

**THE RECAPTURE OF INTEREST{PRIVATE }
ON LIHEAP PAYMENTS
TO UNREGULATED FUEL VENDORS**

An Evaluation of the 1987 Maine Program

Prepared by:

Roger D. Colton
National Consumer Law Center, Inc.
Eleven Beacon Street, Suite 821
Boston, MA. 02108

Prepared With Funds Provided By:

The Jessie Cox Charitable Fund
Boston, MA. 02108

April 1988

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF TABLES	ii
INTRODUCTION	1
I. THE INTEREST POTENTIAL	5
A. THE MAGNITUDE OF POTENTIAL RECAPTURED INTEREST DOLLARS	5
B. THE DRIVING FACTORS	9
II. LOSS OF GRATUITOUS BENEFITS	19
III. PRACTICAL PROBLEMS	23
A. SMALL VS. LARGE DEALERS.....	23
B. MONITORING/AUDITING PROBLEMS	24
C. PAYMENT TIMING	27
D. RECORD KEEPING	35
CONCLUSION	41
NOTES.....	44
APPENDIX A.....	55

TABLE OF TABLES

TABLE:

A.Characteristics of total population with credit balance.

B.Distribution of all dealers by amount of total LIHEAP received.

C.Distribution of all dealers by total number of LIHEAP accounts.

D.Comparative characteristics of fuel oil dealers by the amount of total LIHEAP received.

E.Comparison of 100+ client averages with total population averages.

F.Distribution of all dealers by number of accounts with credit balances on June 1.

G.Distribution of number of credit accounts by amount of LIHEAP received by dealer.

H.Distribution of dealers with credit balances by average size of credit balance.

I.Distribution of dealers by number of credit accounts and by size of dealer.

J.Distribution of C.O.D. dealers by size of dealer.

K.Distribution of dealers paying interest on credit balances by size of dealer.

L.Distribution of budget billing availability by size of dealer.

M.Distribution of dealers paying interest and providing budget billing by size of dealer.

INTRODUCTION

Continuing concern exists regarding how best to offer consumer protections to low-income consumers of unregulated home heating fuels. Because of the lack of regulatory oversight of the industry, consumers of such fuels have nothing to cushion them from the harsh impacts of their poverty. They cannot, for example, avail themselves of the panoply of protections and special rights accorded users of electric and natural gas utilities in the area of service terminations, reconnections, and deferred payment plans.^{/1/}

Some states have sought to correct this problem by legislatively directing that the more general consumer protection statutes apply. Vermont, for example, has declared that the unreasonable termination of fuel oil service falls within the general proscriptions of that state's regulation of unfair and deceptive acts and practices.^{/2/} These efforts, however, do not substitute for the institutional regulation to which public utilities are subjected.^{/3/}

This imbalance of protections available to users of unregulated fuels adds a special urgency to proposals to capitalize on the market power available to state administration of the Low-Income Home Energy Assistance Program (LIHEAP).^{/4/} LIHEAP is a federally funded program designed to help income-eligible households pay their home heating bills.^{/5/} Enacted in 1978, LIHEAP distributes funds to the various states on a formula basis; major factors in deciding the allocation of funds among the states include heating degree days and the number of eligible households.^{/6/}

A proposal which offers some assistance to users of fuel oil and propane is the recapture of interest on LIHEAP funds which have been paid to fuel vendors but which have not yet been used to pay for delivered fuel. This would occur, for example, when a single payment is made to the vendor at the beginning of the heating season and low-income households simply "use-up" the resulting credit they have as they consume the fuel for which the payment has been made. Through such a program, funds can be generated to assist low-income households using unregulated fuels.^{7/}

This issue of interest recapture from dealers of unregulated fuels took on an important dimension in 1987. Along with the substantial drop in crude oil prices, the price of fuel oil also declined to an amount ranging generally from roughly \$0.60 to \$0.90 per gallon. With a typical \$350 primary grant for unregulated fuel LIHEAP recipients,^{8/} therefore, Maine's 1987 primary grant bought roughly 400 - 600 gallons of oil. Depending upon the size of a recipient's oil tank, this comprised approximately three to five deliveries. Primary grants, as a result, went further in 1987 and were drawn down less quickly than in the immediately preceding years.

The State of Maine is a good example of where the unused portion of a LIHEAP assistance grant can be available to generate interest benefits for consumers. In Maine, credit balances for individual households were substantial. Indeed, nearly three of every ten LIHEAP fuel oil households still had a credit balance on June 1, 1986. Of those customers, roughly eight of ten had balances greater than \$100, almost five of ten had balances greater than \$125, and more than one in five had balances of more than \$150. A full one in ten still had credit

balances of greater than \$200 at the end of the heating season.^{/9/}

Maine distributed its LIHEAP funds on a matrix system for a fuel oil use in 1987, the benefit could range from \$180 to \$440 depending on income/family size, region, and housing type. A copy of Maine's LIHEAP matrix used for Fiscal Year (FY) 1987 is included as Appendix A.

In FY 1987, the Maine LIHEAP program experimented with an interest recapture provision for its fuel oil vendors. The 1987 Maine LIHEAP State Plan^{/10/} incorporated a provision calling for the payment by fuel oil vendors of interest on the unused balance of LIHEAP payments.^{/11/} The Maine State Plan provided for two alternative interest payment mechanisms. The payment was either: (1) to be credited to the household account on a monthly basis, or (2) to be made to the local LIHEAP provider at the end of the program year.^{/12/}

The concept of a fuel oil interest recapture program deserves attention outside the political tinderbox created by the 1987 Maine program. The Maine Oil Dealers Association (MODA) strenuously objected to the interest recapture provisions.^{/13/} When the 1986 elections brought a change of Governors, the director of the Maine Division of Community Services who had originally proposed the interest/discount provisions was replaced and the requirement rescinded.

This evaluation has been undertaken largely because the concept of an interest recapture provision became so politicized in Maine. This evaluation looks at various aspects of an interest recapture program. The analysis is based on data provided to the state by Maine fuel oil companies reporting a credit balance for a LIHEAP recipient after the end of the winter heating season. Such balances are reported to the state as of June 1 of each LIHEAP program year. This analysis looks at FY 1986 data, the most recent year for which complete data is available.

