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Testimony of Shirley Bergert¹ Before the Energy & Technology, Appropriations and Human Services Committees Regarding Connecticut's LIHEAP Block Grant September 27, 2011

I am an attorney in Connecticut Legal Services' Willimantic office. Connecticut Legal Services serves low income households in Connecticut, providing legal advice and assistance in civil matters. These are our vulnerable neighbors at greatest risk in affording and maintaining necessary utility and energy services and other basic subsistence needs. Connecticut's LIHEAP Block Grant plan benefits are of critical importance to these families.

I apologize that I am unable to attend today's hearing as I am out of the country. I have prepared an extensive analysis of the Administration's proposed plan and have attached it for your consideration.

Recommended action: Adopt the recommendations of the Low Income Energy Advisory Board:

- **Maintain last winter's program structure** (provides benefits regardless of heating source) **and income eligibility levels, with a three-tiered benefit schedule** to allow the program to modify benefits based on actual federal and potential state-appropriated funds. This means the plan would include a benefit for renters and benefits for households with income up to 60% state median income (SMI), regardless of heating source. Ensuring utility heated households with income up to 60% SMI even a modest benefit, provides continued access to utility arrearage forgiveness programs.
- **Follow last winter's program time table for benefits** (fuel delivery period: Nov. 1 to and mid-March) **and application deadlines** (Nov. 1 through beginning of May, extended to mid-May for utility heated households with a shut-off notice).
- **Commit state funds to:**
 - **Ensure adequate administrative funding** for Community Action Agencies and other qualified entities to administer the program; and
 - Supplement federal funds available **for energy assistance benefits.**

¹ Member of the Low Income Energy Advisory Board, Energy Conservation Management Board, Fuel Oil Conservation Board, and the Advisory Board for the Institute for Sustainable Energy.

The Administration has crafted an energy assistance block grant proposal that will result in more than 85,100 households losing heating assistance. It eliminates all benefits for utility heated households and renters whose heat costs are included in rent, as well as many deliverable fuel heated households.

This block grant proposal is based on the most conservative estimates of available federal funding, reduces the income eligibility level for assistance and violates the law by planning for no benefit for utility heated households or renters (heat cost included in rent payment). We have a history of underestimating available federal funding since exact figures are never available at this point in the process. Last winter OPM's draft plan assumed \$72M in federal funding, but Connecticut actually ran a federally funded program of \$115M.

The Low Income Energy Advisory Board (LIEAB) is charged by Conn. Gen. Stat. §16a-41b with advising OPM and DSS in the planning, development, implementation and coordination of energy-assistance-related programs. It is responsible for making recommendations to the legislature regarding plans subject to legislative approval and administration of the LIHEAP block grant, to ensure affordable access to residential energy services to low-income state residents. The LIEAB recommended an alternative approach that complies with the law and preserves extensive benefits and nongovernmental funding to make energy costs more affordable to the poor. The legislature should vote to redraft the plan in accordance with LIEAB's recommendations, outlined above.

Analysis of Proposed LIHEAP Block Grant for Winter 2011-12

This memo provides an in depth analysis of the Administration's LIHEAP Block Grant plan and the issues involved. It is broken down into three major sections:

I. IMPLICATIONS OF THE ADMINISTRATION'S PROPOSED PROGRAM STRUCTURE

II. FUNDING ISSUES

III. IMPLICATIONS OF LATENESS OF ENERGY ASSISTANCE PLAN AT SIGNIFICANT VARIANCE WITH PRIOR PLANS

I. IMPLICATIONS OF THE ADMINISTRATION'S PROPOSED PROGRAM STRUCTURE

THE ADMINISTRATION'S PROPOSAL WILL RESULT IN A LOSS OF ENERGY ASSISTANCE BENEFITS TO MORE THAN 85,100 HOUSEHOLDS, APPROXIMATELY 72% OF THOSE HISTORICALLY ELIGIBLE FOR THIS NEEDED ASSISTANCE.

