

**STATEMENT OF EMERGENCY**  
**921 KAR 4:122E**

This emergency administrative regulation is necessary in order to immediately utilize federal Consolidated Appropriations Act, 2021, and American Rescue Plan Act (ARPA) funding to provide assistance to low-income households in paying their water and wastewater utility arrears and relief to water and wastewater utility providers. The Consolidated Appropriations Act, 2021, and ARPA funds may only be used to cover costs incurred during the period of time beginning May 27, 2021, and ending September 30, 2023. This emergency assistance is limited to costs incurred during this time period unless federal funding is extended. This emergency assistance program is modeled after the Low-Income Home Energy Assistance Program (LI-HEAP), a federally funded program in which low-income households receive assistance in paying their heating and cooling utilities. This administrative regulation is being filed as an emergency in accordance with KRS 13A.190(1)(a)1. and 2., as providing this assistance to eligible low-income households in the commonwealth will ensure the provision of water and wastewater utilities to at-risk individuals, protecting public health, safety, and welfare, and federal funding will be lost if not used during the specified time period. This emergency administrative regulation is temporary in nature, but may be required for a longer period of time than the 270 days permitted by KRS 13A.190(4)(a) due to funding being available through September 30, 2023. For this reason, this emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Family Support**  
**(New Emergency Administrative Regulation)**

**921 KAR 4:122E. Assistance for low-income households with water or wastewater utility arrears.**

EFFECTIVE: December 1, 2021

RELATES TO: KRS Chapter 13B, 194A.070, KRS 205.240, 278.0154(6), 42 U.S.C. 9902(2), Pub.L. 116-260, Pub.L. 117-2

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to adopt administrative regulations necessary to maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and promulgate administrative regulations necessary to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 194A.070 authorizes the cabinet to utilize and promote community resources for the delivery of services. KRS 205.240 states that all money received from the United States for the public assistance functions administered by the cabinet are hereby appropriated and shall be available to the secretary for expenditure. This administrative regulation establishes the eligibility and assistance criteria for low-income households to receive assistance with paying water or wastewater utility arrears.

Section 1. Definitions. (1) "Agency" means Community Action Kentucky (CAK), or a local community action agency contracted to provide the service.

(2) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.

(3) "Crisis component" means the component that provides assistance to households that are experiencing a home water or wastewater emergency.

(4) "Economic unit" means one (1) or more persons sharing common living arrangements.

(5) "Emergency" means, at the time of application, the household:

(a) Is without water;

(b) Shall be disconnected from a water utility service within forty-eight (48) hours; or

(c) Shall be without water as established in Section 3(3) of this administrative regulation.

(6) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(7) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase water or wastewater in common.

(8) "Household demographics" means an applicant's:

(a) Address;

(b) Household composition that includes:

1. Size;

2. Age group;

3. Relationship to applicant;

4. Sources of income; and

5. Type of housing; and

(c) Water and wastewater source.

(9) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) An individual considers home;

(c) To which, when absent, an individual intends to return; and

(d) Is identifiable from another residence, commercial establishment, or institution.

(10) "Subsidy component" means the component that provides an eligible household with:

(a) A payment to the household's water or wastewater provider; or

(b) A payment to a landlord, if water or wastewater is included in the rent.

Section 2. Application. (1) A household or authorized representative applying for water or wastewater utility assistance shall provide to an agency the following:

(a) Proof of household income;

(b) The most recent:

1. Water bill;

2. Wastewater bill; or

3. Verification that water or wastewater is included in the rent;

(c) A statement of household demographics; and

(d) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Gross household income shall be at or below 150 percent of the official federal poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services pursuant to 42 U.S.C. 9902(2).

(2) The household shall be responsible for paying:

- (a) The water or wastewater bill; or
- (b) Water or wastewater costs as a portion of the rent.

(3) Crisis component. In addition to meeting the criteria in subsections (1) and (2) of this section, an applicant shall have:

- (a) Water or wastewater utility arrears;
- (b) Entered into a payment plan due to water or wastewater utility arrears;
- (c) Received a past-due or disconnect notice;
- (d) A currently disconnected water or wastewater service; or
- (e) Received a notice of eviction due to nonpayment of rent, if water or wastewater cost is included as a portion of the rent.

Section 4. Assistance. (1) For a subsidy component, a maximum assistance amount of \$400 may be provided for a current water utility bill or water utility arrears, a current wastewater utility bill or wastewater utility arrears, or a combination thereof. Payment shall be made to the household's water or wastewater provider, or landlord if the utility is included in rent, as follows:

(a) The amount of assistance shall be based upon household income and whether the household is responsible for water, wastewater, or both.

(b) A household living in federally assisted housing or receiving a utility allowance shall be eligible for a lesser amount of assistance.

(2) For a crisis component, a maximum assistance amount of \$800 may be provided for water utility arrears, wastewater utility arrears, or a combination thereof. Payment shall be made to the household's water or wastewater provider, or landlord if the utility is included in rent, as follows:

(a) The amount of assistance shall be the minimum needed to address the household's arrearages or alleviate a water or wastewater emergency.

(b) A household living in federally assisted housing may be eligible.

(c) A household may receive crisis component assistance more than one (1) time, but shall not receive more than the maximum assistance amount unless a case-by-case determination is made that no other funding source is available to alleviate a household emergency.

(3) A household may receive assistance for subsidy, crisis, or both.