I. THE INTEREST POTENTIAL.

The State of Maine has considerable potential for a LIHEAP interest recapture provision for fuel oil dealers. This potential comes in two areas. First, there is a balance of LIHEAP funds for a time while customers draw down against their annual LIHEAP benefit payment. Second, the incomplete use of LIHEAP funds is prevalent among fuel oil dealers. According to documents filed with the State Division of Community Services,^{/14/} Maine distributed over \$13.3 million in LIHEAP funds to fuel oil dealers in FY 1986.^{/15/} At the end of the heating season, nearly \$1.4 million of that money, or over ten percent of the distributed benefits, remained on dealer books as a credit balance. The general characteristics of the population with credit balances are set forth in Table A.

A. THE MAGNITUDE OF POTENTIAL RECAPTURED INTEREST DOLLARS.

Over the course of a heating season, a state's fuel-oil vendors will hold a positive balance of fuel assistance funds. That positive balance is a financial asset which is worth the interest that could be earned on the unused balances. Recapturing that interest by the state will increase the funds available to the fuel assistance program.^{/16/} In Maine, fuel assistance payments to individual clients are single annual lump sum amounts given to vendors at the time the client is determined to be eligible for benefits. Over the course of the season, the customer will then draw down this initial payment to pay for current usage. As this report documents, however,

TABLE A
CHARACTERISTICS OF TOTAL POPULATION WITH CREDIT BALANCE

Average benefit:	\$360
Average credit balance:	\$150
Average percent of initial grant remaining:	41.7%
Average number of total LIHEAP accounts per dealer:	117
Average number of accounts with credit remaining on June 1, 1986:	33
Average percent of accounts with credit remaining on June 1, 1986:	28.0%
Sum of total statewide benefits:	\$13,310,706
Sum of total statewide credit on June 1, 1986:	\$ 1,356,359

many fuel oil dealers still have a positive balance at the end of the heating season.^{/17/}

In addition to this credit, over the course of the season, the dealers will have access to an average balance of funds equal to half of the sum of the beginning payment and the ending positive balance. This average balance assumes that the funds are drawn down at a steady, even rate. Thus at Day 1, the funds available are \$13.3 million. That balance declines until on June 1st the average balance is \$1.4 million. Over that time period the average balance held is \$7.35 million.

In order to calculate the interest that could be earned, it is necessary to know how long this average balance will be held. While the heating season clearly is considered to begin on October 1st and to end on June 1st, these dates cannot be used to calculate the time the average balance can be held. At the front end, the federal funds do not usually become available for distribution until several months after the official start of the program.^{/18/} At the end of the program, while the average balances are calculated as of June 1st and are possibly to be returned to the state,^{/19/} it usually takes several months for the funds to be returned, if at all. Finally, last year's rolled-over program funds are available on October 1st for use in the current year.

All of these qualifications have the effect of blurring the beginning and end of the period. Subject to any refinements that more precise information would make possible, the interest calculation below will assume that program funds become available on December 1st, and are

capable of earning interest for the vendors until June 1st.

Assuming an interest rate of 7%, the average balance will earn \$257,250 in simple interest.

VALUE OF INTEREST RECAPTURE UNDER VARIOUS INTEREST RATES

INTEREST RATE	RECAPTURED INTEREST
10%	\$367,500
9%	330,750
8%	294,000
7%	257,250
6%	220,500
5%	183,750

This would be the amount of money available if the unused fuel-assistance balances were invested in short-term financial instruments. These calculations assume the earned interest is not itself reinvested. This would be most realistic if the interest earned is to be used on a current basis to run programs. The total potential earnings would be the sum of the interest earned on short-run --perhaps daily-- investments. Because the interest would not be reinvested, the total potential would be equivalent to simple interest. If the available funds were to be accumulated, for some future projects, the potential interest could be calculated on a compound basis and would be slightly greater than that shown above.

B. THE DRIVING FACTORS.

Given the potential dollars available from an interest recapture program, there is a need to determine what factors might affect the magnitude of these funds. It has, however, not been possible to identify a reported factor from vendor data which drives the existence of a June credit balance.^{/20/}

Two variables in particular were explored:^{/21/}

- oThe total amount of LIHEAP funds received by the dealer; and

- oThe total number of LIHEAP accounts for each dealer.

The distribution of dealers by these two factors is set out respectively in Table B and in Table C.

The amount of total LIHEAP dollars received by a fuel oil dealer does not drive the credit remaining on a per household basis. Not surprisingly, the total amount of LIHEAP dollars received per dealer is a function of the total number of LIHEAP customers.^{/22/} The average per household benefit, however, was nearly identical over the full range of total per company LIHEAP funds. The average per household benefit ranged from roughly \$340 to \$370.^{/23/}

TABLE B

**DISTRIBUTION OF ALL DEALERS BY
AMOUNT OF TOTAL LIHEAP RECEIVED**

AMOUNT OF TOTAL LIHEAP RECEIVED	TOTAL NUMBER DEALERS
\$0 - 5,000	127
\$5,001 - 10,000	50
\$10,001 - 20,000	61
\$20,001 - 50,000	105
\$50,001 - 100,000	52
More than \$100,000	19
TOTAL:	414

TABLE C
DISTRIBUTION OF ALL DEALERS BY
TOTAL NUMBER OF LIHEAP ACCOUNTS

RANGE OF ACCT NUMBERS	NUMBER OF DEALERS	CUMULATIVE NUMBERS	CUMULATIVE PERCENT
0 - 5:	72	414	100.0%
6 - 10:	31	342	82.6%
11 - 25:	66	311	75.1%
26 - 50:	54	245	59.2%
51 - 100:	81	191	46.1%
101 - 150:	50	110	26.6%
151 - 200:	19	60	14.5%
201 - 250:	14	41	9.9%
251 - 300:	7	27	6.5%
301 - 400:	11	20	4.8%
401+:	9	9	2.2%
TOTAL:	414		

Irrespective of the total number of LIHEAP dollars received by each dealer, roughly three of every ten households ran credit balances on June 1st of the program year. Moreover, on each level of total benefits calculated on a per company basis, of those households having credit balances, each had 35 percent of their grant remaining.^{/24/} Table D shows the comparative characteristics as between dealers with different levels of total LIHEAP receipts.

