FSC'S LAW & ECONOMICS INSIGHTS

Issue 13-6 Fisher, Sheehan & Colton, Public Finance and General Economics Nov/Dec 2013

IN THIS ISSUE

Using Assets Tests to Establish Eligibility for Energy Assistance

NOTE TO READERS

ON-LINE DELIVERY

This document presents the bi-monthly electronic newsletter of Fisher, Sheehan & Colton: *FSC's Law and Economics Insights*. Previous issues of the newsletter can be obtained at FSC's World Wide Web site:

http://www.fsconline.com (click on "News")

Fisher, Sheehan & Colton
Public Finance and General Economics
34 Warwick Road, Belmont, MA 02478
(voice) 617-484-0597 *** (fax) 617-484-0594
(e-mail) roger@fsconline.com

Assets Tests Represent Flawed Way to Determine Eligibility for Energy Assistance

As resources become tighter for distribution as home energy assistance, whether they are directed toward rate affordability assistance for public utilities,[1] or the distribution of energy assistance through federal[2] and state[3] grant programs, one eligibility limitation that some program administrators seek to impose involves an assets test.[4] Through an assets test, an otherwise income-eligible household might be excluded from receiving assistance if they own assets with a value beyond prescribed limits.[5]

Fisher, Sheehan & Colton recently prepared a white paper on the use of assets tests in energy assistance program. The FSC analysis concludes that for the federal Low-Income Home Energy Assistance Program (LIHEAP),[6] use of an assets test in eligibility determinations is inappropriate. For any energy assistance program, the use of an assets test is difficult (and

[1] See e.g., § 305 ILCS 20/18 (Illinois 2012); see also, 4 Code of Colorado Regulation (CCR), §§ 3412, et seq. (2012); *Policy Statement on Customer Assistance Programs (CAP)*, Pennsylvania Public Utility Commission, Docket No. M-00920345 (July 2, 1992).

[2] See e.g., Low-Income Home Energy Assistance Program (LIHEAP). 42 U.S.C. §§ 8621, et seq. (2012).

[3] See generally, www.ncat.org/liheap for an inventory of state LIHEAP supplements.

[4] See e.g., *PECO Energy Company Universal Service and Energy Conservation plan for 2012 – 2015 Submitted in Compliance with 52 PA. Code §§54.74 and 62.4*, Docket No. M-2012-2290911 (Utility proposes to use assets test to determine eligibility for rate discount program for electric customers).

[5] "Assets" might include items such as homes, vehicles, savings accounts, retirement accounts, life insurance, and the like.

[6] 42 U.S.C. §§ 8621 et seq. (2012).

expensive) to administer and contrary to public policy.

Assets tests have been roundly criticized for public assistance programs such as Medicaid,[7] the Supplemental Nutrition Assistance Program (SNAP) (formerly known as Food Stamps),[8] and Temporary Aid for Needy Families (TANF).[9] From the state's perspective, the elimination of an assets test offers two cost-saving advantages. First, it reduces the administrative costs of implementing public assistance programs.[10] As one researcher found, "many of the states that eliminated asset tests in Medicaid or TANF did so to ease the workload of their caseworkers, to achieve administrative savings, and to simplify and streamline the eligibility processes for families."[11] In Oklahoma, this researcher reported, "removing the asset test for eligibility in Medicaid reduced the time needed to process applications."[12] In Arizona, the state "eliminated the asset test for the Medicare Savings Programs in 2001 after conducting a fiscal impact study"; that study "found that savings on administrative costs related to documenting assets roughly equaled the costs of benefits for additional persons who would enroll in the program."[13]

A second cost savings arises for states because eliminating use of an assets test promotes self-sufficiency and reduces the time during which households receive assistance.[14] As Paulhus reported in West Virginia, "if families can accumulate savings toward education or retirement, then they will be better able to support themselves with less assistance from the state. In turn, this should lead to reduced state expenditures."[15]

---

[7] For states with and without asset tests for Medicaid, see generally, Kaiser Family Foundation (January 2013). "No Asset Tests Required (Or Asset Test Limit) for Children's Medicaid and CHIP,"; see also, Kip Piper (June 2010). "Medicaid Expansion: Briefing for Medicaid Health Plans of America," Medicaid Health Plans of America: Washington D.C.

