

<sup>1</sup> The USF/LIHEAP Program Administrator was the Department of Human Services (DHS) in State Fiscal Years (SFY) 2003, 2004, 2005 and the first quarter of SFY 2006. In October 2006, the Department of Community Affairs (DCA or Program Administrator) was designated by Governor Jon Corzine as the LIHEAP Administrator and the Board thereafter designated DCA as the USF Program Administrator.

allows applicants to have their eligibility status determined for both USF and LIHEAP at the same time. The two programs therefore share an application, database and application intake agency network, known as Community Based Organizations (CBO). CBO employees review and enter the USF/LIHEAP application and documentation into the USF system to determine program income eligibility. The CBOs are overseen by DCA, the current USF/LIHEAP Program Administrator.

The eligibility criteria for the USF program, established by the Board, are based on annual income and energy burden. The first eligibility test that applicants must meet, income eligibility, is set at or below 175% of the Federal Poverty Level (FPL). This income eligibility level is based on the annual household income, including all members of the household. The second eligibility test that applicants must meet, energy burden eligibility, is set so that income eligible applicants must pay more than 3% of their annual household income towards their individual gas or electric bills or more than 6% of their annual household income towards their electric heating bill.

Prior to the establishment of the USF program, Food Stamps recipients with certain heating living arrangements (HLA) were screened for LIHEAP. Each Food Stamps applicant was assigned an HLA code by the Food Stamps staff upon application. Food Stamps recipients had their personal information sent via an automated process from the Food Stamps program to the LIHEAP program and this information is now fed into the database system used by both LIHEAP and USF. Certain heating living arrangements represented by HLA codes are not eligible for LIHEAP, such as those that identify the applicant as having the cost of heat paid for or shared with another person or subsidized through public housing. Food Stamps recipients with these codes were not previously screened for LIHEAP and therefore were not screened for USF eligibility when the two programs became linked. However, if Food Stamps clients with these HLA codes provide the necessary additional information to a CBO, the client's data file would then be released for USF screening on a case-by-case basis.

The USF screening process utilizes a specific methodology to categorize and track applicants. Records of income eligible applicants whose utility accounts are unknown are transmitted to the utilities, so they may attempt to match these applicants to their account records. Each utility uses a slightly different matching process in order to achieve an account match. After a utility claims an applicant as an account holder, the utility returns the account information and energy burden to the USF system for eligibility determination and, if appropriate, a benefit calculation. The USF system then uses an automated process to calculate the benefit amount, which is sent to the utility to start crediting the customer's bill. A large portion of unknown accounts that go through the utility matching process are Food Stamps cases, due to the fact that only one utility account number (for the heating account) is currently stored and transmitted by the Food Stamps program to the USF program.

In the spring of 2008, an error occurred which resulted in approximately 14,500 Food Stamp households with the HLA codes described above, which were not historically screened for USF, to be mistakenly screened and incorrectly admitted into the USF program. All of the Food Stamps files in question, which had unknown utility account numbers and codes which indicated that they should not have been screened for USF, were incorrectly admitted into USF through the screening done in error, in either March or April of 2008 and began receiving credits on their energy bills. The households in question were found to include Food Stamps recipients who were not utility account holders as well as persons whose name and income was not included in the Food Stamps file transfer process to the USF/LIHEAP system. Additionally, the matching process used to identify the utility account for these Food Stamps clients resulted, in some cases, in benefits being matched to the wrong accounts. One of the requirements of the USF

program is that the USF applicant or spouse must have a utility account in their name. Also, these Food Stamps households should not have been admitted into the USF program because their Food Stamps applications lacked the necessary information to make a determination of USF eligibility.

After USF benefits were issued to these Food Stamps recipients, the error came to the attention of the Program Administrator when the USF hotline received over 250 calls from utility account holders who stated they received a USF benefit for which they did not believe they were entitled.

Once Board Staff became aware of the problem, they worked with representatives from DCA, the Office of Information Technology (OIT), the Division of Family Development (DFD) at the Department of Human Services (DHS) and the utilities to understand the facts leading to the error as quickly as possible. These accounts were corrected in June and July 2008 by utilizing the existing recalculation process in the USF system, which 1) discontinues USF benefits; and 2) automatically charges the benefit amount received in error back to the utility account. USF benefits given to these households in error were discontinued in July and August 2008 to prevent any additional erroneous benefits. Additional delay in stopping erroneous benefits would have resulted in an increased burden on households who had to repay the benefits provided in error. Approximately 14,500 households that received a USF benefit in error were affected in this manner.