This energy assistance block grant proposal reduces the number of households eligible to receive energy assistance benefits from 118,000 last winter (including all heat sources and renters) to 36,826 for the upcoming winter (limited to deliverable fuel heated households). It accomplishes this in three key ways (in addition to eligibility reductions for weatherization assistance):

- **No benefits are planned for utility heated customers.** Last winter 72,999 households received energy assistance for utility heat, or 62% of the households poor enough to qualify for benefits.
- **No benefits are planned for renters** (heat cost included in the rent payment). Last winter 2,436 households received a renter benefit, or a little more than 2% of those receiving benefits.
- **Income eligibility reduction:** For years the energy assistance program income eligibility has been up to 60% of the state median income (SMI). The Administration's proposal reduces income eligibility **approximately by half from 60% SMI to 150% of the federal poverty level (FPL) (200% FPL if there is a person with a disability or over 60 years in the household)**. Last winter there were 9721 households in the eliminated eligibility range who received energy assistance for a deliverable fuel heat source, or a little more than 8% of those receiving benefits.

The proposal before you is not balanced. It narrowly addresses an immediate crisis regarding availability of deliverable fuel, ignoring:

- **Legal requirements²** (discussed below).
- **Massive potential loss of both governmental and non-governmental resources which have helped to make energy bills more affordable for low income households:**
 - **Energy assistance – \$58+M in utility funding supports** are likely to be lost to low income households without a plan for benefits for utility heated households:
 - **Connecticut Light & Power (CL&P) and Yankee Gas (YG) provided a total of approximately \$32M** in supports to the energy assistance program this past winter, including just under \$250,000 in administrative funding for CT's Community Action Agencies (CAAs).

² Law governing the energy assistance plan: Conn. Gen. Stat. §16a-41a; Reg. CT State Ag. §16a-41(b)-1 through §16a-41(b)-16; 42 USC §8621 - §8630; 45 CFR §96.80 - §96.89.

- **Connecticut Natural Gas (CNG) and Southern Connecticut Gas (SCG) provided approximately \$26M** in supports this past winter, including just under \$100,000 in CAA administrative funding.
- **Federal leveraging funds:** The federal government provides leveraging funds to states successfully using energy assistance to leverage non-federal energy assistance resources.³ **Without utility company supports and with other losses of resources likely to result from approval of this proposal, Connecticut is not likely to be able to compete successfully for these additional funds.**
 - **Weatherization assistance.** As is more fully described below, **timely expenditure of federal stimulus weatherization funding (estimated \$4-\$6M at risk) and CT Energy Efficiency Funding for low income households (\$20.95M) is at risk.** If not timely expended, the funds are no longer available to meet low income needs.
- **Massive numbers of dangerous spring utility shut-offs, with many low income households unable to ever catch up sufficiently to afford to maintain necessary utility services. The average annual shortfall between actual and affordable home energy bills for Connecticut households below 185% FPL was nearly \$2,100 per household in 2010⁴, an untenable amount.**
- **Utility shut-offs have wide-spread implications:** fires; dislocation and homelessness with particularly dangerous impacts on the elderly, disabled and children (a high level of mobility is highly correlated to school failure); inability to maintain a safe and sanitary environment, or store or prepare food appropriately; loss of housing subsidies requiring maintenance of utility services; potential custody loss where parent is unable to afford necessary utility services. **When low-income households pay unaffordable energy bills, it is often done at the expense of meeting other basic needs such as food and rent.**
- **Ignores the needs of gas heated households which may not be eligible for utility service reinstatement for the winter.** If gas service was maintained last winter because the household qualified as “hardship”, and the family terminated after the winter moratorium, unless they have paid \$100, they will not have gas for heat reinstated this winter.⁵ The number of households impacted by this will dramatically increase next winter if OPM’s proposal to eliminate benefits for utility heated households is adopted.

Legal Requirements Impacted by the Block Grant Proposal

Energy assistance is required by federal law to be focused on the lowest income households which pay a high proportion of income for home energy.⁶ This proposal does not address this requirement. The plan provides benefits based on heat source, not on the low income household’s energy burden.

The Administration’s proposal violates Connecticut’s legal prohibition of discrimination based on heat source in energy assistance benefits: In planning for benefits only for deliverable fuel heated households, this proposal attempts to circumvent the state law requirement prohibiting discrimination based on heat source in the energy assistance program. The block grant proposal must include “a basic grant for eligible households that does not discriminate against such households based on the type of

³ 42 USC §8626a.

⁴ HOME ENERGY AFFORDABILITY GAP: 2010, p. 1, Roger D. Colton, Fisher, Sheehan & Colton, Public Finance and General Economics, Belmont, Massachusetts, January 2011. Report is available on Operation Fuel’s website: <http://www.operationfuel.org/wp-content/uploads/Connecticut-2010-HEAG-Final.pdf>

⁵ Conn. Gen. Stat. § 16-262c(b)(1).