[8] For states with and without asset tests for SNAP, see generally, Food Research and Action Center (FRAC) (2013). "Expanding Access to SNAP: Eliminating the Asset Test"; see also, FRAC (March 2009). "Heat and Eat: Using Federal Nutrition Programs to Soften Low-Income Households' Food/Fuel Dilemma," at 5 – 6, Food Research and Action Center: Washington D.C.

[9] See generally, Ethan Geilling, et al. (2012). "Eliminating Assets Tests: New Research, Challenges and Approaches," presentation to 2012 Assets Learning Conference, Corporation for Enterprise Development (CFED).

[10] "West Virginia would benefit from the elimination of asset tests. These tests are resource-intensive and expensive to administer, but have little effect on limiting eligibility. The elimination of asset tests should. . .ease the burden on eligible workers and reduce administrative costs." Elizabeth Paulhus (October 2011). "Save Up, Not Spend Down: Eliminating the Asset Test for Families in Medicaid and TANF," West Virginia Alliance for Sustainable Families: Charleston (WV).

[11] Save Up, Not Spend Down, supra note 10. See also, Joel Ferber (2004). "Preliminary Observations about the Report of the House Interim Committee on Medicaid Cost and Containment: Analysis of Key Provisions," Missouri Budget Project: St. Louis (MO) ("Missouri and other states eliminated assets tests for these Medicaid beneficiaries because they were administratively burdensome and resource-intensive for the State agency and created barriers to health care access for children and families."); see also, Lisa Chimento, et al. (2003). "Simplifying Medi-Cal Enrollment: Options for the Assets Test," Medi-Cal Policy Institute: Oakland (CA).

[12] Id. ("According to state officials, [removing the asset test] reduced administrative costs by $3.5 million. Even with an increase in benefits from additional caseloads, Oklahoma estimated that it would save at least $1.2 million.")

[13] Laura Summer and Les Thompson (2004). "How Asset Tests Block Low-Income Medicare Beneficiaries from Needed Benefits," prepared for the Commonwealth Fund, Health Policy Institute, Georgetown University: Washington D.C.

[14] "If families can accumulate assets without fear of losing assistance or being ineligible when they need assistance, they may become increasingly more self-sufficient and use Medicaid or TANF for shorter, more temporary periods. In the case of Medicaid, this would save the state money." Save Up, Not Spend Down, supra note 10, at 1. See also, Leslie Parrish (2005). "To Save or Not to Save? Reforming Asset Limits in Public Assistance Programs to Encourage Low-Income Americans to Save and Build Assets," New America Foundation: Washington D.C.

[15] Save Up, Not Spend Down, supra note 10, at 9, citing Neuberger, et al. (2005). "Protecting Low-Income Families' Savings: How Retirement Accounts are Treated in Means-Tested Programs and Steps to Remove Barriers to Retirement Savings," The Retirement Security Project: Washington D.C.

In contrast to these state-oriented interests, from the perspective of the household, the elimination of an assets test provides both short- and long-term benefits. In the short-term, "assets can protect families from losses of income caused by unemployment or reduced wages, and unexpected occurrences such as car repairs or medical expenses. Having assets, usually in the form of savings that can be accessed quickly and easily, enables families to continue making ends meet even when income has been lost."[16] One Utah researcher reports that the state's assets test "prevents Medicaid enrollees from. . .building an emergency fund for when the car breaks down."[17] Forcing these households to liquidate their long-term assets (or whatever equity value they might have in those assets) in order to meet a short-term financial crisis is exactly the wrong step for a state public assistance office to take.

The inability to accumulate and keep savings generates an adverse impact on the long-term well-being of aging persons in particular. The problem arises because retirement savings of the aged get drawn-down over a multi-year period.

