites/default/files/2015-09/documents/sab_evaluation_partial_lead_service_lines_epa-sab-11-015.pdf).
- 12 Jennifer Ortega, “Civil Rights Complaint Draws Attention to the Discriminatory Impacts of Common Lead Pipe Replacement Practice,” Environmental Defense Fund *EDF Health* blog, January 7, 2022, <https://blogs.edf.org/health/2022/01/07/civil-rights-complaint-draws-attention-to-the-discriminatory-impacts-of-common-lead-pipe-replacement-practice/>. The complaint alleges that the practice has a disproportionate impact on Black, Latino, and Native American residents.
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## ***Data Collection and Transparency***

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The fight for policies and programs that ensure affordable access to water and sewer service begins with access to critical data held by utilities.

Data can provide advocates with important information about topics such as:

- water affordability burdens;
- which communities and neighborhoods are most impacted by unaffordable water bills and utilities' credit and collection policies;
- whether there are disproportionate impacts of water bill burdens and collection practices by race;
- where outreach efforts for available affordability and assistance programs should be aimed; and
- whether new or existing policies and programs are effective at ensuring affordable access to water and sewer services for low-income households.

Efforts to obtain this type of information have been, to put it mildly, an uphill battle. Today most water utilities are not required to collect or report data related to rate increases, customer bills, or credit and collections practices. Consequently, decision makers and advocates can face great challenges in assessing the full impact of water utility practices on financially struggling households and communities.

This module begins by discussing the critical importance of data collection and reporting in advancing water affordability goals. Obtaining more granular geographic data, such as by zip code or census tract, is especially important to allow regulators and advocates to understand and address racial and other inequities related to water affordability and access. Then, the module discusses strategies to enhance transparency and improve access to important data on water affordability. These approaches include creation of statewide reporting requirements and other mechanisms that advocates can use to get individual utilities to release data.

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### **SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:**

- Increasing transparency of utility policies and practices by requiring enhanced reporting of utility data, ideally at the zip code or census tract level.
  - Obtaining utility data through public records requests, rate-setting proceedings, or litigation.
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## THE CURRENT LACK OF DATA ON WATER AFFORDABILITY LEAVES DECISION MAKERS AND ADVOCATES IN THE DARK

Most water and wastewater utilities in the United States are not required to collect or report data related to water affordability, such as information on rate increases, customer bills, or credit and collections practices. As a result, the baseline information necessary to assess the full extent and impact of unaffordable water bills is often unavailable to regulators, advocates, and the public.

The data gap is especially significant for the majority of water systems that are not regulated by state utility commissions, a group that includes nearly all publicly owned water systems. For many of these systems, even the current rates for water service may be hard to come by, and very rarely are water rates compiled statewide.<sup>1</sup>

At the national level, no agency tracks water affordability data in the United States. By contrast, for the energy sector, the U.S. Energy Information Administration compiles a detailed national-level data set, the Residential Energy Consumption Survey (RECS), which includes assessments of energy affordability and energy insecurity.<sup>2</sup> Past editions of this survey have revealed stark disparities in energy affordability by race and income.<sup>3</sup> As business journalist Charles Fishman argued in a 2016 op-ed piece for the *New York Times*, the RECS could provide one potential model for creating transparency in the water sector.<sup>4</sup>

The lack of reliable data on water affordability means that lawmakers, regulators, and water utilities are often in the dark concerning the impacts of their decisions on financially struggling households and communities. For example, in a December 2020 report detailing the looming water affordability crisis in Massachusetts, the state's Advisory Committee to the U.S. Commission on Civil Rights identified enhanced data reporting as a critical change needed to allow decision makers to address inequities related to water affordability.<sup>5</sup> The report noted that, despite the existence of a recent study finding significant racial disparities in water shutoffs in Boston, local governing bodies did not collect data on shutoffs, liens, or payment plans. "Without adequate data," the report concluded, "policy makers can't document and remedy any suspected bias in the implementation of water plans."<sup>6</sup>

For advocates, too, the lack of reliable data can impede efforts to convince decision makers of the urgency of water affordability challenges and build pressure for change. This point was highlighted in the NAACP Legal Defense Fund's 2019 report on the disproportionate impact of rising water bills on Black communities, *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities*.<sup>7</sup> This report stressed the need for enhanced water utility data reporting across the United States and emphasized the importance of gathering data when advocating for change, a critical finding among its policy and research recommendations.<sup>8</sup>

Once advocates gain access to data through new regulatory or statutory requirements, the results can be eye-opening. For example, according to the Pacific Institute, a review of utility data reported to the state of California found that "196,800 single-family households lost access to drinking water at least once in 2018 because of service disconnections. Assuming that these households have the average number of residents, this means nearly 583,000 Californians lose access to drinking water for a period of time each year."<sup>9</sup>

## MORE GRANULAR GEOGRAPHIC DATA ON UTILITY PRACTICES ARE CRITICALLY IMPORTANT TO ASSESS AND REMEDY RACIAL INEQUITIES

In Lawrence Berkeley National Laboratory's recently published *Advancing Equity in Utility Regulation*, contributing authors stressed the importance of obtaining zip code-level data, at a minimum, when working toward more equitable practices in electric and gas utility regulation.<sup>10</sup> (The narrower the geographic area, the more accurately one can analyze disparate impacts of credit and collections behavior.<sup>11</sup>) The same rationale applies when working to change utility practices in the water sector.

Today, data on utility operations are most often reported for an entire utility service territory—if they are reported at all. While aggregate information can be useful to assess utility-wide trends, it will often hide differences within the utility's service territory. Access to more granular geographic data, such as by zip code or census tract, can help advocates and regulators identify problems and disparities within water and sewer utility service territories and craft policies to specifically address identified inequities. In addition, bill affordability or assistance programs, to the extent that they exist, can be specifically targeted to areas experiencing high rates of disconnections, arrearages, and other disparate impacts.

Granular data is especially critical to identify disparities related to race and ethnicity, since it can be correlated with local demographic data from the U.S. Census. On the rare occasions that advocates have obtained access to geographic information for water utilities, it has often confirmed the existence of deep racial inequities related to the impacts of unaffordable water bills, such as shutoffs, property liens, and accumulating debt.<sup>12</sup>

The *Advancing Equity* authors note that achieving transparency in utility practices requires, at a minimum, obtaining the following monthly data by zip code for residential customers overall and, to the extent available, for known low-income residential customers (such as those participating in an income-qualified water affordability or assistance program).<sup>13</sup>

- Number of customers
- Dollar amount billed
- Number of customers charged a late payment fee
- Dollar value of late fees collected
- Number of customers with a past-due balance, by age of arrearage
  - 60–90 days overdue
  - 90+ days overdue
- Dollar value of arrearages, by age of arrearage
  - 60–90 days overdue
  - 90+ days overdue
- Number of disconnection notices sent
- Number of disconnections for nonpayment
- Number of service restorations after disconnection for nonpayment
- Average duration of disconnection
- Dollar value of security deposits collected
- Number of security deposits collected
- Number of new deferred payment agreements entered into
- Average repayment term of new deferred payment agreements
- Number of successfully completed deferred payment agreements

Other important data points advocates may wish to seek from water, wastewater, and stormwater utilities include information on:

- Rates (for residential and non-residential customers) and water bills at standardized levels of usage (to allow for comparison between systems);
- Average and/or median dollar amount billed to residential accounts and the average and/or median usage per account;
- Other fees and penalties assessed in addition to late fees (such as interest charges, disconnection and reconnection fees);
- Average and/or median amount of arrears (among accounts that are in arrears);
- Policies concerning shutoffs, reconnections, liens, late fees, deferred payment agreements, arrearage management plans, deposits, billing disputes, and other relevant policies (if not set by state statute or regulation) and the means by which customers are informed of these policies;

- Billing practices (for example, frequency of billing, inclusion of charges for any non-water services on water bills);
- Affordability and assistance programs (including program terms and participation rates);
- The use of liens and other debt-collection practices (such as the number of liens on real property placed, sold, or enforced due to non-payment; the number of administrative hearings held for the purpose of water debt collection; the number of third-party debt collection actions taken; and the number of wage garnishment actions taken); and
- For publicly owned systems, transfers of funds to non-utility governmental accounts.