As mentioned above, the total number of LIHEAP accounts can stand as a simple surrogate for the total number of LIHEAP dollars received by a fuel oil dealer. Accordingly, just as the total number of LIHEAP dollars received was not related to the credit balances remaining, neither was the total number of LIHEAP accounts related to the credit remaining on a per household basis. On each level of the total number of LIHEAP recipients per vendor, roughly one in three experienced a credit balance on June 1st. So, too, of those credit balances, roughly one-third of the initial grant remained.

In sum, the factors which influence how much of a credit balance exists from which to draw interest are not factors that inhere in the fuel oil vendors themselves. More likely, these factors will include households characteristics such as housing stock, time of application, family size and income. Unfortunately, data on these household factors are not available for this study.

TABLE D

**COMPARATIVE CHARACTERISTICS OF FUEL OIL DEALERS
BY THE AMOUNT OF TOTAL LIHEAP RECEIVED**

Page 1 of 6

Total Funds Received: \$0 - \$5000

Total number: 73

	Average*	Minimum*	Maximum*
Funds received:	\$2,411	\$300	\$4,710
Total number of accts:	13	1	421
Benefits received (per account)	\$ 361	\$300	\$ 533
Company balance on June 1, 1986:	\$ 321	\$ 13	\$1,200
Number of accts with credit:	3	1	59
Customer balance on June 1, 1986:	\$ 147	\$1	\$ 400
Percent of benefit left:	40.7%	3.6%	137.9%**
Percent of households with benefit left:	45.9%	4.0%	150.0%

*In this Table (pages 1 - 6), each line is independent of each other. Thus, for example, looking at the "minimum" column, the minimum benefit received was \$300, the minimum customer balance on June 1 was \$1, and the minimum percent of original benefit left was 3.6 percent. Those figures could well represent three different customers and three different accounts. The \$1, in other words, is quite clearly not 3.6 percent of \$300. Similarly, in the "average" column, the \$361 benefit received, \$147 customer balance, and 40.7 percent benefit left are independent of each other and may refer to different customers.

**Throughout this report, a credit equal to or in excess of 100 percent of the benefit is assumed to involve a benefit carry-over from the preceding year.

TABLE D

**COMPARATIVE CHARACTERISTICS OF FUEL OIL DEALERS
BY THE AMOUNT OF TOTAL LIHEAP RECEIVED**

Page 2 of 6

Total Funds Received: \$5,000 - \$10,000

Total number: 44

	Average*	Minimum	Maximum
Funds received:	\$7,705	\$5,200	\$10,000
Total number of accts:	21	13	29
Benefits received (per account)	\$ 368	\$ 308	\$ 669
Company balance on June 1, 1986:	\$ 811	\$ 15	\$ 2,278
Number of accts with credit:	6 1	15	
Customer balance on June 1, 1986:	\$ 131	\$ 1	\$ 377
Percent of benefit left:	35.4%	0.4%	71.5%
Percent of households with benefit left:	30.5%	4.3%	61.9%

*See note on page 1 of this Table.

TABLE D

**COMPARATIVE CHARACTERISTICS OF FUEL OIL DEALERS
BY THE AMOUNT OF TOTAL LIHEAP RECEIVED**

Page 3 of 6

Total Funds Received: \$10,000 - \$20,000

Total number: 58

	Average*	Minimum	Maximum
Funds received:	\$15,006	\$10,148	\$19,995
Total number of accts:	43	26	71
Benefits received (per account)	\$ 354	\$ 167	\$ 473
Company balance on June 1, 1986:	\$1,530	\$ 97	\$ 6,245
Number of accts with credit:	12 2	31	
Customer balance on June 1, 1986:	\$ 128	\$ 44	\$ 390
Percent of benefit left:	36.5%	12.8%	11.6%
Percent of households with benefit left:	28.6%	3.0%	60.0%

*See note on page 1 of this Table.

TABLE D

**COMPARATIVE CHARACTERISTICS OF FUEL OIL DEALERS
BY THE AMOUNT OF TOTAL LIHEAP RECEIVED**

Page 4 of 6

Total Funds Received: \$20,000 - \$50,000

Total number: 103

	Average*	Minimum	Maximum
Funds received:	\$32,306	\$20,165	\$49,425
Total number of accts:	90	54	148
Benefits received (per account)	\$ 361	\$ 194	\$ 563
Company balance on June 1, 1986:	\$3,429	\$ 261	\$ 9,346
Number of accts with credit:	28	3	93
Customer balance on June 1, 1986:	\$ 124	\$ 33	\$ 301
Percent of benefit left:	34.7%	9.1%	85.2%
Percent of households with benefit left:	31.4%	4.9%	80.0%

*See note on page 1 of this Table.

TABLE D

**COMPARATIVE CHARACTERISTICS OF FUEL OIL DEALERS
BY THE AMOUNT OF TOTAL LIHEAP RECEIVED**

Page 5 of 6

Total Funds Received: \$50,000 - \$100,000

Total number: 49

	Average*	Minimum	Maximum
Funds received:	\$69,372	\$50,100	\$98,700
Total number of accts:	195	103	477
Benefits received (per account)	\$ 366	\$ 185	\$ 810
Company balance on June 1, 1986:	\$7,375	\$ 347	\$17,584
Number of accts with credit:	61	1	155
Customer balance on June 1, 1986:	\$ 262	\$ 39	\$ 700
Percent of benefit left:	33.9%	10.4%	68.7%
Percent of households with benefit left:	32.3%	6.0%	68.9%

*See note on page 1 of this Table.

TABLE D

**COMPARATIVE CHARACTERISTICS OF FUEL OIL DEALERS
BY THE AMOUNT OF TOTAL LIHEAP RECEIVED**

Page 6 of 6

Total Funds Received: More than \$100,000

Total number: 18

*Excludes dealer with \$2 million plus.