> Savings amounts that may sound high at first blush would contribute only a small amount of income if drawn down in regular monthly installments throughout an individual's retirement. One analysis found that if Medicare beneficiaries' total countable assets –not just their retirement savings—were drawn down in monthly installments over their expected lifespan (based on age and gender), 90 percent of beneficiaries who otherwise have income below the poverty line would *still* have income below the poverty line. (emphasis in original)[18]

Excluding households that are income-eligible for LIHEAP because they have a certain level of assets, whether those assets are in the form of liquid resources (such as savings) or illiquid resources (such as a home), fails to serve a legitimate function given the risks such those households face. Allowing savings accounts would help low-income energy assistance recipients to respond to problems that recipients view as foreseeable, long-term, temporary and occasional.[19] Home values simply cannot be translated into financial resources in a time span and at a cost to make them a reasonable resource upon which to draw to meet uncontrollable, temporary, and occasional financial problems facing low-income energy assistance recipients.

Moreover, using the value of a home to determine eligibility for an income-based program is contrary to the principle that assets must be "available" to pay for household expenses at the time the money is needed. This "availability" principle, for example, can be found in the original limitation on assets established for the Aid to Families with Dependent Children (AFDC) program, now known as Temporary Aid to Needy Families (TANF).

[16] Save Up, Not Spend Down, supra note 10, at 2 ("Since the use of assistance programs tends to be cyclical, families should be able to retain their assets for when they become ineligible for services or choose to leave a program. Under the current system, families exiting Medicaid would not only lose health care coverage, but also have less than $1,000 in assets. Families leaving WV Works would no longer have income assistance, however meager, and would have less than $2,000 in assets.")

[17] Utah Health Policy Project (2009). "Remove Utah's Medicaid Asset Test: Eliminate Barriers to Self-Sufficiency," Utah Health Policy Project: Salt Lake City (UT). ("The asset test prevents Medicaid enrollees from. . .building an emergency fund for when the car breaks down.") See also, Orszag, P. (2001). "Asset Tests and Low Saving Rates among Lower-Income Families," Center on Budget and Policy Priorities: Washington D.C.

[18] Retirement Security Project (2008). "Removing Barriers to Retirement Saving in Medicaid and Supplemental Security Income," Retirement Security Project: Washington D.C., citing Marilyn Moon, et al. (June 2002). "Medicare Beneficiaries and their Assets: Implications for Low-Income Programs," The Henry J. Kaiser Family Foundation: Menlo Park (CA).

[19] Roger Colton (March 2006). "Georgia REACH Project Energize: Final Program Evaluation," at 19, prepared for Georgia Department of Human Resources: Atlanta (GA).

The LIHEAP Statute and Application of an Assets Test

Four limitations in the federal LIHEAP statute are relevant to the question of whether use of an "assets test" is an appropriate limitation of LIHEAP eligibility:

- The statue provides that states may promulgate income eligibility so long as the eligibility does not go below 110% of the Federal Poverty Guidelines promulgated annually by the U.S. Department of Health and Human Services (DHHS), or above the higher of either 150% of the Federal Poverty Guidelines or 60% of State Median Income;[20]

- The statute provides that participants in certain specified public assistance programs are categorically-eligible for LIHEAP. The programs establishing categorical eligibility include: SNAP, SSI, TANF and certain means-tested veterans assistance programs.[21]

- The statute provides that tenant households and homeowner households shall be treated equally[22]; and

- The statute provides that LIHEAP shall be targeted to specified vulnerable populations, including the elderly, the disabled, and households with children under age six.[23]

The FSC analysis found that the application of an assets test to determine LIHEAP eligibility would run afoul of each of these four limitations. FSC noted that while the LIHEAP statute confers substantial latitude on the states to administer LIHEAP as they see fit,[24] that latitude is not unfettered.[25]

The "availability" principle: Using the value of a home to determine eligibility for an income-based program is contrary to the principle that assets must be "available" to pay for household expenses at the time the money is needed. This "availability" principle, for example, can be found in the original limitation on assets established for the Aid to Families with Dependent Children (AFDC) program, now known as Temporary Aid to Needy Families (TANF). [26]

The value of a home, even if it is the equity value, is neither "actually available"[27] nor "actually on hand or ready for use when it is needed"[28] for purposes of paying a home energy bill.[29]

---

[20] 42 U.S.C. §8624(b)(2)(B) (2012).
[21] 42 U.S.C. §8624(b)(2)(A) (2012).
[22] 42 U.S.C. §8624(b)(8)(B) (2012).
[23] 42 U.S.C. 8624(b)(3) (2012). (A state shall "conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title. . .").