### QUESTIONS TO CONSIDER:

When developing a water affordability advocacy plan, the following questions may help you identify available data and opportunities to obtain and improve access to critical data.

- Does your utility publicly report data on disconnections, arrearages, or other affordability-related topics? If so, where can you obtain the data?
- If your utility is publicly owned, are there state “sunshine” laws (also known as Freedom of Information Act or “FOIA” laws) that you can use to obtain data?
- Are there academics or advocacy groups in the area that might be interested in helping to collect and analyze water utility data?
- If data are not otherwise available, is it possible to obtain information by participating in rate cases or other litigated proceedings? Would your state consumer advocate’s office (if one exists) or attorney general’s office help navigate this process?

### IMPROVING TRANSPARENCY THROUGH ENHANCED PUBLIC REPORTING REQUIREMENTS

While the movement toward increasing transparency in water utility processes and operations remains an uphill battle, examples of advocates, policymakers, and regulators pushing for increased transparency can be found across the United States. The National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) jointly adopted a resolution in 2019 to advance utility reporting of credit and collections data, including a set of data points similar to those recommended by the *Advancing Equity* authors.<sup>14</sup> NASUCA also independently passed a resolution in 2019 encouraging the “adoption,

maintenance and enhancement of reporting requirements relating to disconnections, arrearages, and credit and collections activities and the publication of such information online in a manner that is easily accessible by the public” as part of broader efforts to reduce water shutoffs and “the harm to individuals and the social costs to the community of households living without essential water service.”<sup>15</sup>

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**“Utilities should be required to engage in mandatory data collection and public reporting on rate increases, arrearages, service disconnections, and water lien sales. Data collection should include geographic and demographic information as available.”**

—FROM *WATER/COLOR: A STUDY OF RACE & THE WATER AFFORDABILITY CRISIS IN AMERICA'S CITIES*, THURGOOD MARSHALL INSTITUTE AT THE NAACP LEGAL DEFENSE FUND<sup>16</sup>

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Some state lawmakers and regulators have also begun to recognize the need for greater transparency by adopting enhanced data-reporting requirements for water utilities. These requirements vary significantly, both in terms of the scope of the data to be reported and the types of utilities subject to reporting obligations (publicly owned versus investor-owned). Some prominent examples—by no means exhaustive—are discussed below.

Currently, Illinois is the only state to require zip code-level reporting of water utility credit and collections data, although the requirements apply only to investor-owned electric, gas, water, and sewer utilities. Legislation enacted in 2021 requires that they publicly report by zip code, both annually and by month, critical credit and collections data including customer disconnections, reconnections, successfully completed and defaulted-on deferred payment arrangements, the number of customers in arrears of 30 days or more, and the dollar value of arrearages, among other data.<sup>17</sup> The information is made available for public review on the Illinois Commerce Commission’s website.<sup>18</sup>

Several other states require electric and gas utilities, but not water utilities, to report zip code-level data concerning affordability.<sup>19</sup>

California and Wisconsin require publicly owned and investor-owned water utilities to report affordability-related data, but without a zip code-level breakdown. In California, the Water Shutoff Protection Act, effective as of February 2020, requires all water utilities with at least 200 service connections to report annually on the number of households disconnected for nonpayment.<sup>20</sup> A proposed

amendment to this act would expand the reporting requirements to include additional information related to service restorations, water debt, and participation rates in water assistance programs and would require reporting by zip code.<sup>21</sup>

Previously, the California Water Board was already collecting some data on shutoffs, alongside other operational information, in its annual survey of water systems in the state. The results are published in an annual report on the Water Board website.<sup>22</sup> These reports provided the basis for analysis and reporting by the Pacific Institute on water shutoffs in California.<sup>23</sup>

The California Public Utilities Commission has also established enhanced reporting requirements specifically for “Class A” water utilities (investor-owned utilities with more than 10,000 customers), through a series of regulatory orders.<sup>24</sup> In 2020, in order to evaluate pandemic impacts on customers and on utilities, the commission ordered Class A water utilities to begin regularly reporting the number of customers requesting bill assistance, the number of customers behind on their bills, the average amount of individual customer water debt and total amount of water debt, and the number of customers making partial payments, among other data.<sup>25</sup> In 2021, the commission expanded these reporting requirements to include the number and percentage of customers disconnected for nonpayment and reconnected each month. It further ordered the Class A water utilities to pursue further data reporting refinements through public working sessions.<sup>26</sup> In 2022, the Commission required, among other things, detailed data on customers with special payment arrangements to provide insight on whether those arrangements are effective at helping customers manage their debt.<sup>27</sup>

In Wisconsin, the Public Service Commission recently established a requirement for all of the water, electric, and gas utilities it regulates to report annually on “residential arrears, disconnection notices and disconnections, and for municipal utilities, data on arrears placed on the tax roll.”<sup>28</sup> (Unlike most state utility commissions, the Public Service Commission of Wisconsin regulates both investor-owned and municipal utilities, so this reporting rule covers virtually all water providers in the state.) These annual reports, which also cover a wide range of other topics concerning utility operations and finances, are posted on the state’s website.<sup>29</sup>

During the COVID-19 pandemic, several states adopted temporary requirements for water utilities to report certain affordability-related data. For example:

- Virginia enacted legislation requiring publicly owned utilities (including water, wastewater, electric, and gas) to periodically report, at least through 2022, certain data related to customer arrears, deferred payment agreements, and allocation of federal relief funds to



customer accounts.<sup>30</sup> The reporting requirements were adopted in connection with an appropriation of federal COVID-19 relief funds to pay down municipal utility customers' arrears.<sup>31</sup>

- In North Carolina, using authority granted by the COVID-19 state of emergency, the governor issued an executive order requiring all water and wastewater utilities (both publicly and privately owned) to report to the state utility commission early in the COVID-19 pandemic (April through July 2020).<sup>32</sup> Even with many systems failing to report, the commission found almost \$53 million in water and sewer arrears as of July 31, 2020, with more than 156,000 accounts eligible for disconnection because of overdue bills.<sup>33</sup>
- In Michigan, also using COVID-19 emergency authority, the governor issued an executive order requiring all water utilities to report on the number of residences lacking water service due to a shutoff for nonpayment, as well as the number of residences lacking service for any other reason.<sup>34</sup>

As the above examples demonstrate, enhanced reporting requirements can be imposed through state legislation (as in Illinois, Virginia, and California), by state agencies through regulation (as in Wisconsin and California), or, under certain circumstances, by executive order (as in North Carolina and Michigan). Advocates should consider which avenue might present the best chance of achieving change.