⁶ 42 USC §§ 8621(a) and 8624(b)(5).

energy used for heating.”⁷ The proposal attempts to get around this nondiscrimination provision by labeling its only planned benefit as “crisis.” Federal law provides for states to reserve until March 15th “a reasonable amount based on data from prior years” for “energy crisis intervention.”⁸ There is nothing in Connecticut’s energy assistance history to justify expending 100% of program funds for “crisis” assistance.

The Administration’s proposal does not provide benefits for renters whose heat cost is included in their rental payment: Federal law requires that renters and home owners be treated equitably in the energy assistance program.⁹ Eliminating renter benefits, violates this equity provision. Where landlords provide heat, rental costs reflect this. It is as much an essential energy cost as in situations where households pay directly for heat. And it puts the household at great risk of eviction and dislocation when policy doesn’t reflect this reality.

Federal law requires that state plans describe “benefit levels . . . for each type of assistance.”¹⁰ In multiple sections OPM’s proposal merely indicates benefits may be available based on additional funding (see sections XII (basic benefits), XIII (renter benefits) and XV (catch-all)). To the extent the state needs to plan for a range of possible funding levels, it can do so by specifying what benefits will be available at designated funding levels and how these will be modified if funding is at variance with these funding levels. To do otherwise does not describe benefit levels for each type of assistance.

The Administration’s proposal allows for the possible addition of benefits later in the program year, depending on funding, requiring one of two possibilities:

- the block grant plan would be amended to redesignate the “crisis” deliverable fuel benefit as a “basic” benefit, and provide an equivalent benefit for utility heated households; or
- state law would be amended to allow for a discriminatory lesser benefit to utility heated households (either as the only “basic” benefit or with redesignation of the deliverable fuel “crisis” benefit). If state law is amended (OPM’s suggested approach), the legislative session does not begin until February 2012. OPM proposes shutting down applications in the energy assistance program on March 15 – when legislative action is completed, it will be too late for other systems integrated with energy assistance (arrearage forgiveness and weatherization assistance programs) to plan and gear up to operate, and too late to reach potentially eligible utility heated households to timely file applications in a CAA system that will not have time to plan for expanded administrative capacity to accommodate the added benefits.

However, this apparently facile approach of adding utility benefits later is, simply, not administratively feasible:

- The utilities can neither plan nor gear up in a timely way to administer their arrearage forgiveness programs effectively if benefits belatedly become available for their customers.
- The various weatherization programs that piggy-back on energy assistance eligibility determinations do not have the necessary planning time to develop, fund and implement alternative eligibility systems. Additionally, plan approvals would need to be sought from oversight agencies prior to adding such systems.

⁷ Conn. Gen. Stat. § 16a-41a(a)(1)(E).

⁸ 42 USC § 8623(c).

⁹ 42 USC § 8624(b)(8).

¹⁰ 42 USC § 8624(c)(1)(A).

- The Community Action Agencies cannot plan program administration as their planning is based on the energy assistance plan budget approved at the beginning of the energy assistance season. They also depend on significant utility company funding for administration of applications of utility heat customers, support that is unlikely to be available if there is no utility heat benefit planned. CAA staff have to be hired and trained to operate this seasonal program, locations to take applications rented, volunteer application sites staff have to be recruited and trained.
- Volunteer application sites are not likely to take applications for highly speculative benefits that may be available later – these sites tend to have staff stretched to the limit attempting to assist their neediest clients and they do not have the staff or administrative flexibility to add responsibilities without planning.
- Once it is understood that benefits for utility heated households are not available, it is likely that many households simply won't apply. Timely identifying these households later in the winter if benefits become available will be very difficult, and likely impossible with the most vulnerable households due to competency or mental health issues, learning disabilities and isolation.

There is no viable alternative system that can make up for lost benefits from the energy assistance program and the benefits that piggy-back on the energy assistance program: Operation Fuel¹¹ is the major funding source for fuel banks, the only other source of significant energy assistance. However, it was only able to provide a little more than \$2 million total in emergency assistance to 6,817 households in 2010, from nearly \$1 million raised from private donations, foundations, corporations, small businesses, individuals, and religious organizations, and a one-time grant for \$1.14 million from the state.¹² To put this in perspective, when combined with the \$118M in CAA administered energy assistance from last year, Operation Fuel had a budget that was approximately 1.6% of the total energy assistance available. Operation Fuel largely operates through volunteer fuel banks which do not charge for their administrative costs; if expanded significantly, it would likely need additional funding to cover administration.