In addition to the households who received a USF benefit in error, approximately 2,000 households, (who until the time of this error had been receiving USF appropriately), were impacted as well. The error resulted in the increase or decrease of USF benefits of these recipients. These households had their benefits restored to their correct amount during the month of July via the recalculation process. The recalculation corrected the error for this group through either a charge or a credit to the USF account holder's bill.

Fresh Start credits<sup>2</sup> were also issued to certain households mistakenly enrolled in USF as a result of this error. As these accumulated arrearages existed prior to the customers being mistakenly enrolled into the USF program, any forgiveness provided to these customers was also provided in error. Therefore, any USF Fresh Start credits received in error during this time period have been restored to their accounts and prospective eligibility for Fresh Start is preserved for these households. The utilities have taken action to ensure that if any of these households apply for USF in the future and are found eligible, they will be considered for Fresh Start again.

In July, DCA sent a letter via the USF/LIHEAP database to those Food Stamps households incorrectly enrolled in USF. The letter indicated that an error had occurred, resulting in mistaken enrollment of the recipient into USF. It indicated that the recipient would have to repay any USF or USF Fresh start benefits received in error. The letter further advised that the recipient could contact his or her utility to arrange a payment plan. Additionally, the letter outlined the USF eligibility requirements, provided the USF program's website address and the applicable CBO agency address and phone number. The letter advised the recipient that:

If you disagree, you have the right to an administrative review regarding your eligibility for USF. You may contact the

---

<sup>2</sup> Fresh Start is an arrearage forgiveness program that was implemented by the Board on March 4, 2004, Docket No. EX00020091, in order to assist first time USF recipients with their pre-USF utility arrearages.

Department of Community Affairs toll free at 1-866-240-1347.  
Callers from outside New Jersey must call 1-609-826-4780.

A similar letter was sent to recipients who had their USF benefit amount change due to the error.

Where a recipient previously had requested Food Stamps correspondence in Spanish, the above letters were sent in Spanish.

A second letter was sent by each utility to its affected utility account holders who were enrolled in USF and received a benefit in error. In addition to providing information relating to the error, the eligibility requirements of USF and contact information for DCA, the letter provided a contact number for the account holder's utility company. Finally, the letter provided the mailing address for DCA and indicated that a request for administrative review could be made in writing. Each letter was sent to all recipients in English (front) and Spanish (back).

Finally, approximately 1,500 of the Food Stamps accounts incorrectly screened for USF were either closed by the client or went into portable status (the client moved) during the April – June 2008 timeframe. The portable accounts were closed to prevent another utility from claiming these customers and continuing to provide benefits in error. At its July 30, 2008 Board Agenda meeting, the Board determined that it would not seek collection against these closed accounts. Therefore, any USF or Fresh Start benefits paid in error to these accounts would not be recovered. Additionally, due to the closure of the account, account holders would not be eligible for additional USF Fresh Start benefits in the future.

### **Public Comment**

At its July 11, 2008 agenda meeting, the Board instructed Staff to solicit public comments concerning the issue of repayment of these USF benefits. In response to a July 14, 2008 Notice seeking comment, the Board received comments from the following:

- 1) American Association of Retired Persons (AARP);
- 2) New Jersey Department of Public Advocate, Division of Rate Counsel (Rate Counsel);
- 3) Legal Services of New Jersey (LSNJ);
- 4) South Jersey Gas Company, Atlantic City Electric Company, Elizabethtown Gas Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, Rockland Electric Company and New Jersey Natural Gas Company jointly submitted comments ("the utilities")
- 5) New Jersey Citizen Action (NJCA);
- 6) La Casa Newark, Essex County CBO (La Casa); and
- 7) Ms. Lana Stokes

### **AARP Comments:**

AARP expressed disappointment that the consumer representatives in the USF Working Group were not informed of the existence of this problem and the steps taken to communicate with affected customers prior to July 14, 2008, when the public notice requesting comment was posted on the Board's website.

AARP further asserts that the information disseminated to the USF Working Group was confusing and not sufficient to allow AARP to fully understand the nature of this error. AARP indicated that Food Stamps recipients are “low income” as certified during this program’s means-tested income verification procedures and historically are automatically screened by DCA for Home Energy Assistance benefits and then also automatically screened for determination of eligibility for USF benefits; therefore it was unclear why the Food Stamps households in questions should not have been screened for USF.

AARP indicated that relying on the DCA telephone number provided in the notice to customers may be insufficient and felt the Board could have notified customers of the alleged error, halted the USF benefit as an interim step, and waited several months before seeking repayment to allow customers time to either prove program eligibility or establish a reasonable repayment plan.