In a few states, data reporting legislation has been introduced to require all publicly and privately owned water, wastewater, electric, and gas utilities to annually submit much of the data identified in the previous section of this module.<sup>35</sup>

There may also be opportunities to enhance water utility transparency by attaching strings to state or federal infrastructure funds that utilities receive, or by directly offering funds to utilities to facilitate data collection. For example, states administer billions of dollars in federal water infrastructure funding through the Drinking Water State Revolving Fund and the Clean Water State Revolving Fund. Some states also have their own water infrastructure funding programs. States or the federal government could condition utilities' receipt of these infrastructure funds on regular reporting of affordability-related data.<sup>36</sup> Similarly, any future state or federal low-income water affordability or assistance program could condition utilities' receipt of funds on such data reporting.<sup>37</sup> Federal grants could also be provided to water utilities specifically to support efforts to collect affordability-related data. A bill that passed the House of Representatives in 2021 would have required robust data collection by the U.S. Environmental Protection Agency and provided grants to utilities to upgrade their data management systems to be able to provide the data.<sup>38</sup>

## DATA ARE CRITICAL TO EVALUATE AND IMPROVE UTILITY PROGRAMS

When water utilities run affordability or assistance programs, debt relief programs, efficiency programs, plumbing repair programs, and the like, regular reporting on implementation is important to evaluate progress, identify challenges, and propose solutions.

In Philadelphia, for example, the legislation that created the city's percentage-of-income payment program (PIPP) also included a requirement that the Water Department prepare an annual report on implementation, including key metrics such as the number of applicants enrolled by income level, the number of rejected applicants and the reasons for the rejections, the number of customers with extended payment agreements, and the number of enrolled participants who failed to make their monthly payment.<sup>39</sup> These reports have helped to inform policymakers and the public about the Water Department's progress and helped advocates address roadblocks related to implementation. Advocates in Philadelphia also have the benefit of a robust rate-setting process, which allows them to request additional data directly from the utility.

Similarly, the law that created Baltimore's PIPP required the city to collect data on "application and enrollment numbers . . . reasons for denials, and the relative success of different outreach methods," among other things.<sup>40</sup> A new Office of Customer Advocacy within the city's Department of Public Works is responsible for analyzing the data, identifying problems, and proposing solutions, regarding not only the PIPP but also the utility's billing dispute resolution processes.<sup>41</sup>

## OBTAINING ESSENTIAL DATA THROUGH PUBLIC RECORDS REQUESTS, THE RATE-SETTING PROCESS, AND LITIGATION

Where data are not publicly reported, advocates have employed a variety of approaches to obtain essential information from water and sewer utilities. The possible avenues by which to obtain utility data vary according to factors such as whether the utility is privately or publicly owned, and whether it is regulated by a state utility commission.

For publicly owned water providers (such as municipal water departments), advocates can leverage states' sunshine laws to secure release of data held by the utility.<sup>42</sup> (These laws are often referred to as FOIA statutes, in reference to the federal Freedom of Information Act.) For example, Food & Water Watch obtained data from 73 large utilities, in nearly every state, to create a report on the prevalence of water shutoffs nationwide.<sup>43</sup> Advocates in Detroit gathered data on water shutoffs and foreclosures based on water debt and used it to create maps and other data visualizations illustrating the impacts of unaffordable water bills and harsh collection practices



in their city.<sup>44</sup> Advocates in New York obtained data from several of the state's largest water utilities to illustrate the extent of customer arrears during the COVID-19 pandemic, highlighting the risk of mass shutoffs absent additional state relief.<sup>45</sup> Advocates in Cleveland obtained data that revealed disparities in impacts of water utility disconnection and collections practices, which they used to file a federal civil rights lawsuit; in turn, that lawsuit is providing opportunities to obtain further information.<sup>46</sup>

In a report detailing how to access troves of data in the possession of municipal and other publicly owned and operated water utilities, Northeastern School of Law faculty Henry Sturm and Martha Davis emphasize the importance of using FOIA statutes to unearth data that might not otherwise see the light of day.<sup>47</sup> In the report, the authors reflect on an earlier research project, run through the law school's Program on Human Rights and the Global Economy, that documented the water affordability policies of 12 Massachusetts municipal utilities by obtaining data through the state's FOIA law.<sup>48</sup> These efforts, they write, provided "a trove of information regarding municipal water rate calculations, water bill assistance policies, nonpayment processes, relevant city ordinances, and consumer demographic data."<sup>49</sup>

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"Importantly, the tools that we used are available to anyone. You need not be a lawyer or a government insider to request this information from your local government. And once you have the information, you can use it to educate, inform, and motivate community members."

—FROM *THE HUMAN RIGHT TO WATER: A GUIDE TO USING FREEDOM OF INFORMATION REQUESTS TO UNDERSTAND RISING WATER RATES*,  
NORTHEASTERN UNIVERSITY SCHOOL OF LAW<sup>50</sup>

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The Northeastern authors advise advocates to do their homework before crafting a FOIA request. The report recommends "a scaffold approach, in which you gradually build up knowledge before making phone calls or sending a FOIA request" and advises starting with online searches of relevant news articles, city ordinances, and departmental regulations.<sup>51</sup> The report provides a sample email to a municipal water department staff as part of the initial investigation and a sample FOIA request that can be used once basic processes and procedures related to water rates, disconnections, debt collection activity, and other areas of interest are better understood.<sup>52</sup>

In addition, advocates seeking change in water utility debt collection practices can reach out to academic institutions in their area that may have the funding and capacity to help support data collection efforts. Although anyone can file a FOIA request, trained researchers can help navigate the process, identify the most useful data, and crunch the numbers once the data come in.

Even with state FOIA laws, successfully obtaining the ideal data set may prove challenging. Some utilities may claim that certain data do not exist in a reportable form.<sup>53</sup> But plenty of useful information should be available, as shown by the Northeastern School of Law investigation.

State FOIA laws do not apply to privately owned water providers. Of course, advocates can always request the data they want, but a response may be unlikely. When Food & Water Watch requested shutoff data from 11 privately owned water companies as part of a national study on shutoffs, only one company responded.<sup>54</sup>

However, privately owned utilities are typically regulated by state utility commissions, and this makes it possible to obtain data through formal legal proceedings. When a commission-regulated utility requests a rate increase or the commission engages in a rulemaking related to consumer protection requirements, the commission will open a formal proceeding (sometimes referred to as a case or docket). Organizations that formally intervene in the proceeding can file extensive data requests, which the utility is obligated to respond to, assuming the requests are relevant to issues in the case. Data obtained during this so-called discovery process can help reveal inequitable policies, rates, and impacts of credit and collection policies. A sample set of data requests from a utility commission rate case can be found under "Key Resources" at the end of this module.

Utility commission proceedings can also present an opportunity to secure commitments to data reporting from the utility through a negotiated settlement agreement. For example, advocates in Illinois were able to use settlement negotiations to secure commitments by large investor-owned water and energy utilities to begin publicly reporting monthly credit and collections data, by zip code for the energy utilities and by "water regions" for the water utilities. These data points formed the basis for the previously referenced Illinois zip code-level data collection statute passed in 2021.<sup>55</sup>

Participating fully in state utility commission proceedings takes time, resources, and often legal representation, which may be beyond the reach of many community-based groups. One possibility might be to see if the state's attorney general or consumer advocate (or an experienced advocacy organization) would assist in obtaining the data if they are already participating in the proceedings, as is often the case. (Considerations related to participating

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When investor-owned water utilities request a rate increase, advocates can obtain data through formal state utility commission proceedings.

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in utility commission cases are discussed further in the Accountability and Participation in Decision Making module.)

Even for some utilities that are not regulated by a utility commission—such as Philadelphia’s municipal water and sewer utility—there may be a formal rate-setting process that offers similar opportunities to extract information through data requests and settlement agreements. This is currently very rare, however. Where this option is not available, advocates may want to consider trying to change local decision-making processes as a path to compelling the utility to provide key data. (See the Accountability and Participation in Decision Making module for a discussion of Philadelphia’s rate-setting process and other models.)

Finally, lawsuits in state or federal court provide another avenue of extracting information from utilities through data requests and settlements, similar to a utility commission

proceeding. Bringing a lawsuit is generally even more expensive and time-consuming than participating in utility commission proceedings, however.