[24] 45 C.F.R. §96.50(e) (2012). ("The Department recognizes that under the block grant programs the States are primarily responsible for interpreting the governing statutory provisions. As a result, various States may reach different interpretations of the same statutory provisions. This circumstance is consistent with the intent of and statutory authority for the block grant programs. In resolving any issue raised by a complaint or a Federal audit the Department will defer to a State's interpretation of its assurances and of the provisions of the block grant statutes unless the interpretation is clearly erroneous.") See also, *Cabinet for Human Resources, State of Kentucky v. Northern Kentucky Welfare Rights Association*, 954 F.2d 1179 (6th Cir. 1992).
[25] See e.g., *Crawford v. Janklow*, 710 F.2d 1321 (8th Cir. 1983); *Clifford v. Janklow*, 733 F.2d 534 (8th Cir. 1984); *Boles v. Earl*, 601 F.Supp. 737 (W.D. Wisc. 1985).
[26] Elizabeth Kolshom, "The Effect of the Federal Availability Principle on State AFDC Asset-Transfer Rules," 89 Colum. L. Rev. 580, 585 (1989) (internal citations omitted).
[27] Kolshom, supra note 26, *quoting*, *Lewis v. Martin*, 397 U.S. 552, 555 & n. 6 (1970) (quoting HEW Handbook of Public Assistance pt. IV, § 3131.7 (1967)); 45 C.F.R. § 233.20(a)(3)(ii)(D) (1987) ("To the extent not inconsistent with any other provision of this chapter, income and resources are considered available ... when actually available....").
[28] Kolshom, supra note 26, quoting, *RAM v. Blum*, 564 F.Supp. 634, 639 n. 14 (S.D.N.Y.1983).
[29] For example, most utility shutoff notices provide a 10-day notice prior to the termination of service for nonpayment. See generally, Roger Colton (2012). "Model Disconnection and Disconnect Notice Regulation: Philadelphia Water Department," Fisher, Sheehan & Colton: Belmont

The rationale for using the "availability" principle to restrict the denial of energy assistance benefits based on the value of capital assets, even if valued at the equity amount, extends far beyond the imputation of non-existent resources that might be used to pay current bills. The very process of translating the net equity value of a home into cash, for example, has considerable costs associated with it unto itself. Even if one assumes that the homeowner could qualify for some type of credit line based on the value of a home –this ability to qualify for credit is doubtful if that owner is in the position of needing to access credit to pay basic living expenses such as home energy bills-- the process of acquiring the credit would involve not only financing fees, but legal fees, inspection fees, real estate fees, and the like. The process of converting a capital asset (such as a home) into cash, in other words, assumes access to a certain level of financial resources that is not likely to be available if the household is sufficiently in crisis to need such cash for basic living expenses with which to begin.

Moreover, the forced sale of a capital asset in order to generate liquidity to pay basic living expenses is the antithesis of arms-length bargaining in a real estate transaction.[30] The time- and financial pressure to divest ownership in a home in order to receive sufficient cash to pay month-to-month bills would be in direct conflict with the goal the homeowner would otherwise pursue, to receive the best value for the home. An assets test would thus not merely force a low-income household to dispose of a fundamental long-term financial resource at a considerable cost, but also would likely force that household to dispose of the resource at less than its full value.

It is not merely the value of a home that would experience lost value due to forced sale, it is the value of other illiquid assets as well. Retirement funds (such as 401(k) accounts) and IRAs might have value, but also have substantial penalty clauses should the holder be forced to liquidate them prematurely.