AARP recommended that the Board: 1) instruct the utilities not to disconnect service based on any portion of the error amount being overdue; 2) require DCA to expedite reinstatement for eligible customers who have lost benefits due to this error; 3) provide back benefits for those customers determined to be eligible; and 4) conduct an outreach to impacted customers, preferably by New Jersey SHARES, to ensure they fully understand their options and how to apply for USF.

#### **Utilities Comments:**

The utilities do not believe that it is appropriate for customer complaints related to the misapplied credits be counted against the utilities in evaluating complaint trends, since they were not responsible for this administrative error. The utilities believe that dictating a “one-size fits all” approach for setting repayment plans is not appropriate because every customer’s situation is unique. The utilities believe that there would be no overall benefit to establishing repayment terms that do not allow for the flexibility to address customer-specific circumstances. The utilities also caution the Board against directing them to develop additional conditions that separately treat this “benefit reversal” balance since that could require significant and potentially expensive additional system programming.

#### **NJCA Comments:**

NJCA states that Board staff needs to provide more information about the circumstances that led to the removal of people from the USF program because NJCA alleges that the Board has not provided adequate information to verify that these people were not eligible for the USF program. NJCA recommends that the Board reinstate these households into the USF program and not require them to repay any benefits until the Board knows conclusively that they are ineligible for USF benefits. Further, NJCA states that protocols must be implemented to prevent the shut off of electric and/or gas service of these households who find themselves in arrears because of this administrative error. In addition, the Board should ensure that the utilities provide affordable repayment plans.

#### **LSNJ Comments:**

LSNJ alleges that the Board acted in an arbitrary, capricious and unreasonable manner by terminating Food Stamp recipients from the USF program and instructing the utilities to demand repayment from these recipients. LSNJ further stated that the Board’s actions were inconsistent with its policies and representations to the Food Stamps recipients. LSNJ also states that the

Board's reversal of the USF programs benefit determination for this group of Food Stamps recipients is improper and illegal because the Board cannot use reconsideration of a prior determination to affect a policy a change. Specifically, LSNJ believes that the Board was not correcting an error, but was reconsidering a prior policy determination that the affected Food Stamps accounts should be screened for USF. Finally, LSNJ states that the Board's notice to beneficiaries failed to comport with due process.

LSNJ contends that many of the Food Stamps recipients enrolled in the USF program in March were and are eligible for USF benefits. LSNJ recommends that the Board:

- (i) rescind the summary disenrollment immediately as to all categories of affected Food Stamp recipients who may have been eligible for USF benefits in March 2008, and immediately reinstate their USF benefit, (ii) provide prompt, account-specific notice to any affected customers that the Board contends were ineligible for USF benefits in March 2008 clearly stating the basis for the Board's belief (and providing the customer with the right to a pre-deprivation hearing), (iii) ensure reasonable timeframes for the repayment of any credits that are properly determined *after* hearing to be subject to recoupment, (iv) provide for waivers of any recoupment obligation that would result in significant financial hardship, and prohibit any termination of service based on inability to pay any backbilled amounts, and (v) engage New Jersey SHARES to conduct any necessary outreach to affected Food Stamp recipients. (LSNJ letter of July 28, 2008, pg. 2)

#### **Rate Counsel Comments:**

Rate Counsel objects to the procedure followed by the Board because it asserts that at the time the Board issued its Notice requesting comments, the Board had already resolved the issues upon which it was seeking comment. Specifically, the Notice seeking comment indicates that the Board has already determined: 1) that the benefits were provided in error; and 2) the details of the repayment process. Since the repayment process had been determined, and was already in the process of being implemented, the comment period provided by the Board was essentially meaningless.

Rate Counsel suggests that since the apparent overpayments were the result of the Board's own error, the utilities should be directed to offer extended repayment plans for those customers for whom repayment will be financially burdensome. Further Rate Counsel urged the Board to take steps to avoid a similar situation from occurring in the future and involve the USF Working Group if changes in the enrollment process are contemplated.

#### **La Casa Comments:**

La Casa believes it is unfair to recoup funds from already low income/high usage USF customers. It maintains that such measures severely impact these customers and put them right back into arrearage problems. If the Board must recoup these funds, La Casa states that the amount of credit should be reversed equally throughout the year and clearly marked as "USF Repayment Fee".

La Casa asserts that to avoid future errors the following concerns should be addressed:

- Allow DFD full access to the LIHEAP/USF database to process eligible DFD applications to avoid “dumping FAMIS (Food Stamp program database) errors” and changes made by the agencies”;
- Utility representatives should be able to see all the household members to properly match the accounts to the utility bill;
- If full access is not feasible, DFD should not be allowed to use an account number unless it belongs to the Food Stamps client. Applicant should match name of bill; and
- Agencies should have the capacity to update changes in portability accounts.