### **WHAT TO DO WITH THE INFORMATION ONCE IT’S RECEIVED**

Once advocates successfully gather data needed to inform their advocacy, there are many avenues for pursuing change in water utility practices. As noted above, there should be continued outreach to academic institutions and nongovernmental organizations with the funding and capacity to investigate and document inequitable water utility practices. Engagement with local media, too, is critical to publicize the disparities that are uncovered in data investigations. Advocates should consider whether litigation or the threat of litigation is the necessary next step in pursuing change in discriminatory and punitive water policies.

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### **KEY RESOURCES:**

Henry Sturm and Martha Davis, *The Human Right to Water: A Guide to Using Freedom of Information Laws to Understand Rising Water Rates*, Northeastern University School of Law, 2019, <https://law.northeastern.edu/wp-content/uploads/2021/04/phrge-foi-water-guide.pdf>.

*This report includes a sample Freedom of Information request to a publicly owned water utility, seeking data and other information on water shutoffs, reconnections, liens, payment plans, assistance programs, fees, dispute resolution processes, and related matters. It also includes tips on navigating the Freedom of Information request process.*

Sample data requests to be sent to utility in order to obtain zip code-level data on disconnections, arrears, and other credit and collections activity concerning residential customers, <https://www.nrdc.org/resources/sample-data-request-state-utility-commission-proceeding>.

*These sample data requests were used by consumer advocates in an energy utility rate case before a state utility commission. They can be readily adapted for use in a water utility rate case, or for Freedom of Information requests made to a publicly-owned water utility that is not regulated by a state utility commission.*

## ENDNOTES

- 1 There are some exceptions where water and sewer rates are collected for nearly all utilities in a state. For a list of free resources compiling rates, see the Background module, box titled “Comparing Water Rates: Resources and Cautionary Notes.”
- 2 U.S. Energy Information Administration, “Residential Energy Consumption Survey,” accessed May 6, 2022, <https://www.eia.gov/consumption/residential/>.
- 3 Chip Berry, Carolyn Hronis, and Maggie Woodward, “One in Three U.S. Households Faces A Challenge in Meeting Energy Needs,” U.S. Energy Information Administration, September 19, 2018, <https://www.eia.gov/todayinenergy/detail.php?id=37072>. For a recent example of how RECS data can be used to assess disparities by race and income, see Chandra Farley et al., *Advancing Equity in Utility Regulation: Future Electric Utility Regulation Report No. 12*, U.S. Department of Energy, November 2021, 20-26, [https://eta-publications.lbl.gov/sites/default/files/feur\\_12\\_-\\_advancing\\_equity\\_in\\_utility\\_regulation.pdf](https://eta-publications.lbl.gov/sites/default/files/feur_12_-_advancing_equity_in_utility_regulation.pdf).
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- 24 The California Public Utilities Commission regulates nearly 100 privately owned water utilities throughout the state. These are categorized by size, the largest of which are Class A water utilities with more than 10,000 customers. Cal. Pub. Util. Code § 241 (West); California Public Utilities Commission, “Regulated Water Utilities,” December 16, 2020, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/water-division/reports/wd-landing-page/water-utilities--total-connections.pdf>.
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- 37 A proposed amendment to the 2021 Bipartisan Infrastructure Law that was not included in the final enacted law would have created a permanent low-income water assistance program including requirements for utilities receiving funds to report key affordability-related data. Amendment to Rules Committee Print 117-9 (offered by Tlaib of Mich.), [https://amendments-rules.house.gov/amendments/TLAIB\\_035\\_LIDWAP210628110017323.pdf](https://amendments-rules.house.gov/amendments/TLAIB_035_LIDWAP210628110017323.pdf).
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- 47 Henry Sturm and Martha Davis, *The Human Right to Water: A Guide to Using Freedom of Information Laws to Understand Rising Water Rates*, Northeastern University School of Law, 2019, <https://law.northeastern.edu/wp-content/uploads/2021/04/phrge-foi-water-guide.pdf>.
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## *Accountability and Participation in Decision Making*

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Advocates seeking to improve water affordability can work within current decision-making structures to influence rates, policies, and programs. They can also work to change the decision-making structure to improve their ability to effect change and hold decision makers accountable.

Existing processes for decision making by—and oversight of—water and wastewater utilities can vary widely from place to place. To help orient advocates new to this work, this module explains the scenarios that typically arise.

This module also goes a step further, exploring how advocates—whether new or experienced—can seek to change the decision-making processes to improve their ability to achieve their goals. (As discussed in several other modules of this toolkit, advocates can also seek to bypass the decision-making processes of local governments and state utility commissions by appealing directly to state legislatures to establish rules, policies, and programs that apply uniformly to all utilities.)

Part 1 of this module addresses investor-owned utilities, which are regulated by state utility commissions. They are subject to very formal, structured, public decision-making processes. Part 2 addresses publicly owned utilities. While these utilities have widely varying governance structures, typically their decision-making processes are much less structured than utility commission procedures, and they offer fewer formal opportunities for public input.

Understanding these differences is essential to effective advocacy for change.

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### **SOLUTIONS AND TOOLS EXPLORED IN THIS MODULE:**

- Understanding variations in water and sewer utility governance and oversight
- Using existing opportunities to influence decisions on rates, policies, and programs
- Improving public oversight and accountability of investor-owned utilities, including by:
  - Enabling affordability advocates to participate effectively in rate cases by providing compensation for their time and for retaining expert witnesses and by making proceedings more accessible
  - Strengthening requirements for utility data reporting to the commission
  - Strengthening policies concerning fair, transparent, and ethical decision making by utility commissioners
- Improving public oversight and accountability of publicly owned utilities, including by:
  - Creating an independent local ratemaking board and adapting decision-making processes from the state utility commission context
  - Creating a local Water Customer Advocate Office
  - Establishing partial or full oversight of publicly owned utilities by the state utility commission or other state agency

## PART I: HOLDING INVESTOR-OWNED UTILITIES ACCOUNTABLE

The overwhelming majority of people who receive drinking water from a utility (84 percent) are served by publicly owned utilities.<sup>1</sup> The remaining minority of water customers (and an even smaller percentage of wastewater customers) are served by private companies that are typically owned by corporate shareholders and referred to as investor-owned utilities (IOUs). Some small—typically very small—privately owned water companies are not investor-owned. This toolkit does not address issues unique to those systems.

As for-profit monopolies, IOUs are regulated by state utility commissions. This section explores the decision-making processes for commission-regulated utilities in regard to rates and consumer protections. (As will be discussed in Part 2, below, a small minority of publicly owned water utilities are also regulated by state utility commissions. Those utilities are covered by the same decision-making processes as IOUs.)

### QUESTIONS TO CONSIDER:

As you develop a water affordability advocacy plan, answering the following questions can help you identify relevant decision makers and opportunities to impact decisions concerning your utility.

- Is your utility investor-owned or publicly owned?
- Is your utility regulated by the state utility commission?
- If the utility is regulated by the state utility commission:
  - Are commissioners appointed or elected?
  - How can customers participate in decisions on rates and consumer protection rules and policies? For example, can an advocate or advocacy organization intervene as a party when the utility proposes a rate increase, or petition for changes in consumer protection rules?
  - How can you attend and participate in commission open meetings and/or comment on open proceedings?
  - Is there a ratepayer or consumer advocate?
  - How can you get information about how the utility is performing on matters concerning affordable access to service? (See the Data Collection and Transparency Module for recommended data that should be made publicly available.)
- If the utility is publicly owned and *not* regulated by the state utility commission:
  - What is the governance structure for the utility? For example, is it operated as part of the municipal government (like a water department or public works department) or as a separate entity (like an authority or special district)?
  - Are the people in governance positions elected or appointed? If appointed, by whom?
  - Who are the local decision makers on rates and consumer protection rules and policies, and what opportunities exist for public participation in decision making on those issues?
  - Is there a department, consumer board, or ombudsman to address consumer complaints?
  - Is there a ratepayer or consumer advocate?
  - How can you get information about how the utility is performing on matters concerning affordable access to service? (See the Data Collection and Transparency Module for recommended data that should be made publicly available.)