Equal treatment for homeowners and renters: Under the federal LIHEAP statute, states must provide an assurance that the LIHEAP program will treat homeowners and renters equally. An asset test that does not exclude illiquid assets such as homes, however, has precisely the opposite effect. An asset test that does not exclude housing adversely affects homeowners. It is unlikely, at best, that the home energy bills of homeowners will be lower than the home energy bills of renters. This is particularly true given the LIHEAP statutory restriction of "home energy" only to home heating and cooling (excluding electricity, hot water, and other appliances such as gas cooking). Indeed, it is a virtual certainty that energy bills for owner-occupied homes will exceed the energy bills for renter-occupied homes.

Given the well-established relationship between consumption and the size of housing units, it is not surprising that owner-occupied units tend to have higher heating/cooling consumption (and thus higher heating/cooling bills). The U.S. Department of Energy's Energy Information Administration publishes data for four Census Regions[31] and nine Census Divisions.[32] According to EIA/DOE, the average heated floor space by primary heating fuel is substantially higher for owner-occupied units than for renter-occupied units.

This data leads to several conclusions, each of which independently, and certainly when considered in combination with each other, lead to

(MA).

[30] See e.g., *Deel v. Lukhard*, 830 F.2d 1283, 1291 n. 1 (4th Cir.1987) (Motz, J., concurring), rev'd en banc sub nom. *Deel v. Jackson*, 862 F.2d 1079 (1988).

[31] Northeast, South, North and West.

[32] Northeast (New England, Mid-Atlantic); South (South Atlantic, East South Central, West South Central); North (East North Central, West North Central); and West (Mountain, Pacific). A map of the Census Regions and Divisions by states can be accessed at www.eia.gov/emeu/reps/maps/us_census.html (last accessed March 23, 2013).

the conclusion that adoption of an assets test either to exclude otherwise income-eligible households from receiving LIHEAP, or to reduce LIHEAP benefits to otherwise income-eligible households, is contrary to the LIHEAP statute:

An assets test used to limit LIHEAP eligibility results in a disparate adverse impact on homeowners relative to tenants. An assets test tends to exclude homeowners from LIHEAP, even though homeowners can be expected to routinely have greater home heating and cooling consumption, and correspondingly higher home heating and cooling bills, than tenants do.

This limitation occurs despite the fact that homeownership is not limited exclusively to the highest income households. Indeed, some homeowners can be expected to regularly fall within a subgroup of low-income households that would be income-eligible for LIHEAP, which is demarcated by the lowest incomes and the highest home heating/cooling bills relative to income.

It is difficult to see how an assets test used to limit the participation of, or level of benefits to, otherwise income-eligible households in LIHEAP can be reconciled with the LIHEAP statutory language requiring that homeowners and renters be treated equally.

LIHEAP's Categorical Eligibility and Use of an Assets Test.

The federal LIHEAP statute provides states the flexibility to serve households having at least one member who also receives assistance under any of the following Federal programs (referred to as "categorical eligibility"): (1) TANF; (2) Supplemental Security Income (SSI); (3) SNAP; and (4) certain needs-tested Veterans Benefits.[33]

Categorical eligibility eliminates the use of an assets test for the households affected. Categorical eligibility means that participation in one public assistance program establishes eligibility for another public assistance program without further qualification.

The LIHEAP program can and should take guidance from SNAP in its application of categorical eligibility. The federal SNAP program has adopted categorical eligibility[34] with the resulting elimination of asset tests. Under federal law, "there are two basic pathways to gain financial eligibility for SNAP: (1) having income and resources below specified levels set out in federal law; and (2) being 'categorically,' or automatically eligible based on receiving benefits from other specified low-income assistance programs."[35] Categorical eligibility extends to households in which all members are either eligible for or receive benefits from TANF, SSI, and state-financed General Assistance programs.[36]

Households that are categorically eligible for SNAP, because they have already been through an income determination for the underlying programs, "bypass the income and resource tests" otherwise applicable to SNAP.[37] According to

[33] See generally, Office of Community Service (May 2012). "LIHEAP Eligibility Criteria," Department of Health and Human Services, Administration for Children and Families, Office of Community Services: Washington D.C.

