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**Winter Shutoff Protections and
LIHEAP Participation**

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**CONDITIONING WINTER UTILITY SHUTOFF
PROTECTIONS ON LIHEAP PARTICIPATION
MAY UNLAWFULLY DISCRIMINATE BASED
ON RACE OR ETHNICITY**

The state of Iowa has created a winter shutoff moratorium for low-income utility customers. According to Iowa statutes, a low-income household shall not be subject to the disconnection of service between the dates of November 1 and April 1 of each winter heating season. The statute provides, however, that in order to be considered "low-income," a customer must be certified to be eligible for benefits from either of two federal programs: (1) the federal Low-Income Home Energy Assistance Program (LIHEAP); or (2) the federal Weatherization Assistance Program (WAP).

A recent study by Fisher, Sheehan & Colton, Public Finance and General Economics (FSC) found, however, that to the extent the Iowa statute is construed to require customers to apply for LIHEAP, the statute has a discriminatory impact based on race. As a result, the statute may run afoul of explicit federal prohibitions banning discrimination based on race in the extension of consumer credit.

The FSC analysis considered the impact that Iowa's winter moratorium requirement had on Hispanic customers in particular. In 1987, a unanimous U.S. Supreme Court ruled that the prohibition of racial discrimination under the federal Civil Rights Act extended to discrimination based on "ancestry or ethnic characteristics."

The Policy Context

Iowa's winter moratorium serves multiple functions. First and foremost, it prevents the termination of essential utility service during cold weather months. The winter termination of heating service, as well as the termination of the electric service that is essential for many heating systems to operate, represents a life-threatening circumstance to low-income Iowa residents.

It is not the mere termination of utility service, however, that poses health and safety threats. The Iowa Department of Human Rights, which administers the LIHEAP program in Iowa, has documented the extraordinary steps that low-income Iowa residents take in order to pay their utility bills and avoid the termination of service. One DHR survey of the impacts of home energy bills in the 1999/2000 winter heating season, for example, documented that winter energy needs far transcend bill payment troubles.

The Iowa survey found that over 12 percent of the surveyed LIHEAP recipients went without food to pay their home heating bill. Projected to Iowa's total LIHEAP recipient population, that meant that about 7,600 low-income households (representing 20,000 Iowa citizens) went without food at times as a result of unaffordable home heating bills.

More than one-in-five went without medical care to pay for heating bills. This included not seeking medical assistance when it was needed, not filling prescriptions for medicine when a doctor had prescribed it, and/or not taking prescription medicines in the dosage ordered by the doctor.

Almost 30 percent reported that they did not pay other bills, but did not elaborate as to which bills went unpaid. In addition to not

paying other bills, many low-income households incurred debt in order to pay both their home heating bills and other basic necessities: borrowed from friends and/or neighbors; used credit cards to pay for food and other necessities, or did not pay the heating bill.

Disproportionately excluding a discrete population of Iowa residents from the protections offered by the Iowa winter utility shutoff moratorium, therefore, unfairly places these households at greater risk not merely of losing their service, but of the harms that they must subject themselves to in order to prevent that loss of service.

Impacts on Iowa's Hispanics

Pre-conditioning the extension of Iowa's winter shutoff moratorium on the receipt of fuel assistance through the federal LIHEAP program has the effect of disproportionately denying winter health and safety protections to Iowa's Hispanic community. The conclusion that discrimination is present in this regard is determined based upon application of an "effects test."

The primary attribute of an effects test is that the results of a practice urged to be discriminatory can be separated from the intention held by the defending party. The "effects test" relies not upon any improper intention by the challenged party, but rather upon the measurement of disparate impacts. The good or bad faith of the defendant, in other words, is irrelevant to any showing that a challenged practice does or does not discriminate against a protected class. The focus, instead, is on discriminatory results.

Reformulation of the judicial statement of the appropriate test to apply in assessing discriminatory impacts, FSC said, results in the following inquiry: Does the requirement

that, in order for a customer to gain the protection of the Iowa winter utility shutoff moratorium, that customer must also be certified as LIHEAP-eligible, disproportionately screen out Hispanics from the receipt of winter shutoff protections?

FSC concluded that “the data documents a pattern of systematic exclusion by this winter moratorium requirement.”