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84 percent of customers are served by publicly owned water utilities.

Most others are served by investor-owned private utilities.

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## Who has decision-making authority?

The rates and policies of IOUs, as well as their decisions concerning infrastructure investments, are overseen by state public utility commissions.<sup>2</sup> These commissions are sometimes referred to as public service commissions or public utility boards or departments. A public utility commission's authority is derived solely from state statute. The decisions and rules it issues must adhere to the framework outlined in a state's public utilities law.

In some states, the commissioners are appointed by the governor. In other states, they are elected by the public.

Typically, commissioners serve for a fixed number of years and may represent specific geographic areas within the state. The commissions are composed of a mixture of political affiliations, with the majority party typically mirroring the governor's party affiliation for appointed commissions.

In addition to regulating individual utilities' rates, state utility commissions have consumer protection regulations that apply to all utilities they regulate. The rules for water utilities may be in the same section as those for other utilities, or they may be in a separate section. Either way, rules usually apply equally to electric, gas, and water utilities, though there may be some variation.

Some utility commissions summarize their consumer protection rules in a customer "bill of rights." An official state consumer advocate office or independent, nonprofit advocacy organizations may also offer educational materials about these protections. Commission rules typically address applications for service, billing, meter-reading, deferred payment arrangements, late fees and deposits, shutoff protections and procedures (including notice requirements), customer complaints and dispute resolution, and other issues.

## How can the public participate in decision making?

Public utility commissions are subject to state open-meeting and open-records laws, as are most state government agencies. However, utility commissions use very formal legal proceedings to make decisions (for example, when setting rates). This can look very similar to a court trial, with participating "parties" having the right

to request documents from the utility (and vice versa), present evidence and expert witnesses, cross-examine other parties' witnesses, file legal briefs, and present oral arguments. Sometimes formal commission proceedings are used to establish policy or rules governing a class of utilities.

Each proceeding (or "case") has a "docket"—essentially a case number and copies of materials filed in the case. A commission will open a docket when the utility seeks to revise its rates or policies. Commissions may also open a docket on their own initiative to develop a new regulation or policy or to investigate issues concerning a specific utility. In many states, dockets can be accessed on the commission's website, sometimes with an option to subscribe for email notification when a new document is added to the docket.

A commission's rules of procedure and the commission's website may detail when and how members of the public—not limited to formal parties to a case—can make written and oral comments about matters of general concern or about any specific docketed proceeding.<sup>3</sup> The right to speak publicly to a commission is an important one that should be exercised early and often when seeking to challenge utility actions and policies. Inviting members of the press to observe and write about an open meeting in which advocates plan to speak can be an important method of gaining public attention. But timing is everything: Advocates should not wait until the date they expect a commission to make its decision to weigh in publicly. By then, commissioners' votes have largely been decided. Advocates' early and frequent participation in open meetings during the pendency of a case is key to keeping an issue on a commission's radar.

Advocates wishing to participate more extensively in a utility rate case or other commission proceeding typically must file a petition to "intervene" as a formal party to the case, most often through an attorney. Any person or organization that intervenes has all of the rights of parties, described above, to participate in the trial-type proceedings. Many if not most states require an intervening party to be represented by an attorney. (California is one exception to that rule.<sup>4</sup>) The National Consumer Law Center offers a consumer's guide to intervening in utility

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The right to speak publicly to a state utility commission should be exercised early and often.

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commission proceedings, which is a helpful resource to any advocates considering participating as intervenors.<sup>5</sup>

If unable to afford an attorney, advocates seeking to engage beyond general opportunities for public comment should contact the state office that represents residential ratepayers before the state commission, typically the state attorney general's office or a designated state consumer advocate office.<sup>6</sup> Representatives from these offices can advise you on how to obtain pro bono representation or may welcome the opportunity to work jointly with grassroots advocates on issues impacting residential customers. Similarly, if other like-minded organizations have intervened in a commission proceeding (as reflected in the formal docket), they might have an interest in collaborating. Advocates should also attempt to reach out to relevant commission staff member who may be working on a case to discuss concerns and positions in the case.<sup>7</sup>

Commission decisions can be appealed to state court. In these lawsuits, however, courts typically set a high bar for overturning the commission's decision.

### **How can decision-making processes be changed, to strengthen oversight and accountability?**

There are many steps that state legislatures and utility commissions should take to help level the playing field for consumer advocates as they attempt to impact policy and rates at state commissions. First, states can provide "intervenor compensation" to enable community-based advocates and concerned individuals to participate fully and effectively in often complicated and resource-intensive commission proceedings. Utility customers pay for the cost of a utility's legal representation and expert witnesses in commission proceedings, since these costs are recovered in the utility's rates. The same benefit should be provided to consumer advocates, who often lack the funds to hire an attorney, let alone expert witnesses.<sup>8</sup> States with intervenor compensation have typically enacted these benefits through state legislation.<sup>9</sup>

Second, beyond providing funding for intervenors, states and utility commissions should consider ways to make proceedings more accessible to community-based groups. For example, commissions could publicize important proceedings on their website and within potentially impacted communities, conduct workshops or trainings on how to participate, and/or hold public hearings on issues of importance at times and places that are accessible to impacted communities (again, ideally with financial support for under-resourced groups to participate).

Third, states should take proactive steps to increase the transparency of utility operations and customer impacts of utility rates and policies. For example, they should require utilities to file—and utility commissions should post online—monthly reports on shutoffs, reconnections and

other credit and collections data by zip code or U.S. Census tract. This information is critical to understanding how utility policies and rates impact households, determining whether disparate impacts on certain communities and populations are occurring as a result of utility policy and rates, and identifying places where assistance is most needed. (See the Data Collection and Transparency module for more detail on the information that should be collected and reported and examples from various states.)

Fourth, commission employees, including commissioners, should be required to undergo equity training as part of any job training. Understanding how structural racism in our laws and economy have contributed to the lack of generational wealth among communities struggling to afford essential utility services is critical to enacting change and understanding why utility bill affordability and debt relief are needed.

Fifth, strong "revolving door" provisions should be put in place to ensure that when their terms expire, commissioners aren't rewarded with jobs or consulting arrangements with utilities regulated by the commission or positions representing a regulated utility through employment at a law firm.<sup>10</sup> Revolving door rules would bar such activities for a period of time after a commissioner's term ends, helping to avoid conflicts of interest in commissioners' decisions.

Sixth, in order to ensure independent, evidence-based decision making, strong ex parte rules for commissioners and other key decision makers should be codified in law and strictly enforced. Ex parte rules place restrictions on private, "off-the-record" communications between decision makers and individuals or organizations with an interest in the outcome of a case. At a minimum, any communications by commissioners or their direct advisors with external parties concerning an ongoing, active proceeding should be documented and publicly reported.<sup>11</sup> Some states have also imposed additional restrictions, such as rules prohibiting any communications with parties within a certain timeframe of a decision, or preventing utilities from consulting with commissioners or their staff immediately before filing a rate increase.<sup>12</sup> Which restrictions are necessary or beneficial may depend on local circumstances, including the existing dynamic between commissioners, utilities, and any consumer or public interest advocates in the state.<sup>13</sup>

Advocates, however, should not be discouraged from contacting commission staff participating in formal commission proceedings to discuss positions and encourage consensus on issues. Conversations with commission staff are typically permitted, although the staff members may be required to document the meeting.<sup>14</sup> Such conversations are important because administrative law judges and commissioners, rightly or wrongly, often view commission staff testimony as the most objective opinion in a case.