	Average*	Minimum	Maximum
Funds received:	\$147,000	\$102,000	\$351,687
Total number of accts:	452	280	1406
Benefits received (per account)	\$ 342	\$ 197	\$ 389
Company balance on June 1, 1986:	\$ 16,914	\$ 2,691	\$ 43,581
Number of accts with credit:	142	62	311
Customer balance on June 1, 1986:	\$ 116	\$ 34	\$ 153
Percent of benefit left:	35.4%	9.6%	74.5%
Percent of households with benefit left:	32.3%	15.7%	57.7%

*See note on page 1 of this Table.

II. LOSS OF GRATUITOUS BENEFITS.

Notwithstanding the potential funds to be generated by an interest recapture program, some low-income advocates see possible policy disadvantages with a recapture provision. One objection to an interest recapture provision is that fuel vendors might, in retaliation to such a requirement, withdraw other benefits currently provided as a matter of course and considered by some to be more important than interest.

One group of local Maine LIHEAP providers, for example, wrote in opposition to the 1987 interest provisions:

It is not our position that fuel vendors be allowed to make money on the balance of HEAP customer accounts. However, neither is it our position that clients should be placed in a situation where the fuel vendors refuse to make deliveries prior to receiving HEAP funds.^{/25/}

Moreover, these Maine LIHEAP providers said, "fuel vendors are giving cash price across the board and that is a compromise on their part, and a definite benefit to the HEAP recipient."

These concerns by Community Action Agency staff are shared by other low-income advocates.^{/26/} The Maine state LIHEAP Program Supervisor, for example, expressed concern that the 1987 interest requirements would result in the "loss of extras now provided by many vendors."^{/27/} Among the "extras" to which the LIHEAP state supervisor referred were:

- oNo penalty provision for small deliveries;
- oFree after-hours or unscheduled deliveries;
- oFree furnace start-up;
- oUp-front credit and deliveries; and
- oNo finance charges.

If an interest program is not adopted because of the fear that these other gratuitous services will be withdrawn, the interest possibility should be bargained away in exchange for a guarantee that all companies will provide these "extras." Currently, while some vendors provide such services, not all do. The Maine Division of Community Services each year surveys the credit terms extended by the state's fuel oil dealers. According to that survey, for example, only 78 of Maine's largest dealers^{/28/} give a cash price to their LIHEAP customers. Of the 95 large dealers with 20 or more credit accounts, 67 reported that they offered the "cash price" to LIHEAP recipients.

Discounts for early payments, too, are a form of "benefit" provided by some, but not all, Maine LIHEAP fuel oil dealers. Indeed, significantly fewer of the large fuel oil dealers give discounts for early payment than give the cash price. There were 63 of the 110 large dealers in general, and 52 of the 95 credit-prone large dealers in particular, who offered early payment discounts to their LIHEAP recipients.

The other types of "extras" commented upon by the Maine state LIHEAP Program

Supervisor are not surveyed by the state. It is thus not possible to study the extent to which, if at all, such extras might be subject to loss if an interest recapture provision were to be instituted.^{/29/}

In sum, two different paths lead to the conclusion that the availability of some "gratuitous benefits" should not ipso facto lead to the rejection of an interest recapture program. On a conceptual level, just as the right to receive these services does not "belong" to LIHEAP recipients, neither does the interest on a client's public assistance "belong" to the fuel oil dealer. As a result, the client should only be required to give up the receipt of interest in an exchange of consideration with the dealer. The dealer's consideration might be the provision of the extra services discussed above.

In contrast, on a practical level, the market power of LIHEAP benefits should not be ignored when assessing the possibility that gratuitous benefits currently provided by some fuel oil vendors might be withdrawn as retaliation for an interest recapture provision. If these "extras" are considered by poverty advocates to be more valuable than the recapture of interest, the specific requirement that these services be provided should be the quid pro quo for the abandonment of an interest program.

This process of exchange would in a sense allow both interest groups to determine what they consider to be more valuable. In the bargaining process, in other words, if the dealers consider the interest to be more valuable than the provision of extra services, they would be

required to provide the services and allowed to keep the interest. If the reverse is true, the dealers could refuse to provide the services but be required to pay the interest.

III. PRACTICAL PROBLEMS.

Even given a policy justification for an interest recapture provision, several practical barriers to the effective implementation of such a program may exist. These problems concern the administration of the LIHEAP efforts.

A. SMALL vs. LARGE DEALERS.

Particular concern was expressed in Maine regarding the burden that an interest recapture program would place on the state's smallest fuel oil dealers. These concerns, however, should not be viewed as a barrier to the program's implementation. Given the concerns for smaller vendors, to limit an interest recapture program to larger companies is not unreasonable. Moreover, it is unnecessary to include the smaller fuel oil dealers in such a program to make it effective. One possible approach in Maine, for example, is to limit such a program to those fuel oil dealers serving 100 or more LIHEAP clients.^{/30/} This population of dealers includes 110 of the 414 total number of Maine fuel oil dealers. In FY 1986, these few large dealers:

- o served 33,552 of the 41,653 fuel oil LIHEAP clients (81 percent);
- o received \$10,420,411 of the \$13,310,706 in fuel oil LIHEAP benefits (78 percent);
- o served 9,867 of the 11,327 fuel oil accounts with credit balances (87 percent); and

- o held \$1,154,161 of the \$1,356,359 total statewide June 1, 1986 credit balance (85 percent).

There is no substantive difference in either the size of the initial grant or the amount of the credit balance between the population as a whole and that comprised of these 110 dealers. A comparison of the two populations is set out in Table E.^{/31/}

B. MONITORING/AUDITING PROBLEMS.

An interest recapture program assumes LIHEAP payments for each household made once a year. There are primarily three different payment mechanisms that can be used by a state in such a way. These include:

1. **DIRECT CLIENT PAYMENTS:** A direct client payment is generally based exclusively on formula eligibility. Such a mechanism, for example, might make AFDC recipients automatically eligible for LIHEAP. Under this mechanism, LIHEAP payments are simply attached to the AFDC benefit checks. Since payments are made directly to the client, no documentation of any type need be kept by the state. As a result, the mechanism is relatively inexpensive to administer.

2. **TWO-PARTY CHECKS:** Two-party checks were designed to promote the development of some type of relationship between the client and the fuel vendor.

Two-party checks, however, are expensive both to the vendor and to the state. The

vendor, for example, must make at least one contact with each customer to effect the transfer of the check. From the perspective of the state, rather than permitting a single payment to each vendor (aggregating the benefits of many of that vendor's customers into the single check), the state must issue separate checks for each individual household.

TABLE E
COMPARISON OF 100+ CLIENT AVERAGES
WITH TOTAL POPULATION AVERAGES

	100+ Dealers	Total Population
Average Benefits	\$311	\$320
Average Credit:	\$117	\$120
Average Percent of Benefit Left as Credit:	37.7%	37.5%

3. DIRECT VENDOR PAYMENTS: A direct vendor payment entails a payment made directly from the LIHEAP provider^{/32/} to the energy vendor. Annual benefits may be paid either once at the time the household qualifies for assistance, or in increments over the course of the heating season.

It is the single sum payment that raises the possibility of an interest recapture provision.^{/33/}

It should be noted, however, that single payments, which pose no problems when benefits

are provided to large vendors, create administrative problems for the state when small vendors are involved. The problem arises in auditing/monitoring. In the event that single annual prepayments are made, the state must then monitor whether vendors actually make the deliveries for which payment is made.^{/34/} In the case of a few large vendors, each of whom serves a substantial number of clients, this monitoring can be done with relative ease by the state. That is not so when small vendors are involved, each of whom may serve only a few customers. The sheer multiplicity of such small vendors may create monitoring problems for the state.

The alternative to state monitoring is to make payments on a reimbursement basis only. Under a reimbursement system, the state makes LIHEAP payments to vendors only upon the presentation of adequate documentation of the actual delivery of fuel. In these circumstances, however, the vendor does not hold uncommitted funds on which an interest obligation would arise.^{/35/}

C. PAYMENT TIMING.

The timing of vendor payments from the state may cause additional problems. The LIHEAP program year stretches from October through the following September. Vendor contracts are signed early in the program year, if not before. In these contracts, the state agrees to pay a predetermined level of benefits for households meeting designated eligibility criteria and the vendor agrees to provide the amount of fuel purchased with that benefit level.

Historically, however, vendor payments are not actually received by vendors until after the

start of the heating season. As a result, some oil vendors make deliveries to LIHEAP recipients simply upon the "promise" by the local LIHEAP provider that the client has been approved for LIHEAP. In these instances, by the time the state actually pays the primary grant to the vendor, that grant may already have been spent, in whole or in part. In this case, very few interest dollars would be generated under a recapture program.

For accounts that have credit balances remaining on June 1, however, the timing of LIHEAP payments to fuel vendors is largely rendered moot.^{/36/} Such balances indicate that, in fact, LIHEAP benefits are not exhausted prior to actual receipt by the vendor.^{/37/} As the magnitude of the total outstanding statewide balance might indicate,^{/38/} the presence of June credits is not an isolated event among Maine fuel oil dealers. Of the 414 dealers reporting, almost 350 had at least one customer with a credit balance. There were roughly 60 dealers who had more than 50 such customers and nearly 20 dealers who had more than 100 customers with credit balances. A distribution of the number of accounts with credit balances among dealers is set out in Table F.^{/39/} A breakdown of credit accounts by the amount of LIHEAP funds received is provided in Table G.

Credits were substantial not only from a total program perspective but from the perspective of the individual households as well. Nearly three of every ten LIHEAP fuel oil households had a credit balance on June 1, 1986. Of those customers, roughly eight of ten had balances greater than \$100, almost five of ten had balances greater than \$125, and more than

one in five had balances of more than \$150. A full one of ten had credit balances greater than \$200. Of all households with a June 1 credit, an average of \$150 of the initial \$360

TABLE F

**DISTRIBUTION OF ALL DEALERS BY NUMBER OF
ACCOUNTS WITH CREDIT BALANCE ON JUNE 1**

RANGE	NUMBER	CUM NUMBERS	CUM PERCENT	
0		67	16.2%	
1		31	98	23.7%
2-5		63	161	38.9%
6-10		115	276	66.7%
21-25		23	299	72.2%
25-50		57	356	86.0%
51-100		41	397	95.9%
101-150		9	406	98.1%
151-200		3	409	98.8%
201-250		2	411	99.3%
251-300		1	412	99.5%
301-400		1	413	99.8%
400+		1	414	100.0%
TOTAL		414		

TABLE G

**DISTRIBUTION OF NUMBER OF CREDIT ACCOUNTS
BY AMOUNT OF LIHEAP RECEIVED BY DEALER**

TOTAL LIHEAP RECEIVED	TOTAL NUMBER	DEALERS WITH JUNE 1 st BALANCE
\$0 - 5000:	127	74
\$5001 - 10,000:	50	44
\$10,001 - 20,000:	61	58
\$20,001 - 50,000:	105	103
\$50,001 - 100,000:	52	49
\$100,001+:	18	18
TOTAL:	413	346

*Excluding one account with \$2 million plus benefits.

benefit remained after completion of the winter heating season. The distribution of credit balances is set forth in Table H.

Intuitively, one would expect that dealers with larger numbers of customers would have more accounts with a credit balance and that expectation is borne out. Of the 147 dealers with fewer than 20 customers, 86 (60 percent) had either one or zero credit accounts. In contrast, of the 267 dealers with 20 or more customers, only 12 (four percent) had either one or zero customers with a credit balance. These distributions are set out in Table I. This, too, supports the rationality of limiting an interest recapture program to the larger dealers.