### **Lana Stokes Comments:**

Lana Stokes believes that this administrative error caused significant confusion. She further states that the letters sent out to recipients are not very clear as to how and why the error occurred.

Ms. Stokes suggests that letters, applications (and instructions) should be sent to each household involved, requesting that the applicant visit his/her CBO and apply for USF. She also felt the household should be considered for LIHEAP if eligible for USF since the first payment was in the LIHEAP season.

### **Discussion and Findings**

The Board regrets the error, which caused certain Food Stamps recipients to be mistakenly screened and USF benefits to be credited in error and especially the resulting inconvenience experienced by customers. While the Board is sympathetic to the difficulty those in low-income households face in paying their energy bills, the Board also must ensure that only eligible households receive USF benefits. In accordance with its determination at the July 11, 2008 Board Agenda meeting, the Board ORDERS that all USF benefits resulting from the incorrect screening of Food Stamps recipients for the USF program via the Food Stamps screening error mentioned herein are stopped.

In order to adequately review the public comments that the Board received in response to its July 14, 2008 Notice seeking comment, the Board initially deferred the issue of repayment methodology of these benefits until Staff was able to review and consider the recommendations contained in these comments.

The Board notes that some of the commenters indicated the USF Working Group was not provided with an opportunity to comment on the repayment issue prior to the Board's notification to affected account holders that they would be required to work out a repayment plan with utilities. As noted herein, the Board acted to minimize the impact of the USF error by utilizing a pre-existing process to stop the benefits in error, which includes charging any erroneous benefits back to the account. Additionally, the Board found it appropriate to advise affected account holders that they could contact their utilities to discuss a repayment plan. Although the Board determined that payments had been made in error and that this money must be repaid, the Board requested public comments as to the structure of the repayment method. The comments which were received helped to inform the Board's decision to provide an extended repayment period as described herein. This repayment method is available to all affected account holders, including those persons who previously agreed upon a shorter repayment period.

Several commenters have suggested that the Board engage New Jersey SHARES to conduct outreach to members of the group that were affected by this error. At its October 3, 2008 agenda meeting the Board approved an amendment to DCA's administrative budget to allow DCA to engage New Jersey SHARES to conduct a limited outreach to those affected households whose HLA code indicated they live in public housing, as this group was considered demonstrably lower-income. As set forth below, the Board has determined that providing an additional written notice regarding this error is appropriate.

Several commenters have further recommended that the Board consult the USF Working Group on similar issues in the future. The Board notes that in accordance with the Board's directive at its July 30, 2008 Agenda meeting, Staff, in conjunction with DCA and DHS, has initiated a broad overview of the interconnections between USF, LIHEAP and Food Stamps. Representatives from the State agencies, members of the USF Working Group, and other interested parties are meeting to explore the program connections to assist in determining if the current processes are best serving both the applicants and administrative aspects of the programs.

LSNJ comments that the Board is effecting a policy change in correcting the HLA error. As noted herein, the persons with the relevant HLA codes who were enrolled in USF in error have not previously been screened for USF. The steps taken by the Board in this Order are consistent with the Board's historic procedures and practices regarding the screening of Food Stamp recipients for USF/LIHEAP benefits. The Board is taking the steps it has determined are appropriate to notify affected account holders of the error and provide an appropriate opportunity to seek an administrative review. Board Staff has begun a stakeholder process to determine whether the Food Stamps screening process should be modified to expand the enrollment of eligible persons into USF.

In accordance with its determination at the July 30, 2008 Board Agenda meeting and its November 7, 2008 Board meeting, the Board ORDERS that the electric and natural gas utilities shall not disconnect any of the accounts which received USF or Fresh Start benefits, due to this error, for any arrearages that accrued on their accounts as a result of this USF benefit error. This stay of disconnections shall be in effect until March 15, 2009, the end of the Winter Termination Program, N.J.A.C. 14:3-3A.5. Thereafter, the monies are only due and owing in accordance with the payment plan established between the account holder and the utility under the parameters set forth herein.

The Board HEREBY ORDERS that the Utilities shall provide up to a two-year repayment plan (at the discretion of the customer), starting as of the date the customer first contacted the utility to establish a repayment plan, but no later than March 15, 2009, the end of the Winter Termination Program, N.J.A.C. 14:3-3A.5. If the customer chooses the two-year repayment plan, the amount of the monthly minimum payment shall be sufficient to ensure that the HLA related arrearages are paid back within the period of the repayment plan, but may not be less than \$5.00 a month. This repayment process will most appropriately provide affected account holders an opportunity to repay the USF benefit provided in error. The Board further ORDERS that any customer that has previously set-up a repayment plan may request a modification of his/her current repayment plan in accordance with this Order, by contacting the relevant utility. When payments are made to an affected account which is otherwise in arrearage, the money should be applied to the oldest arrearage first, in accordance with each utilities' standard practice. The utilities may take action in accordance with their tariffs subject to the provisions of this Order.