[34] There are different types of categorical eligibility for SNAP. The distinction between these types of categorical eligibility are not relevant to our discussion here. For a discussion of SNAP categorical eligibility, see generally, Gene Falk and Randy Alison Aussenberg (July 17, 2012). "The Supplemental Nutrition Assistance Program: Categorical Eligibility," Congressional Research Service: Washington D.C.; Kathlee FitzGerald and Emily Holcombe (April 2012). "The Supplemental Nutrition Assistance Program," Congressional Budget Office: Washington D.C.

[35] CRS Categorical Eligibility, supra note 34, at 1.

[36] Id., at 2. In addition, the Congressional Research Service says, "federal law also provides a separate rule for all households where some, but not all, members receive benefits from TANF or SSI. In such households, recipients of TANF or SSI benefits are deemed to have passed the SNAP resource test. That is, the assets of household members who receive TANF, SSI, or GA are disregarded from the household's total resources when determining whether the household passes the asset test." Id., at 2, note 4, citing Section 5(j) of the Food and Nutrition Act of 2008.

[37] CRS Categorical Eligibility, supra note 34, at 2.

the Congressional Research Service, "categorical eligibility was seen as advancing the goals of simplifying administration, easing entry to the program for eligible households, emphasizing coordination among low-income assistance programs, and reducing the potential for errors in establishing eligibility for benefits."[38] These are the same administrative and program savings reported for elimination of the imposition of assets tests in Medicaid programs.

The office of Food and Nutrition Services (FNS) within the U.S. Department of Agriculture, the federal agency that administers SNAP, has made clear to state program directors that SNAP may not impose an independent assets test for households entering SNAP through a categorical eligibility program. Only if the underlying program that makes a household categorically eligible for SNAP has an assets test is there "in effect a de facto resource limit for SNAP."[39] According to FNS, "[t]he State cannot require a resource limit if the program used to confer categorical eligibility does not have a resource limit."[40] SNAP categorical eligibility, in other words, is "increasingly being used by states to eliminate the SNAP asset test and raise gross income limits. . .As more states adopt broad-based categorical eligibility, the number of households that are categorically eligible for SNAP, and thus not subject to the SNAP asset and income tests, will continue to grow substantially."[41]

The same rules are likely to be applied to LIHEAP eligibility as well. Should low-income households enter a state's LIHEAP program through the statutory categorical eligibility process, the state may not impose an independent asset test to limit participation. To the extent that an underlying program establishing categorical LIHEAP eligibility imposes an asset test, that program will establish a de facto asset test for LIHEAP as well. To the extent that the underlying program does not impose an asset test, LIHEAP may not impose an independent asset limitation. Federal LIHEAP administrators should reach the same conclusion that federal program administrators have reached for SNAP: "The State cannot require a resource limit if the program used to confer categorical eligibility does not have a resource limit."

Administrative problems with Using an Assets Test.

In addition to the statutory and legal problems with the imposition of an assets test to limit participation in LIHEAP identified above, the imposition of an assets test that fails to exclude an applicant's home poses numerous implementation problems from the perspective of the program administrator.

While an assets test may seem simple to design and implement, in fact, it would not be. For most people, the primary asset they have is their home. One first step in application of an assets test, therefore, would be to determine the "value" of the home (i.e., the value of the asset). To do so, a LIHEAP program would need to define "value." Would the "value" of the home, for example, be tied to fair market value or to the appraised value? In applying an assets test to households that are not categorically eligible for the federal Supplemental Nutrition Assistance Program (SNAP, formerly known as Food Stamps), the fair market value is used.[42] Who would determine that value? Who would pay for the determination of that value? Would the

[38] Id., citing U.S. Congress, House Committee on Agriculture, report to accompany H.R. 2100, 99th Cong., 1st sess., September 13, 1985, H.Rept. 99-271, Part 1, at 142, Government Printing Office: Washington D.C.