## FORMAL OPPORTUNITIES FOR PUBLIC PARTICIPATION IN UTILITY DECISION MAKING

Public oversight of water and sewer utilities' rates and consumer protection rules is not an "on-off switch." Depending on the specific decision-making processes that apply to your utility—for example, whether it is regulated by a state utility commission—formal opportunities for advocates to hold water utilities accountable vary widely. These opportunities may include some or all the following, listed roughly in order of how robust they are:

- Advance notice of proposed rates, rules changes, and official meeting agendas
- Public hearings on proposals (either informal/off-the-record or formal/on-the-record)
- "Sunshine" or open-records laws requiring disclosure of information relied on by decisionmakers
- Right to formally petition for a change in rules or policies
- Requirement for decision maker to issue a formal, written decision that considers public comments, testimony, and/or evidence in the record
- Opportunity to submit evidence to support a position
- Opportunity to review and contest the utility's evidence supporting a rate increase
- Opportunity to intervene in formal legal proceedings before a neutral adjudicator
- Rules against improper ex parte communications with decisionmakers that ensure transparency
- Dedicated, funded public advocate to represent residential customers' interests (e.g., a consumer advocate office)
- Dedicated intervenor compensation for public interest groups to participate in rate-setting processes

Virtually all of these protections exist for customers of systems that are regulated by state utility commissions, which are primarily investor-owned utilities. (The main exception is intervenor compensation, which is available in only a minority of states.<sup>15</sup>)

For systems not regulated by utility commissions—including the publicly owned systems that serve the vast majority of the U.S. population—practices vary widely. As you proceed down the list, the more robust protections become increasingly rare; in some places, even the most basic protections may be missing. There are exceptions, however. For example, an amendment to Philadelphia's city charter and subsequent city ordinance created a rate-setting process that includes all of these procedures except intervenor compensation.<sup>16</sup>

Typically, a final decision on rates, whether made by a state utility commission or by a publicly owned utility, is subject to challenge in state court. In these lawsuits, however, courts typically set a high bar for overturning a decision.

In principle, all of the practices listed above could be applied to any utility, with or without bringing the utility under the jurisdiction of a state utility commission. Existing oversight processes are not set in stone; they are established by local and/or state laws. And, as all advocates know, laws can be changed.

## PART 2: HOLDING PUBLICLY OWNED WATER AND WASTEWATER UTILITIES ACCOUNTABLE

The two primary types of publicly owned water and wastewater systems are municipal utilities or entities known as authorities or special districts. Municipal water utilities are run directly by the local government of the area they serve, such as the water department or public works department of a city, town, or county. Authorities or special districts serve one or more municipalities (sometimes dozens across a large metropolitan area), but they exist and are governed as legal entities separate from the municipal government.<sup>17</sup>

The vast majority of publicly owned water and wastewater utilities in the United States are *not* regulated by state utility commissions, although there are notable exceptions

in some states.<sup>18</sup> (See text box below, "Existing Utility Commission Regulation of Publicly Owned Water and Wastewater Systems.") Additionally, public-private partnership arrangements between publicly owned systems and private companies or investors typically are not subject to state utility commission oversight, even though they introduce a substantial element of for-profit management and finance that affects (for good or ill) both quality of service and rates.<sup>19</sup>

Therefore, for most publicly owned utilities, local decision makers have wide discretion to set rates.<sup>20</sup> They also have discretion to establish rules and policies concerning nonpayment of bills and other matters of concern to water affordability advocates. Opportunities for public oversight and participation in these decisions vary widely.

## EXISTING UTILITY COMMISSION REGULATION OF PUBLICLY OWNED WATER AND WASTEWATER SYSTEMS

In about 10 states, utility commissions are involved to at least some degree in oversight of publicly owned water and/or wastewater systems.

Wisconsin is the only state where virtually all publicly owned water systems are commission-regulated. Publicly owned wastewater utilities are not commission-regulated in Wisconsin, except that the commission will review the reasonableness of rates, rules, and practices if a customer files a complaint.<sup>21</sup>

In approximately 10 other states (Alaska, Indiana, Kentucky, Maine, Maryland, Mississippi, New Jersey, Pennsylvania, Rhode Island, and West Virginia), utility commissions have varying degrees of limited jurisdiction over publicly owned water and/or wastewater utilities.<sup>22</sup> Some regulate publicly owned utilities unless the utility opts out; others regulate only the rates charged to retail customers outside of their own municipal boundaries; and others regulate only very small water or sewer districts. In some of these states, public water authorities or districts may be fully exempt from commission regulation, even though utilities owned by a municipality are subject to the commission's limited jurisdiction.<sup>23</sup> (As noted above, Wisconsin's utility commission also exercises limited oversight of wastewater utilities.)

In Pennsylvania, state law singles out one specific publicly owned utility (Pittsburgh Water and Sewer Authority) for full commission regulation.<sup>24</sup> There may be arrangements like this in other states as well.

### Who has local decision-making authority?

For municipal systems—assuming they are not regulated by a state utility commission—the water department or public works department sometimes has full authority to set rates and adopt rules, answerable only to a mayor. Elsewhere, a city council is responsible for rate-setting; in that case, the utility would develop a proposed rate schedule and submit it to the council for approval. In still other places, rate-setting may be the responsibility of an independent board, commission, or similar body that has been created specifically for that utility and whose members are typically appointed by a mayor and/or city council.

Where the city council or an independent body sets rates for a municipal utility, the same entity may also have responsibility to adopt rules concerning nonpayment of bills and other matters. Alternatively, the municipal utility itself (i.e., the water department or public works department) may have this responsibility.

For water authorities or special districts—again, assuming they are not regulated by a state utility commission—a governing board is wholly responsible for setting rates, adopting rules and policies, and managing and operating

the water or sewer system. This board is often composed of representatives from some or all of the municipalities in the service area. Board members may be appointed or directly elected.

### How can the public participate in local utility decision making?

In some places, residents may be entitled to little more than notice of a pending rate increase and, perhaps, an opportunity to speak in support or opposition at a meeting of the city council, water board, or other utility governing body. At the opposite end of the spectrum, some larger municipalities may have a formalized rate-setting process that looks something like a trial, similar to a state utility commission rate case, in which advocates can intervene as parties and have the right to present expert testimony and cross-examine the utilities' witnesses. Philadelphia offers a prominent example of that model.<sup>25</sup> In many places, the process will fall somewhere in between. (See text box above, "Formal Opportunities for Public Participation in Utility Decision Making.")

## IT'S NOT ALWAYS EASY TO FIND LOCAL WATER RATES OR UTILITY POLICIES

Public oversight of a utility requires that people be able to find basic information such as the utility's current rates and its policies on things like shutoffs, payment arrangements, and billing disputes. But this may be easier said than done, especially for publicly owned systems. To improve accountability and public oversight, you may need to push the utility to prominently post the most basic information on its website and make it easily available in other ways for people who lack internet access.<sup>26</sup> Similarly, you may need to press your utility to communicate clearly about how it makes decisions on critical issues and urge more effective public notice and outreach when proposals are made.

### The role of politics

Regardless of the formal governance structure, it is important to keep in mind that wherever elected officials (or their appointees) are responsible for overseeing water department rates and policies, their decisions may be influenced by political priorities unrelated to sound utility financial management.

For example, they may be reluctant to approve a rate increase to pay for critical infrastructure investments. Or they may seek to divert utility rate revenues for nonutility purposes (e.g., to fill budget gaps in the municipal general fund). The flip side of that coin, however, is that advocates can exert *political* pressure to achieve their goals, regardless of whether the utility's formal decision-making processes allow for meaningful public participation.