The Data Analysis

Two sources of data were used to determine whether requiring customers seeking winter utility shutoff protections to also be recipients of federal LIHEAP assistance has a disproportionate adverse impact on Hispanics in Iowa. First, ethnicity data on LIHEAP participants was obtained from the Iowa Department of Human Rights for the 2001 and 2002 program years. A Hispanic penetration rate was calculated for each Community Action Agency (CAA) delivering LIHEAP benefits. In Iowa, while DHR administers the LIHEAP program, CAAs are the sub-grantees through which the LIHEAP benefits are distributed.

The rate of Hispanic participation in the Iowa LIHEAP program was then compared to two different figures: (1) the proportion of Hispanics in the total population; and (2) the proportion of Hispanics in the population with income below 100% of the Federal Poverty Level. County population figures were aggregated into figures that could be compared to the CAA LIHEAP data. Each county was assigned to a CAA. The breakdown of CAA service territories was provided by the Iowa Department of Human Rights. The county-specific data was then aggregated and attributed to the respective CAA.

To prevent the possible over-representation of Hispanics in one CAA service territory from masking the under-representation of Hispanics in a different CAA service territory, each CAA was evaluated to determine whether Hispanic participants reflected the proportion of Hispanics in the overall population, as well as the below-Poverty population, for that service territory.

Hispanics were substantially under-represented in both populations of Iowa residents. When compared to the proportion of Hispanics in the total population, Hispanics were under-represented in 13 of the 18 Iowa CAA service territories in Program Year (PY) 2002 and in 12 of the 18 CAA service territories in Program Year (PY) 2001. When compared to the proportion of Hispanics in the population of persons with income below 100% of the Federal Poverty Level, Hispanics were under-represented in all 18 CAA service territories in both years.

In some service territories, the extent of the under-representation was substantial.

In the City of Des Moines (PY2001), while 13.7% of all persons below 100% of the Federal Poverty Level were Hispanic, only 4.7% of all LIHEAP participants were Hispanic, an under-representation of nearly 300%. In PY 2002, the figures were 13.7% and 4.4% respectively.

In Woodbury County, while 17.2% of all persons below 100% of the Federal Poverty Level were Hispanic (PY2001), only 7.2% of the LIHEAP participants were, an under-representation of 240%. In PY2002, the figures were 17.2% and 6.4% respectively.

In Upper Des Moines Opportunity (UDMO) (PY2001), while 8.7% of all persons below 100% of the Federal Poverty Level were

Hispanic, only 3.2% of LIHEAP recipients were, an under-representation of more than 270%. In PY2002, the respective figures were 8.7% and 2.9%.

Of the total 75,357 LIHEAP recipients served in Iowa in Program Year 2002, more than 4,000 additional recipient households would needed to have been Hispanic (with a constant participation rate) in order for Hispanics to reach a level reflecting their incidence in the Iowa below-Poverty population, an increased Hispanic statewide participation rate of 230%. In PY2001, more than 4,400 additional Hispanic LIHEAP households would have been needed, an increased statewide participation rate of 215%.

Summary and Conclusions

Iowa disproportionately denies the protections of its winter utility shutoff moratorium to its Hispanic residents, FSC concluded. While not doing so overtly, or directly, the requirement that the winter utility shutoff moratorium extends only to households that have been certified as eligible for LIHEAP has the *effect* of excluding Hispanics at a rate that is much higher than is merited by their presence in the Iowa population. Given federal prohibitions on discrimination in the granting of credit, including utility credit, it would appear that Iowa's limitations on its winter moratorium would be subject to successful challenge.

A copy of the complete analysis, titled "The Discriminatory Impacts of Conditioning Iowa's Winter Utility Shutoff Protections on the Receipt of LIHEAP," including all data tables and citations to federal statutory authority, can be obtained by sending an e-mail to:

publications@fsconline.com

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) is a research and consulting firm with offices in Belmont (MA), Scappoose (OR), and Iowa City (IA).

FSC specializes in providing economic, financial and regulatory consulting. The areas in which *FSC* has worked include infrastructure financing, public enterprise planning and development, natural resource economics, community economic development, telecommunications, public sector labor economics, planning and zoning, regulatory economics, energy law and economics, fair housing, and public welfare policy.

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