[39] Arthur Foley (December 15, 2009). Memo to SNAP Regional Directors Regarding Categorical Eligibility Questions and Answers, USDA, Food and Nutrition Services: Washington D.C.

[40] Id., at Question 1.

[41] Carole Trippe and Jessica Gillooly (July 23, 2010). "Non-Cash Categorical Eligibility for SNAP: State Policies and the Number and Characteristics of SNAP Households Categorically Eligible Through those Policies: Final Memo," at 1, 9, Report to USDA/FNS, Mathematica Policy Research: Washington D.C.

[42] 7 C.F.R. § 273.8(c)(2) (2012). It is important to remember, however, that SNAP specifically excludes a home from consideration as a household resource. 7 C.F.R. § 273.8(e) (2012).

"forced sale" attribute of the asset distribution be taken into consideration, and if so, how?

It is not merely a determination of the value of the home that is needed, however. A second step would be to determine the net value of the home.[43] The value of a person's home as an "asset," in other words, is neither the fair market value nor the appraised value. The value of the asset is the equity interest the household has in the home.[44] As discussed in detail above, the value of an asset is not simply the value of the home, but rather the value of the home minus the value of all remaining debt payments.[45] The LIHEAP office would need to establish what that equity value would be.

One interesting question posed by an assets test is whether it operates in a parallel application. The LIHEAP statute specifically provides that income eligibility may not be set below 110% of the Federal Poverty Level. Despite this limitation, an assets test is used by some states to exclude households who otherwise have income below this minimum statutory level. If a household with income *below* the minimum statutory threshold may be excluded because of high assets, however, may a state (or even *must* a state) then *include* households with income *above* the statutory threshold if the household has negative equity in their home?[46]

Conclusion

In an era of decreasing resources for the provision of public and private assistance to help pay home energy bills, there is sometimes a desire by program administrators to ensure that assistance is reserved for households who "really need it." One technique used to limit assistance is through the imposition of an assets test in addition to traditional income eligibility.

Recent movement in non-energy public assistance programs has been to eliminate assets tests. The federal SNAP, Medicaid and TANF programs all have eliminated, or substantially scaled back, such program requirements. Not only has this move been found to help move households toward self-sufficiency, and thus away from a long-term reliance on program benefits, but elimination of the use of assets tests has also been found to generate administrative cost savings for the state.

Quite aside from the financial and policy reasons to eliminate the use of an assets test for LIHEAP, the use of an assets test appears to be in direct conflict with multiple portions of the federal LIHEAP statute.

For a copy of FSC's white paper on the use of assets tests, *Owning up to the Problems: Limiting the Use of an Assets Test for Determining Home Energy Assistance Eligibility*, please

[43] See generally, R. Richard Banks, "'Nondiscriminatory' Perpetuation of Racial Subordination," 76 B.U. L.Rev. 669, 677 (1996) ("Net worth 'conveys the straightforward value of all assets less any debts.'")

[44] See e .g., 7 C.F.R. § 273.8(c)(2) (2012). (In determining the value of "resources" for purposes of Food Stamps, federal regulations allow the consideration of "non-liquid resources" as follows: "Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (f) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.")

[45] In deciding the equity value of the home, it would then be necessary to determine whether to include only first mortgages, or to include first and second mortgages. How would one count a home equity loan that was negotiated in order for a household to purchase a new automobile? How would one count an outstanding mortgage that was taken out not for the purchase of the home, but to finance a college education? How would one even <u>*know*</u> what the purpose of an outstanding mortgage was?

[46] According to the U.S. Department of Housing and Urban Development's (HUD) Office of Policy Development and Research (PDR), an estimated 23 percent of Americans owe more on their mortgages than their homes are worth, or have "negative equity." PDR (2013). "Negative Equity in the United States," HUD USER, citing, George Carter III (March 2012). "Housing Units with Negative Equity: 1997 – 2009," CityScape 14(1):149, U.S. Department of Housing and Urban Development: Washington D.C. Mortgages with negative equity value are also known as "under water" or "upside down" mortgages."

write: roger [at] fsconline.com.

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which *FSC* has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.