## How can decision-making processes be changed, to strengthen oversight and accountability?

There are many potential tools in the public participation toolbox. And there's a good chance that many of them are lacking for your utility. (See text box above, "Formal Opportunities for Public Participation in Utility Decision Making.") You may want to consider pushing to get more of those tools incorporated into the local decision-making processes for your utility. This may require local or state legislation.

In Philadelphia, for example, a city charter amendment and ordinance created an independent rate-making board and rate-setting process that closely resembles a utility commission rate case, complete with a paid, independent consumer advocate who participates as a party and funding for the advocate to retain expert witnesses.<sup>27</sup>

As another approach, recent water affordability legislation in Baltimore created an Office of Water-Customer Advocate within the city's water department. This office is charged with collecting data on customer concerns and making recommendations on "changes to the department's rules, regulations, policies, or procedures that will promote fairness to customers and resolve customer concerns."<sup>28</sup> In developing proposed reforms, this office must give "great weight" to data derived directly from customer experiences.<sup>29</sup>

Another option is to push for state utility commission oversight of publicly owned water and/or wastewater utilities in your state, or even of just your utility specifically. This would almost certainly require state legislation. For example, Pennsylvania enacted legislation specifically to make the Pittsburgh Water and Sewer Authority subject to utility commission regulation.<sup>30</sup> This has opened up new advocacy opportunities for community-based organizations.<sup>31</sup>

There are pros and cons to commission oversight, of course. On the plus side, such oversight provides a check on the discretion of local officials (useful where systems are poorly managed), ensures a formal and typically robust role for ratepayers in decision making, and can significantly enhance transparency. The flip side is that it takes control over decision making away from local officials, who in theory should be responsive to local constituents' concerns. Control shifts to remote state officials, who are subject to partisan swings in state politics and, in some states, are seen by utility consumer advocates as too cozy with utilities. Academic experts have explored other arguments, both pro and con.<sup>32</sup>

It is also possible to pursue approaches that involve the state utility commission but are short of full commission regulation. There are many existing models for this approach. (See text box above, "Existing Utility Commission Regulation of Publicly Owned Water and Wastewater Systems.")

Apart from those models currently in use, there are other ways to provide varying degrees of oversight by a state utility commission or other state agency. A few scenarios for commission oversight of publicly owned water utilities, adapted from a longer list offered by Janice Beecher at Michigan State University's Institute of Public Utilities, are listed below.<sup>33</sup> In each scenario, it would also be possible to substitute some other state agency for the utility commission, such as a state agency with financial oversight responsibility over local governments or a state agency with consumer protection responsibilities.

- **Accounting and reporting requirements:** Publicly owned systems could be required to file financial reports, rate schedules, and other information annually with the commission, to be posted publicly.
- **Audits:** The commission could be empowered to audit specific aspects of financial and managerial performance.
- **Incentivizing (or requiring) best practices:** Publicly owned systems could be made subject to commission oversight but exempted from some or all aspects of oversight if they comply with certain best practices. States could also adopt legislation that *requires* all systems to comply with specified best practices and gives the commission responsibility for enforcement.
- **Customer dispute resolution:** Uniform consumer protection rules could be applied to publicly owned utilities, with commission jurisdiction to investigate complaints and enforce those rules.

Additionally, although this module is focused on participating in formal decision-making processes, informal communication with local utility officials and staff can also be valuable, either in a group setting or individually. Advisory committees, work groups, and the like have potential to be useful if they do not devolve into a rote exercise in which utility staff "talk at" community members rather than engage in two-way dialogue and collaborative problem solving. Similarly, community meetings may be designed in ways that facilitate attendance by the most impacted community members if care is taken to make them inclusive. Unfortunately, local water and sewer utility leaders often must be reminded that meaningful engagement with impacted individuals and communities is essential to achieving their mission of providing safe, affordable water services. And they must be educated by advocates on what meaningful engagement really looks like.



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## KEY RESOURCES:

Charlie Harak, John Howat and Olivia Wein, *A Consumer's Guide to Intervening in State Public Utility Proceedings*, National Consumer Law Center, March 2004, [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/consumer\\_protection\\_and\\_regulatory\\_issues/report\\_may2003.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_may2003.pdf).

*This guide provides a plain-language overview of key considerations for consumer and public interest groups to participate in public utility commission proceedings. (Although it is close to 20 years old, it is still relevant today.)*

Janice A. Beecher, "Potential for Economic Regulation of Michigan's Water Sector: Policy Brief for the Incoming 2019 Gubernatorial Administration," *Michigan State University*, November 7, 2018, 7-8, <https://ipu.msu.edu/wp-content/uploads/2018/12/Policy-Brief-for-the-Incoming-2019-Gubernatorial-Administration.pdf>.

*This policy brief on the potential for subjecting Michigan water utilities to state utility commission regulation includes a summary of how water utilities are regulated across the 50 states and the District of Columbia (see pages 6-8), as well as a discussion of the benefits and drawbacks of public utility regulation of water systems (see pages 8-10).*

University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Navigating-Pathways-to-Rate-Funded-CAPs.pdf>.

*This report includes a state-by-state analysis of which decisionmakers are responsible for setting water and sewer rates, both for utility commission regulated utilities and non-commission regulated utilities (see pages 19-121).*

River Network, *Equitable Water Infrastructure Toolkit*, 2021, [http://www.rivernetwork.org/wp-content/uploads/2021/06/rn\\_ewit.pdf](http://www.rivernetwork.org/wp-content/uploads/2021/06/rn_ewit.pdf).

*In this toolkit from a national water advocacy organization, the "Utilities" and "Decision-Making and Influence" chapters provide tips on engaging with local water utilities.*