II. FUNDING ISSUES

The Administration's proposal assumes \$46.4M in federal funding for energy assistance this winter. Last winter OPM's draft plan assumed \$72M in federal funding, but Connecticut actually ran a federally funded program of \$115M.

- **Federal funding: Every year Connecticut develops an energy assistance plan based on guestimates of available federal funds.** This year is no different except for heightened concern regarding federal budget issues in light of the debt ceiling deal creating the so-called congressional "Super Committee" to develop a budget plan. The Administration's proposal is based on the most conservative estimate of available federal funds, a planning gamble with damning consequences for low income households. **While no one can guarantee the most conservative estimate is wrong, historically it has consistently been a serious underestimation of available federal funds.**
- **State funding:** The state is dealing with difficult fiscal issues engendering difficult choices in its \$19B annual budget. But even **modest state investment in energy assistance:**

¹¹ Conn. Gen. Stat. § 16a-41h.

¹² Operation Fuel Annual Report 2010, available at <http://www.operationfuel.org/wp-content/uploads/OpFuel-FY10-Annual-Report.pdf>.

- can preserve significant non-governmental resources worth well over \$60M, particularly utility programs and contributions supporting energy assistance (described below);
 - may make the difference in timely expenditure of federal stimulus weatherization funds (if these funds are not expended by March 2012, they must be returned to the federal government); and
 - avoid harm from spring utility shut-offs resulting from inadequate support for utility heated customers, and an ongoing inability of these households to afford necessary utility service.
- **Importance of early budget planning:** The budget in the plan adopted at the beginning of the heating season has two major planning implications:
 - **Plan benefit levels drive arrearage forgiveness payment plans with the utility companies.**¹³ If there are no benefits, utility heated households lose access to the arrearage forgiveness program. Payments in the arrearage forgiveness program are set by this basic formula: annual anticipated utility bill minus *anticipated energy assistance*, and that sum is divided by 12 for a monthly payment base to which an affordable amount is added toward any arrearage. The utilities, working with social service providers, have developed a so-called “below budget” payment plan for households which cannot afford the monthly payments for the arrearage forgiveness program, only available to those actually receiving energy assistance. **If participating customers cannot afford their monthly payments consistently, they lose all arrearage forgiveness and face a spring shut-off.**
 - **The CAAs staffing is based on the administrative funds in the plan. Federal law limits use of federal dollars to 10% for program administration, with a presumption of state support for costs above this amount.**¹⁴ OPM has articulated an impossibility: the CAAs will process as many applications as last year with less than half the funds in the plan for this purpose. Additionally, **if no benefits are available for utility heated households, significant funding by the utilities to support processing applications for utility heated households will likely be lost – last year NU provided approximately \$281,000 and CNG and SCG provided \$95,000 in such support.** Volunteer application sites are unlikely to take applications for utility heated households based on speculation of possible later benefits, further eroding administrative capabilities.

III. IMPLICATIONS OF LATENESS OF ENERGY ASSISTANCE PLAN AT SIGNIFICANT VARIANCE WITH PRIOR PLANS

Energy and related assistance exist in silos in Connecticut. **The energy assistance intake process and eligibility determination has been used as the base from which to coordinate available related assistance and protections.** This coordination reduces the need for and expense of redundant administrative processes. Coordination is particularly important for low income households which tend to be under great life stress with disproportionately high levels of disability and competency issues that impede successfully accessing needed assistance through complex bureaucracies.¹⁵

¹³ Conn. Gen. Stat. §16-262c mandates that CL&P, UI, CNG, SCG and YG offer their customers who receive energy assistance a payment plan that allows the household to “earn” arrearage forgiveness in exchange for regular monthly payments. PURA approves the annual plan and issued a draft decision on 9/8/11 in docket #11-06-14.

¹⁴ 42 USC §8624(a)(9)(A) and (B). State support is generally presumed in federally funded programs to assist states meet subsistence needs of their most vulnerable residents (e.g., SNAP (food stamps), Medicaid, TFA).

¹⁵ US Census Bureau report P70-61, “Current Population Reports Americans With Disabilities: 1994-95”, dated August 1997, indicated the occurrence of disability in the general US population over age 22 years increases by age from a low 14.9%, including 6.4% with severe disabilities, to 71.5%, including 53.5% with severe disabilities for those who are 80+ years old (Report, Figure 1, p. 2), and 40.3% of persons receiving means-tested cash, food or

It is too late for all the systems that piggy-back on or integrate with energy assistance to adapt to this last minute radical modification of the energy assistance program to develop effective alternatives for program administration.¹⁶ In addition to the great risk to low income households, this proposal will result in a significant loss of non-governmental low income arrearage forgiveness program funding, and significant risk to both non-governmental and federally funded weatherization assistance.

The following are the systems that depend on the energy assistance system:

- **Weatherization:**
 - an energy assistance application is also an application for US DOE funded weatherization assistance:
 - The Administration's proposal reduces the energy assistance *and weatherization* income eligibility approximately by half from 60% SMI to 150% FPL (200% FPL if there is a person with a disability or over 60 years in the household),¹⁷ thus reducing access to weatherization assistance to help households reduce consumption;
 - OPM's proposal plans no energy assistance for utility heated households -- these households will be much less likely to apply once they learn there is no assistance, resulting in weatherization assistance being disproportionately directed to deliverable fuel heated households regardless of real need for such assistance.
 - eligibility determination for energy assistance is used for accessing:
 - federal stimulus funding for low income weatherization,¹⁸ which currently uses 60% SMI as its income limit. Significant planning is underway to ensure full expenditure of these funds by March 2012, but eligibility determinations are piggy-backed on energy assistance determinations -- if determinations are not made for utility heated households or no energy assistance is available above 150% FPL, this will impede this system's ability to timely plan and expend these funds to avoid returning them to the federal government;
 - CT Energy Efficiency Fund low income weatherization assistance, largely funded by utility ratepayers,¹⁹ 2012 budget is \$20.95M for low income household weatherization, based on the amount of revenues low income ratepayers contribute to the fund. Programs are designed based on energy assistance eligibility of 60% SMI, they piggy-back on the energy assistance determination of eligibility, and they budget for measures to enhance the federally funded

rent assistance had a severe disability (Report, p. 4). These figures are consistent with many studies to identify disability in the population.

¹⁶ While LIEAB meets regularly with administration officials, it was only provided a copy of the energy assistance plan on the evening of August 31. The concepts in OPM's proposed plan that are a radical departure from past programs were never previously presented to LIEAB for vetting. Had they been, OPM would have been advised regarding the far-reaching implications of its proposal.

¹⁷ Income limits for 2-person household: 60% SMI is \$41,667/yr. or \$3472/mo.; 150% FPL is \$22,065/yr. or \$1839/mo.; 200% FPL is \$29420/yr. or \$2452/mo.

¹⁸ Federal energy assistance law requires that the state coordinate energy assistance with "similar and related programs administered by" the state. 42 USC § 8624(b)(4). Yet OPM's proposal puts federal weatherization funding at risk.

¹⁹ Conn. Gen. Stat. §§ 16-245m and 16-32f. The statutes also provide for a conservation fund administered by municipal utilities, including low income benefits, Conn. Gen. Stat. § 7-233y, but these potentially jeopardized funds are not accounted for in this analysis as they are significantly less than the programs involving the public service companies.

weatherization – if the CEEF budget for low income cannot be timely expended, it will return to old practices of using low income customer revenues to subsidize wealthier customer conservation programs.

- **Winter moratorium protection:** The utilities code households which receive energy assistance as “hardship” to ensure they do not face life or health threatening terminations of service between Nov. 1 and May 1 based on an inability to afford their full utility bill.
- **Utility payment programs:** If the energy assistance income limits are reduced, these affordability programs will only be available to households eligible for energy assistance for a utility heat source; these programs will not be available if energy assistance is not available for a utility heat source.
 - **Arrearage forgiveness programs:** The utilities identify and affirmatively offer the arrearage forgiveness program (debt forgiveness in exchange for customer payment of budgeted monthly amounts) to their customers who receive energy assistance for a utility heat source.²⁰ If these households receive no energy assistance benefit this winter, it will impede utility identification of eligible households for arrearage forgiveness programs in the future. These programs are showing high levels of success with customers making regular required payments, but it has taken years of operation to achieve this success. If the payment programs are not available this winter, it will again take years of concerted effort to operate them successfully, building trust and getting “word” out that it is again possible to develop an affordable payment plan with the utility company that allows the household to maintain year around utility service.
 - **Below budget payment program:** CL&P, UI, SCG, CNG and YG have worked with social service providers to develop an affordable payment program for households unable to afford the regular arrearage forgiveness program, utilizing a strict budgeting system.

²⁰ CGS §16-262c(b)(4) requires that customers “apply and be eligible for benefits available under the Connecticut energy assistance program”.