The Board further ORDERS that, if an affected customer (1) completes a USF application; or (2) contacts DCA and submits additional information, on or before March 15, 2009, the end of the Winter Termination Program, N.J.A.C. 14:3-3A.5, and the affected customer is found eligible for USF, the account holder shall be entitled to USF benefits as of the date he/she was initially enrolled in USF through the screening process conducted in error and appropriate benefits shall be credited to his/her account. Any person who received benefits through the screening process conducted in error, may otherwise request an administrative review of his/her file by contacting DCA or the appropriate CBO on or before March 15, 2009, the end of the Winter Termination Program, N.J.A.C. 14:3-3A.5. Such persons may be required to submit additional information as set forth herein, before a final determination can be made.

For any person who does not seek an administrative review, file a completed USF application or otherwise submit the required additional information to a CBO prior to March 15, 2009, the Board's prior determination of ineligibility will be a final agency action.

Although the Board believes the initial letters sent to customers explaining the USF benefit error and their rights to an administrative review provided adequate information to customers, an additional notice is appropriate now that the repayment terms have been finalized. The Board therefore ORDERS its Staff to work with the utilities to send an additional notice to affected account holders, who: 1) are not currently receiving USF benefits; and 2) are currently in arrearage status.

The letter shall advise that: (1) in order to be considered for USF benefits as of the date he/she was initially enrolled in USF through the screening process conducted in error, he/she must submit additional information (such as a utility account number and/or information about household members) to the appropriate CBO or otherwise apply for USF on or before March 15, 2009, the end of the Winter Termination Program, N.J.A.C. 14:3-3A.5; (2) any determination following a request for administrative review in response to the eligibility determination based on the appropriate application process will constitute final agency action; and (3) provide a mailing address and contact information to which the request for administrative review must be sent.

Additionally, the letter shall: (1) provide a general explanation of the error; (2) provide an overview of the USF eligibility requirements and identify a website containing additional information; (3) provide the USF hotline number; (4) provide a telephone number and mailing address of the CBOs in the utility's service territory; and (5) advise that a recipient may contact his/her utility to set-up a repayment plan over a maximum two year period, with a minimum monthly payment of \$5.00 for the USF benefit amount received in error (a recipient may modify a prior repayment plan to extend up to two years from the date they set up the initial repayment plan).

This additional notification will further serve to provide another opportunity to determine whether the households, who received a USF benefit as a result of this error, could be eligible for USF if more information is provided.

In order to prevent a similar error from occurring in the future, the Board HEREBY ORDERS Staff to:

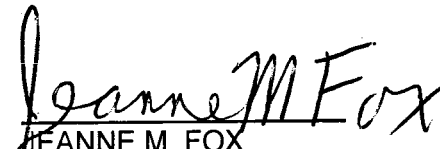
- 1 Work with the appropriate State agencies to ensure that, as has been the case in the past, no Food Stamps files with HLA codes which indicate there may be others in

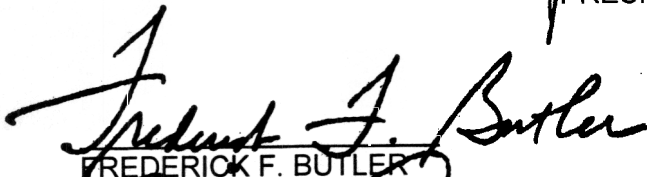
residence or the household is in public housing be selected for the regular USF screening process unless authorized by the Board;

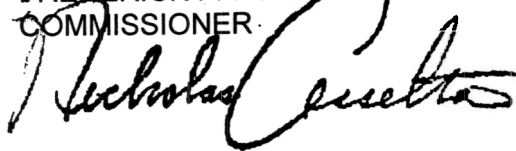
2. Work with the appropriate State agencies to examine the Food Stamps screening process and ascertain if changes may be needed to ensure income eligible households are screened for USF eligibility; and
3. Work with the utilities to develop a standardized matching process, subject to Board review and approval, for income eligible applicants in the USF/LIHEAP database and system with unknown utility account numbers.


DATED: 1/20/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

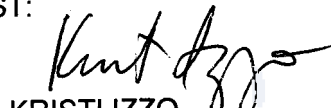
  
FREDERICK F. BUTLER  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities