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## ENDNOTES

- 1 Manny Teodoro, “Graphic Realism,” *Manny Teodoro Blog*, July 15, 2020, <https://mannyteodoro.com/?p=1636>.
- 2 For more background on regulation of investor-owned utilities in the United States, see Regulatory Assistance Project, *Electricity Regulation in the US: A Guide*, March 2011, <https://www.raponline.org/wp-content/uploads/2016/05/rap-lazar-electricityregulationintheus-guide-2011-03.pdf>. Although the report is focused on electric utilities, the discussions in chapters 5 through 8, regarding the role of state utility commissions and their decision-making processes, are equally relevant to regulation of investor-owned water utilities.
- 3 Public notice of meetings and agenda items are typically published on a commission’s website. Notice of commission meetings may also appear in a weekly state bulletin announcing formal agency actions.
- 4 Cal. Code of Regs., tit. 20, § 1.4.
- 5 Charlie Harak, John Howat, and Olivia Wein, *A Consumer’s Guide to Intervening in State Public Utility Proceedings*, National Consumer Law Center, March 2004, [https://www.nclc.org/images/pdf/energy\\_utility\\_telecom/consumer\\_protection\\_and\\_regulatory\\_issues/report\\_may2003.pdf](https://www.nclc.org/images/pdf/energy_utility_telecom/consumer_protection_and_regulatory_issues/report_may2003.pdf).
- 6 National Association of State Utility Consumer Advocates, “Members,” accessed April 20, 2022, <https://www.nasuca.org/members/>. Most state utility consumer advocacy offices (often state-funded but sometimes independent nonprofits) are members of NASUCA and are listed on this website.
- 7 Utility commissions have professional staff who present testimony and take positions in a rate case. The commissioners (and administrative law judges who take evidence and make a recommended decision to the commission) will often, rightly or wrongly, look to commission staff as the neutral party in the case and write decisions that favor commission staff positions on contested issues. Establishing communications early with these staff witnesses, to educate them on your position in a case and the evidence you have gathered, may help gain their support as a case progresses.
- 8 This is especially important when a commission requires parties to have an attorney to participate; without intervenor compensation, this may be an insurmountable barrier to participation.
- 9 FTI Consulting, *State Approaches to Intervenor Compensation*, National Association of Regulatory Utility Commissioners, December 2021, <https://pubs.naruc.org/pub/B0D6BID8-1866-DAAC-99FB-0923FA35EDIE>. Some states have stronger statutes than others. For example, Illinois’s statute is not a strong example because compensation is dependent on whether a party prevails in the commission’s final order on the issues raised.
- 10 For example, rules could provide that no commissioner or commission employee be permitted to obtain such employment within a minimum of two years of leaving commission employment.
- 11 For example, the California Public Utilities Commission’s ex parte rules permit meeting with decision makers in ratesetting proceedings up to three days before the issuance of an order, but require prompt notification of such meetings to all parties and detailed reports of communications, including service of a copy of any written, audiovisual, or other material used for or during the communication. Cal. Code Reg. tit. 20, div. 1, ch. 1 §§ 8.2, 8.4.
- 12 See, e.g., Cal. Code Reg. tit. 20, div. 1, ch. 1 §§ 8.2 (prohibition on meetings with decision makers within three days of an order); 220 IL Comp. Stat. 5/9-201(d) (prohibition on utility meetings with decision makers prior to the filing of a rate increase request).
- 13 For example, New Jersey recently relaxed its restrictions on communicating with commissioners *outside* an active proceeding. N.J. Stat. Ann. §§ 48:2-32.9, <https://law.justia.com/codes/new-jersey/2021/title-48/section-48-2-32-9/>. The change has benefited public interest advocates, by allowing them to meet with directly with commissioners and staff and raise awareness on issues of concern. Personal communication with Eric Miller, NRDC, May 24, 2022. However, the state’s ex parte restrictions still apply *within* active proceedings.
- 14 How ex parte rules apply to staff, if at all, varies from state to state. In some states, commissioners and staff work closely together to develop policy positions and final decisions in contested proceedings. Elsewhere, commissioners may be “walled off” from staff for purposes of proceedings, with staff treated much like any other intervening party. In the second instance, ex parte rules are less likely to apply.
- 15 FTI Consulting, *State Approaches to Intervenor Compensation*, 7–9.
- 16 City of Philadelphia, “Water, Sewer & Storm Water Rate Board,” accessed April 20, 2022, <https://www.phila.gov/departments/water-sewer-storm-water-rate-board/about/>; Phila. Home Rule Charter § 5-801, [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-182806#text-2-1](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-182806#text-2-1); Phila. Code ch. 13-100, [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-203161](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-203161).
- 17 Significantly, authorities and special districts typically maintain a credit rating separate from the municipality or municipalities they serve, backed by their ability to self-fund their budgets through water and sewer rates.
- 18 For a general overview of state approaches, see Janice A. Beecher, “Potential for Economic Regulation of Michigan’s Water Sector: Policy Brief for the Incoming 2019 Gubernatorial Administration,” Michigan State University Extension, November 7, 2018, 7–8, <https://ipu.msu.edu/wp-content/uploads/2018/12/Policy-Brief-for-the-Incoming-2019-Gubernatorial-Administration.pdf>.
- 19 These are typically not commission-regulated because they do not involve actual private ownership of the utility. For example, public–private partnerships include situations in which a private company operates a water or sewer system under contract with a publicly owned utility. They can also include situations in which a private company leases a system by making annual payments to the local government and in return gets the right to retain ratepayer revenue. In some cases, these arrangements have resulted in rate increases far in excess of the increases anticipated when contracts were negotiated, in order to generate a guaranteed level of profit for the private company and its investors. See Danielle Ivory, Ben Protes, and Griff Palmer, “In American Towns, Private Profits From Public Works,” *New York Times*, December 24, 2016, <https://www.nytimes.com/2016/12/24/business/dealbook/private-equity-water.html>.
- 20 For a state-by-state discussion of laws that govern rate-setting by systems not subject to state utility commission regulation, see University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities*, 2017, <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Navigating-Pathways-to-Rate-Funded-CAPs.pdf>.
- 21 Public Service Commission of Wisconsin, “Water Utility Regulation,” accessed April 20, 2022, <https://psc.wi.gov/Pages/ForUtilities/Water/Water.aspx>; Public Service Commission of Wisconsin, “Water Sewer FAQs,” accessed April 20, 2022, <https://psc.wi.gov/Pages/ForConsumers/WaterSewerFAQ.aspx>. For more detailed descriptions of Wisconsin’s approach, see University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*, 117–118 and Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 8–9.
- 22 One national survey identified nine states with partial utility commission jurisdiction over publicly owned water utilities. The authors of this toolkit are aware of at least one more state (Kentucky). Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 7–8.
- 23 For an overview of these variations, see Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 7–8. For a state-by-state discussion of commission jurisdiction over water and wastewater in *all* states, see University of North Carolina Environmental Finance Center, *Navigating Legal Pathways*.

- 24 Pa. Pub. L. 1208, No. 65 (Dec. 21, 2017) § 2, codified at Pa. Stat. and Cons. Stat. Ann. tit. 66 §§ 3201-3209 (West), <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2017&sessInd=0&act=65>.
- 25 University of Michigan Water Center, “Reimagining the Water Rate-Setting Process in Philadelphia,” accessed April 20, 2022, <https://graham.umich.edu/media/pubs/Water-CS-Reimagining-the-Water-Rate-setting-Process.pdf>; City of Philadelphia, “Water, Sewer & Storm Water Rate Board.”
- 26 Center for Water Security and Cooperation, *American Water Access Survey*, Spring 2022, 21–22, <https://drive.google.com/file/d/10LjfhNyz3q8p368XjQTn512VegSikub/view>.
- 27 University of Michigan Water Center, “Reimagining the Water Rate-Setting Process in Philadelphia”; City of Philadelphia, “Water, Sewer & Storm Water Rate Board”; Phila. Home Rule Charter § 5-801 [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-182806#text-2-1](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-182806#text-2-1); Phila. Code ch. 13-100, [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-203161](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-203161); Phila. Water, Sewer, and Storm Water Rate Bd. Regs. §§ I(n), II (2021), <https://www.phila.gov/media/20220204155914/WRBRegulationsAmended20210908reaffirmed20211013.pdf>.
- 28 Balt. City Code art. 24, § 2-17(c)(3)(ii)(a), [https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water\\_\(rev%2004-11-22\).pdf](https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water_(rev%2004-11-22).pdf).
- 29 Balt. City Code art. 24, § 2-17(d)(4), [https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water\\_\(rev%2004-11-22\).pdf](https://legislative.reference.baltimorecity.gov/sites/default/files/Art%2024%20-%20Water_(rev%2004-11-22).pdf).
- 30 Pa. Pub. L. 1208, No. 65 (Dec. 21, 2017) § 2, codified at Pa. Stat. and Cons. Stat. Ann. tit. 66 §§ 3201-3209 (West).
- 31 Pennsylvania Public Utility Commission, “PUC Approves Pittsburgh Water and Sewer Authority Rate Settlement for Water, Wastewater and Stormwater Services,” press release, November 18, 2021, <https://www.puc.pa.gov/press-release/2021/puc-approves-pittsburgh-water-and-sewer-authority-rate-settlement-for-water-wastewater-and-stormwater-services>; Demos, Pittsburgh United, and Our Water Campaign, *Water as a Public Good: Pittsburgh’s Our Water Campaign*, February 8, 2022, [https://www.demos.org/sites/default/files/2022-02/PGHOurWater\\_FINAL.pdf](https://www.demos.org/sites/default/files/2022-02/PGHOurWater_FINAL.pdf).
- 32 For example, see Beecher, “Potential for Economic Regulation of Michigan’s Water Sector,” 8-10.
- 33 *Ibid.* at 11–12.