More important than the number of dealers with various sized customer bases is the number of fuel oil dealers with numerous credit accounts. There were 143 dealers, for example, that had twenty or more credit accounts on June 1, 1986. These dealers tended to be the larger companies. Of these dealers, 95 had 100 or more LIHEAP customers. (A total of 110 fuel oil dealers exist with 100+ customers.)^{/40/} The average number of credit accounts from dealers with 100 or more customers was 64.^{/41/}

TABLE H
DISTRIBUTION OF DEALERS WITH CREDIT
BALANCES BY AVERAGE SIZE OF CREDIT BALANCE

RANGE	RAW NUMBERS	CUM NUMBERS	CUM PERCENT
\$1	1	347	100.00%
\$2-50	31	346	99.71%
\$51-100	45	315	90.78%
\$101-125	108	270	77.81%
\$125-150	86	162	46.69%
\$151-175	25	76	21.90%
\$176-200	17	51	14.70%
\$201-250	14	34	9.80%
\$251-300	11	20	5.76%
\$301-350	4	9	2.59%
\$351-400	4	5	1.44%
\$401+	1	1	0.29%
TOTAL	347		

TABLE I: Page 1 of 2

**DISTRIBUTION OF DEALERS WITH FEWER THAN 20
TOTAL ACCOUNTS BY NUMBER OF CREDIT ACCOUNTS**

RANGE	RAW NUMBERS	CUM NUMBERS	CUM PERCENT
0	59	59	40.14%
1	27	86	58.50%
2-10	60	146	99.32%
11-20	1	147	100.00%
21-50	0	0	100.00%
51-100	0	0	100.00%
101-150	0	0	100.00%
151+	0	0	100.00%
TOTAL:	147		

TABLE I: Page 2 of 2

**DISTRIBUTION OF DEALERS WITH 20 OR MORE
TOTAL ACCOUNTS BY NUMBER OF CREDIT ACCOUNTS**

RANGE	RAW NUMBERS	CUM NUMBERS	CUM PERCENT
0	8	8	3.00%
1	4	12	4.50%
2-10	55	67	25.09%
11-20	62	129	48.32%
21-50	80	209	78.28%
51-100	41	250	93.63%
101-150	9	259	97.00%
151+	8	267	100.00%
TOTAL:	267		

D. RECORD KEEPING.

The additional record keeping required of fuel oil dealers in order to successfully implement an interest recapture program is an additional concern. At first blush, by far the overwhelming majority of such dealers do not operate so as to need to keep customer-specific account books.^{/42/} Of the 414 total dealers, 263 provide C.O.D. deliveries, thus avoiding the need to keep customer-specific accounts. Reliance upon C.O.D. deliveries does not turn on the size of the company. While 125 of the 224 companies with 50 and fewer customers (55-percent) provide fuel oil C.O.D., 84 of the 110 with more than 100 customers (77-percent) do. A review of the companies delivering C.O.D. as a function of the size of the company is set out in Table J.

An interest recapture provision would not require additional bookkeeping from dealers already providing interest either. Fewer companies, though still a noticeable number, already provide interest payments to their customers. There were 49 of the 414 total companies (12-percent) who provided interest in FY 1986; 34 of the companies with more than 100 customers (31-percent) provided interest. The distribution of interest-providing companies, by size of vendor, is set out in Table K.

Virtually all of the large companies providing interest were "credit-prone." Of the 34 offering interest, 26 had 20 or

TABLE J

DISTRIBUTION OF C.O.D. DEALERS BY SIZE OF DEALER

SIZE OF DEALER BY (NO. OF CUSTOMERS)	TOTAL NUMBER OF DEALERS*	NUMBER OF DEALERS DELIVERING C.O.D.	PERCENT OF TOTAL DELIVERING C.O.D.
20 AND FEWER:	148	81	54.73%
50 AND FEWER:	224	125	55.80%
100 AND FEWER:	303	178	58.75%
GREATER THAN 100:	110	84	77.06%

*One dealer did not report.

TABLE K

**DISTRIBUTION OF DEALERS PAYING INTEREST ON
CREDIT BALANCES BY SIZE OF DEALER**

SIZE OF DEALER BY (NO. OF CUSTOMERS)	TOTAL NUMBER OF DEALERS*	NUMBER OF DEALERS WHO PAY INTEREST	PERCENT OF TOTAL WHO PAY INTEREST
20 AND FEWER:	148	6	4.05%
50 AND FEWER:	224	11	4.91%
100 AND FEWER:	303	15	4.95%
GREATER THAN 100:	110	34	31.19%

*One dealer did not report.

more customers with credit balances as of June 1, 1986; 16 had 50 or more accounts with credit balances.

Finally, the presence of budget billing belies the assertion that an interest recapture provision would require additional household-by-household accounting that otherwise might not exist. Among the 110 companies with more than 100 customers, 69 (nearly 63-percent) offer budget billing plans. Under a budget billing plan, customers pay a set monthly fee irrespective of their actual consumption. This offer of budget billing is a function of company size. As opposed to the 63-percent of the larger dealers, of the companies with fewer than 50 customers, 29-percent (64) offered budget billing; of the companies with fewer than 20 customers, 21-percent (31) offered budget billing. This distribution is set out in Table L.

Once a company sets up its record keeping capability, that capability can be extended to multiple uses. For example, virtually all companies offering interest also offered budget billing plans. Of the 49 total vendors which paid interest in FY 1987, 46 offered budget billing. This overlap, as distributed by company size, is set out in Table M.

TABLE L

**DISTRIBUTION OF BUDGET BILLING AVAILABILITY
BY SIZE OF DEALER**

SIZE OF DEALER BY (NO. OF CUSTOMERS)	TOTAL NUMBER OF DEALERS*	NUMBER OF DEALERS WITH BUDGET BILLING	PERCENT OF TOTAL WITH BUDGET BILLING
20 AND FEWER:	148	31	20.95%
50 AND FEWER:	224	64	28.57%
100 AND FEWER:	303	100	33.00%
GREATER THAN 100:	110	69	63.30%

*One dealer did not report.

TABLE M

**DISTRIBUTION OF DEALERS PAYING INTEREST AND
PROVIDING BUDGET BILLING BY SIZE OF DEALER**

SIZE OF DEALER BY (NO. OF CUSTOMERS)	TOTAL NUMBER OF DEALERS*	NUMBER OF DEALERS WHO PAY INTEREST	NUMBER OF DEALERS WITH BUDGET BILLING	NUMBER OF DEALERS WITH BOTH INT. AND BUDGET BILLING
20 AND FEWER:	148	6	31	6
50 AND FEWER:	224	11	64	10
100 AND FEWER:	303	15	100	15
GREATER THAN 100:	110	34	69	31

*One dealer did not report.

CONCLUSION

Several significant conclusions can be drawn with regard to an interest recapture program for fuel oil LIHEAP recipients in Maine. Among the conclusions that can be reached are:

- A significant potential exists for the recapture of interest on Maine fuel oil accounts. In addition to the funds available as customers draw down a one-time annual lump sum payment, nearly \$1.4 million of the total \$13.3 million distributed to the state's fuel oil vendors remained as a credit balance on June 1 of the program year.
- On a statewide basis, an interest recapture provision could generate from \$173,750 to \$363,500 in benefits depending on the interest rate assumed.
- A significant mismatch occurs between the level of LIHEAP benefits received and the amount of those benefits devoted to paying home heating fuel oil bills. At the end of the FY 1986 heating season, nearly \$1.4 million of the \$13.3 million in LIHEAP funds distributed to fuel oil dealers in 1986 remained as a credit balance.
- Maine's fuel oil LIHEAP households are not receiving the full benefit of their annual LIHEAP grant. Roughly three of ten fuel oil LIHEAP households ran credit balances on June 1, 1986, the end of the 1986 program year heating season. These households had, on average, 35 percent of their grant remaining. Of these credit accounts, roughly eight in ten had more than \$100 remaining; almost five of ten had balances of more than \$125, and more than

one in five had balances of more than \$150. A full one in ten had balances of greater than \$200.

- Limiting an interest recapture program to Maine's largest fuel oil dealers would free most of the state's dealers from these restrictions while retaining the vast majority of the benefits of a recapture provision for Maine's fuel oil LIHEAP clients.
- The additional record keeping of an interest recapture provision for Maine's largest fuel oil dealers would pose no significant problem. Substantial record keeping for credit accounts and for budget accounts now occurs in any event.
- It is not clear the extent to which, if at all, Maine's fuel oil dealers systematically provide the gratuitous "extras" the loss of which is feared because of an interest recapture provision. The loss of such services should not ipso facto be a barrier to the recapture of interest. Should poverty advocates determine that these services are more valuable than an interest provision, the interest should be bargained away for a commitment by all dealers to provide such services.

In sum, an interest recapture program is an imperfect solution to a problem created by the imperfect design of a flat grant LIHEAP distribution not tied to actual consumption. In lieu of the elimination of the flat grant benefit system, however, an interest recapture provision should be designed and implemented as discussed in this evaluation or should be bargained away for other services to LIHEAP recipients which

are of equal or greater value than the interest foregone.

NOTES

/1/Not all public utilities have these protections either. For example, in most states municipal utilities, as well as Rural Electric Cooperatives (RECs) are unregulated.

/2/9 Vermont Stat. Ann. section 2461(b) as amended by House Bill 110. The Vermont Attorney General issued regulations, effective January 6, 1986, to implement this statute. Vermont Attorney General Rule CF 111, Liquified Petroleum "Propane" Gas.

/3/For example, there is no requirement that conservation programs be provided to eliminate wasteful energy use. Moreover, unlike regulated public utilities, vendors of these deliverable fuels are not rate regulated in any fashion and do not operate under a mandate to provide "least-cost" service.

/4/See, Charles Hill, "Leveraging the Resources of the Low-Income Home Energy Assistance Program: Great Potential for Low-Income Customers," 21 Clearinghouse Review 612 (Nov. 1987). As Hill said: "Clearly, LIHEAP funds constitute a significant block of purchasing power. If properly used, this purchasing power could lead to leveraged resources aiding the poor to pay for their energy usage." *Id.* at 612. Hill then sets forth "some relatively simple examples of state action that could hold significant and concrete benefits for the poor." (hereafter, Hill).

/5/Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. sections 8621, et seq.

/6/For FY 1988, LIHEAP had \$1.53 billion appropriation.

/7/The thrust of this evaluation is the recapture of interest from vendors of deliverable fuels such as fuel oil. There is no reason, however, that such a program could not apply equally to public utilities, both regulated and unregulated.

/8/As discussed in the text, the LIHEAP grant in Maine could range from \$180 to \$440. See, page 3, supra; see also, Appendix A.

/9/It would be wrong to assume, however, that the presence of a credit balance invariably indicates the fact that the grant exceeds annual consumption. Instead, a credit balance could simply indicate that the LIHEAP recipient filed an application for assistance, and thus received benefits, late in the heating season. This possibility of a late application, however, is limited by the fact that Maine's LIHEAP program stop taking applications on April 7. Maine Division of Community Services, Chapter 1, Rule 1.5(D) (1986).

/10/Pursuant to federal law, each state must annually file a plan that outlines how it intends to administer its LIHEAP program. This "state plan," too, must contain certain "assurances" along with a a description of how the assurances will be met. These

assurances include, for example, that the state will use its LIHEAP funds to assist eligible households meet the costs of home energy; that the state will reserve a reasonable portion of its LIHEAP appropriation for crisis assistance; that the state will comply with certain income guidelines in its distribution of benefits; that the state will provide the highest level of assistance to those households with the lowest income and the highest energy cost in relation to income, taking into account family size; and that the state will coordinate its LIHEAP program with other state and federal programs.

/11/The requirements were incorporated, as well, into the state "vendor agreements," those contracts that fuel oil vendors (whether they be public utilities or fuel oil dealers) sign with the state each year setting forth the responsibilities that a vendor agrees to shoulder in consideration of the receipt of LIHEAP benefits. See, note 19, *infra*.

/12/In the alternative, vendors could provide a discount on their fuel oil in lieu of providing interest. See, Hill, *supra* note 4, at 613.

/13/At a January 1987 hearing on the interest recapture provision, the Maine Oil Dealers Association (MODA) stated that the state Division of Community Services made "several critical errors" in adopting the provision. Among the "errors" cited was the allegation that "the division is ignoring the fact that the federal statute restricts state actions and in this case mandates that the state establish a vehicle allowing for chargebacks when the state has negotiated discounts.* * *It is not within the division's

rulemaking authority to restrict rights given to vendors under federal law." Hearing before the Division of Community Services, Tr. 3 - 4 (January 5, 1987). Since no litigation occurred, the ultimate correctness of this legal position by MODA was never established. MODA continued: "Beyond the critical issues of the division ignoring major elements of the federal guiding statutes in the administration of this program* * *is the atmosphere the division has created as a result of the approach taken this year.* * *The division has poisoned the relationship between itself and the petroleum industry resulting in an atmosphere of extreme distrust. In short, the legacy left by those in charge of the program this year is one of extraordinary failure." Transcript, at 6.

/14/These annual reports include information on, among other things, the number of LIHEAP clients served by the vendor, the total amount of LIHEAP funds received, the number of clients having a credit balance on June 1, the total amount of the benefits received retained as a credit balance, and whether the vendor provides any one of a number of credit terms (as discussed below).

/15/This figure is the sum of the benefits reported by the respective dealers. The figures were not cross-checked against benefit figures provided by the state. If an incorrect amount was reported by the dealer, or if there are dealers that did not report, there will be a divergence between this figure and state-supplied information.

/16/While this discussion centers on the recapture of interest by the state, it is not at all clear that the state, rather than the client, is entitled to that interest. Equity would seem to dictate that since the benefit "belongs" to the client, the interest generated by the benefit would belong to the client as well. Moreover, clients applying late in the heating season in all likelihood have higher credit balances remaining on June 1st. The payment for previous winter usage, however, would have been made out of client pockets. It would thus seem that interest, if any, derived from the unused balance should be applied to defray those previously incurred expenses. For purposes of evaluating the proposed Maine interest recapture program, this issue of to whom the interest belongs as between the state and the client will be set aside for the moment.

/17/The state has determined this date to be June 1st.

/18/In addition, fuel vendors would not receive funds until a client has applied and found eligible for assistance. This application may come later rather than sooner in the heating season.

/19/Appendix E to the final rules for the 1987 Maine LIHEAP program sets forth the Vendor Agreement for the non-regulated fuel vendor. Paragraph 2 of that Vendor Agreement states that all credits on HEAP accounts "be carried forward until exhausted" unless the credits are "recalled by the Department." While fuel oil dealers are required to report the credits carried forward, the state will not necessarily ask that these credits

be returned each year.

/20/This is not particularly surprising. A much better predictor of credit balances would come from household data rather than vendor data. This household information might include, for example, quality of housing stock, and timing of benefit. Household specific information was, however, not available for this report.

/21/These two variables are closely interrelated. They would differ if there are significant differences as between vendors in the household characteristics as set forth in Appendix A.

/22/Indeed, these factors can be used as surrogates one for the other.

/23/As discussed in the text, actual benefits could have ranged from \$180 to \$440.

/24/The portion of the grant remained ranged from 34 to 36 percent.

/25/Correspondence, Donna Finley to Karen Schuler (January 20, 1987) (on behalf of LIHEAP directors from eight Community Action Agencies).

/26/So, too, for example, did one Legal Services attorney express a concern that "* * *requiring oil vendors to participate in an interest recapture program may dissuade them from

making 'credit' deliveries prior to receipt of LIHEAP funds, which would severely impact on many of our clients." Correspondence, John Rao (Attorney, Rhode Island Legal Services Corporation) to Roger Colton (National Consumer Law Center), Jan. 2, 1987.

/27/Memo, Karen Schuler (State HEAP program supervisor) to Nancy Boothby (Director, Division of Community Services) (October 3, 1986). Schuler concluded: "After careful consideration, I must recommend that the provision requiring fuel dealers to pay interest or grant additional discounts to HEAP customers be removed from the 1987 HEAP Rules and vendor contracts." Memo, at 1. Karen's memo.

/28/This study examines dealers serving more than 100 LIHEAP customers with a particular look at those which also have 20 or more credit accounts. In total, there are 110 dealers with more than 100 LIHEAP customers, 95 of which had more than 20 credit accounts. These dealers with 20 or more credit accounts are referred to as "credit prone."

/29/Although input was solicited from the Maine Oil Dealers Association (MODA) for this report, such assistance was declined.

/30/There is no conceptual or theoretical justification for limiting such a program to large dealers. Such a limit would simply be a response to the special administrative

problems for small vendors.

/31/There may be some overreaching in defining the dealers to pay interest by the number of LIHEAP recipients they have. For example, 28 of the 110 dealers with more than 100 clients carried a credit balance of less than \$5000 on June 1. However, the numbers went up quickly from there. 72 carried a credit balance of up to \$10,000 and 90 had a credit balance of up to \$20,000.

/32/The LIHEAP providers in Maine, as in most states, are local community action agencies. In other states, however, they may be the local office of the state department of social services.

/33/In this analysis, it does not matter whether a check is a two-party check or a direct vendor payment.

/34/This must be done at least on a sample basis.

/35/The problems involved with monitoring may well explain the payment patterns among New England LIHEAP programs. Only Maine and Rhode Island have one-time up-front payment processes. Rhode Island has a two-party check process while Maine makes direct vendor payments. In contrast, while New Hampshire, Massachusetts and Connecticut all have direct vendor payments, they also all pay only on a

reimbursement basis. In these latter states, no interest recapture is possible.

/36/The timing of the LIHEAP application, however, is always relevant to the amount of interest that could be gleaned from the unused balance.

/37/For the late applicant, fuel oil vendors might require the payment of deliveries obtained before receipt of the LIHEAP benefits out of the customer's pocket. In this instance, there will not be an outstanding bill toward which the LIHEAP benefit would be applied.

/38/The outstanding credit among Maine fuel oil dealers was roughly \$1.4 million out of a \$13.3 million total distribution of LIHEAP grants. See Table A, page 6, supra.

/39/One must be careful on what conclusions are to be drawn from the presence of a credit balance. For example, the presence of a credit balance indicates that LIHEAP benefits were not exhausted prior to actual receipt of the benefit. This might occur if the dealer provided fuel on the certification that a LIHEAP grant was forthcoming. The converse, however, is not true. The lack of a credit balance does not necessarily indicate that LIHEAP benefits were exhausted prior to actual receipt. Rather, there could have been a positive balance that was simply exhausted subsequent to the receipt of the benefit but prior to June 1.

/40/These dealers with 100+ customers are referred to as the "large dealers." Dealers with 20+ credit accounts are classified as "credit-prone." See note 28, supra.

/41/This figure excludes one dealer with 9,122 total accounts and 1,688 credit accounts. The average number of total customers was 211.

/42/Aside from the credit terms provided by the dealer, as discussed below, each vendor would also be required to keep customer specific accounts whenever LIHEAP benefits exceeded the cost of current or prior deliveries.