Section 5. Assistance Delivery Method. Payment shall be authorized by a one (1) party check made payable to the household's:

- (1) Water or wastewater utility provider or providers; or
- (2) Landlord, if the cost of water or wastewater is included as a portion of the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon within the time standards established in Section 7 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing be held in accordance with 921 KAR 2:055 and KRS Chapter 13B.

Section 7. Time Standards. (1) An eligibility determination shall be made by an agency within fifteen (15) working days after receipt of information required by Section 2 of this administrative regulation.

(2) An applicant shall have fifteen (15) working days from the date of application to provide the information required by Section 2 of this administrative regulation to an agency, or the application shall be denied.

Section 8. Water or Wastewater Provider Responsibilities. A provider accepting payment pursuant to this administrative regulation for water or wastewater utility services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities shall be accomplished upon receipt of payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of water or wastewater and amount of payment made pursuant to this administrative regulation.

(3) An assistance recipient shall be treated the same as a household not receiving this assistance, with the exception established in KRS 278.0154(6).

(4) The household on whose behalf assistance is provided shall not be discriminated against in the services provided.

(5) A landlord shall not increase the rent of a recipient household due to receipt of assistance provided pursuant to this administrative regulation.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 19, 2021

FILED WITH LRC: December 1, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by January 14, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and process for low-income households to receive assistance in paying water or wastewater utility arrears accumulated between May 27, 2021, and September 30, 2023. This program is provided through the federal Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) of 2021 funding in order to assist households with utility arrears incurred during the COVID-19 pandemic.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria and process through which low-income households may receive assistance in paying water or wastewater utility arrears accumulated during the COVID-19 pandemic. This program is similar to the Low Income Home Energy Assistance Program (LI-HEAP), which provides assistance to low-income households with heating and cooling utility costs. This administrative regulation is being filed as an emergency in accordance with KRS 13A.190(1)(a)1. and 2., as providing this assistance to eligible low-income households in the commonwealth will ensure the provision of water and wastewater utilities to at-risk individuals, protecting public health, safety, and welfare, and federal funding will be lost if not used during the specified time period.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050, which requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to maintain the health, personal dignity, integrity, and sufficiency of the citizens of the commonwealth and to qualify for the receipt of federal funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility and assistance criteria for the implementation of this program, which is designed to ensure the health and welfare of low-income households by ensuring the maintenance of water and wastewater utility services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment; however, it is necessary to establish the criteria and process for low-income households to receive assistance in paying water or wastewater utility arrears accumulated between May 27, 2021, and September 30, 2023.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment but is necessary to establish the criteria and process through which low-income households may receive assistance in paying water or wastewater utility arrears accumulated during the COVID-19 pandemic.

(c) How the amendment conforms to the content of the authorizing statutes: This new administrative regulation conforms to KRS 194A.050, which requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to maintain the health, personal dignity, integrity, and sufficiency of the citizens of the commonwealth and to qualify for the receipt of federal funds.

(d) How the amendment will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of the statutes by establishing eligibility and assistance criteria for the implementation of this program, which is designed to ensure the health and welfare of low-income households by ensuring the maintenance of water and wastewater utility services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action

agencies and one local government to provide utility assistance throughout Kentucky's 120 counties. The cabinet will work through CAK to provide this utility assistance in the same manner LIHEAP assists with heating and cooling utility payments. In SFY 2019, Kentucky served approximately 156,694 low-income households with utility payment assistance through LIHEAP. Water and wastewater utility providers will also benefit from the implementation of this program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Eligible households must present their most recent water or wastewater utility bill demonstrating that they have water or wastewater utility arrears, have entered into a payment plan due to water or wastewater utility arrears, have received a past-due or disconnect notice, or have received a notice of eviction due to nonpayment of rent, if water or wastewater cost is included as a portion of the rent. If the household meets all requirements established in this administrative regulation, they shall receive arrearage payment assistance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs to eligible households complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible households meeting the requirements of this administrative regulation may receive arrearage payment assistance up to \$1,200 subsidy and crisis components in order to assist in the maintenance of water or wastewater utilities and ensure the health and welfare of low-income households in the commonwealth. Water and wastewater utility providers (or landlords if these utilities are part of rent) will be the recipients of this funding and will benefit from the implementation of this program.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) of 2021 funds are being used to implement this administrative regulation. Approximately \$18.6 million in funds have been provided for this program and up to 15% may be used for administrative costs.

(b) On a continuing basis: The cabinet will not operate this program and implement this administrative regulation until funds are exhausted. Unless extended, The Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) of 2021 funds may only be used to cover costs incurred during the period of time beginning May 27, 2021, and ending September 30, 2023.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) of 2021 funds are being used to implement this administrative regulation. Approximately \$18.6 million has been provided to Kentucky for the purpose of implementing this program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? This administrative regulation contains eligibility criteria that must be met in order to obtain this assistance, but this program will be provided in a like manner statewide so that tiering is not applicable.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation. The cabinet holds a master agreement with Community Action Kentucky (CAK), which subcontracts with twenty-two community action agencies and one local government to provide utility payment assistance throughout Kentucky's 120 counties. Municipal water and wastewater systems will benefit from the payment of customer arrears.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 194A.070, KRS 205.240, Pub. L. 116-260, Pub. L. 117-2.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is temporary and will not generate revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet is utilizing federal Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) of 2021 funds to implement this administrative regulation. Approximately \$18.6 million in funds have been provided for this program.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation and program is temporary in nature as, unless extended, the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act (ARPA) of 2021 funds may only cover costs incurred up to September 30, 2023.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: