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The Honorable Nancy Potok, Chief Statistician
Office of Management and Budget
9257 New Executive Office Building
725 17th St. NW
Washington, DC 20006

[Submitted via <https://www.regulations.gov>]

Re: Request for Comment on Consumer Inflation Measures Produced by Federal Statistical Agencies OMB-2019-0002-0001

Dear Dr. Potok,

The National Women's Law Center (the "Center") takes this opportunity to comment in opposition to the use of any slower and more inaccurate inflation measure for the annual adjustments of the Official Poverty Measure (OPM) used by public benefit programs. Such a change would make poverty measurement less accurate, providing policymakers and the public with less credible information about the number and characteristics of American families struggling to get by. It would also cause women, children, and families to lose vital public benefits, inflicting serious harm on them, their communities, and the nation.

The Center fights for gender justice — in the courts, in public policy, and in society — working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone — especially those who face multiple forms of discrimination. For more than 45 years, the Center has been on the leading edge of every major legal and policy victory for women.

Women are more likely than men to face economic insecurity at all stages of their lives, due to ongoing employment discrimination, overrepresentation in low-wage jobs, difficulty accessing affordable and comprehensive health care, and greater responsibilities for unpaid caregiving. As a result, programs and policies that protect health; ensure access to high-quality, affordable child care; and help people meet their basic needs are essential to women and their families. Many of these programs have eligibility criteria connected to the OPM, which uses the Consumer Price Index for All Urban Consumer (CPI-U) for its annual inflation adjustments. Consequently, the Center strongly opposes the official use of any index that uses a slower and more inaccurate measure of inflation and will lead to more and more women, children, and families losing benefits from these vital programs over time.

I. Slower measures of inflation provide a less accurate measure of inflation for people living in poverty.

Many Federal agencies use the Consumer Price Index for All Urban Consumers (CPI-U) for a variety of purposes, including in the annual adjustments of the OPM (also known as the “poverty threshold”). The CPI-U calculation is based on a consumer group that factors in the expenditures of about 93% of the total U.S. population and is calculated based on the change in prices of goods and services urban households consume.¹

There is strong evidence that low-income people may face higher rates of inflation than the population as a whole.² That means that the CPI-U is an imperfect measure of inflation that does not reflect the realities of low-income people, and slower measures of inflation would exacerbate this inaccuracy, making poverty measurement less accurate. Furthermore, the current poverty line is not an accurate indicator of whether people can actually make ends meet.

A. Chained Consumer Price Index for All Urban Consumers (C-CPI-U)

The C-CPI-U assumes that as prices of goods rise, individuals substitute less expensive items, thereby reducing their overall expenses. However, there is evidence that low-income people cannot as readily take advantage of such substitutions, since they are already doing without more expensive items (and even without moderately priced items). Research also suggests that costs as a share of overall income rise more rapidly for low-income households than for the population as a whole. They pay a greater percentage of their income for housing and utilities, for instance.

As discussed above, the CPI-U is already an inaccurate means of calculating inflation for the OPM because low-income people experience inflation at higher rates than families with higher incomes. Using the C-CPI-U would only exacerbate this inaccuracy—indeed, its use over 10 years would reduce the poverty line by two percent.³ And it would inaccurately characterize low-income working or retired individuals or families as living above the poverty line, when they are struggling to pay

¹ U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEXES OVERVIEW, <https://www.bls.gov/cpi/overview.htm> (last modified Jun. 5, 2018).

² See, e.g., GREG KAPLAN & SAM SCHULHOFER-WOHL, INFLATION AT THE HOUSEHOLD LEVEL, 91 J. OF MONETARY ECON. 9 (2017), available at <https://doi.org/10.1016/j.jmoneco.2017.08.002> (describing how low-income people experience inflation at higher rates than families with higher incomes because they do not have as much opportunity to switch to less expensive items); DAVID ARGENTE & MUNSEOB LEE, COST OF LIVING INEQUALITY DURING THE GREAT RECESSION, KILTS CTR. FOR MARKETING AT CHICAGO BOOTH – NIELSEN DATASET PAPER SERIES 1-032 (Sep. 20, 2017), available at <http://dx.doi.org/10.2139/ssrn.2567357> (describing the increased phenomenon during recessions).

³ AVIVA ARON-DINE & MATT BROADDUS, CTR. ON BUDGET AND POL'Y PRIORITIES, POVERTY LINE PROPOSAL WOULD CUT MEDICAID, MEDICARE, AND PREMIUM TAX CREDITS, CAUSING MILLIONS TO LOSE OR SEE REDUCED BENEFITS OVER TIME (May 2019), available at <https://www.cbpp.org/research/poverty-and-inequality/poverty-line-proposal-would-cut-medicaid-medicare-and-premium-tax>.

for necessities. As described in more detail below, denying these families eligibility for benefits such as health coverage and services, heating or cooling assistance, or nutrition assistance will increase hardship and threaten health, child development, and family stability, contrary to the intent of Congress in establishing these programs.

B. Personal Consumption Expenditures Price Index (PCEPI)

The PCEPI, like the CPI-U, measures the changing prices of consumer goods and services but reflects changes in consumer behavior and covers out-of-pocket consumption and some government-funded consumption.⁴ However, the PCEPI has a major flaw for low-income people similar to the C-CPI-U—its substitution assumptions do not consider how low-income people are already using inferior goods and often cannot substitute for even more inferior goods. Using the PCEPI over 10 years would reduce the poverty line by 3.4%,⁵ resulting in an even more inaccurate measure of inflation for low-income people compared to the C-CPI-U.

OMB should reject the use of any slower inflation measure for agencies to use in determining public benefits.

II. Using a slower, less accurate inflation index for the OPM is effectively a benefit cut—it will cause hundreds of thousands of low-income people to lose part or all of vital supports that help meet basic living standards.

In this notice, OMB has said it is not currently seeking comments on the poverty guidelines produced annually by the U.S. Department of Health and Human Services (HHS), and so we are not providing comprehensive comments on that issue. However, it is irresponsible for OMB to consider changing the OPM without undertaking extensive analysis of how such a change would affect program eligibility and soliciting public comment on that analysis. Considering changing the inflation measure that impacts the HHS Poverty Guidelines without researching and taking into consideration the impact on affected populations shows a disregard for the real-life impacts of policy decisions and the potential for disparate impact on protected populations.

What follows is only a preliminary analysis of the impact on women, children, and families, with rough, preliminary estimates of impacts. OMB should undertake more thorough research and analysis, as well as solicit public comments regarding impacts such as the number of individuals losing assistance and a demographic profile of those individuals and families, how service providers would be impacted, and how the impacts would change over time, including beyond the initial decade. The onus is on the federal government to conduct these kinds of extensive analyses before suggesting a policy change that would harm large numbers of women, children, and families.

⁴ TODD E. CLARK, FED. RES. BANK OF KANSAS ECON. REV., A COMPARISON OF THE CPI AND PCE PRICE INDEX (1999), available at <https://www.bea.gov/resources/learning-center/what-to-know-prices-inflation>.

⁵ ARON-DINE & BROADDUS, *supra* note 3.

As a country, we want to ensure that people have access to basic supports, including food, health care, and housing. Because of the systemic issues described below, women are more likely than men to face economic insecurity at all stages of their lives. As a result, programs and policies that protect health; ensure access to high-quality, affordable child care; and help people meet their basic needs are essential to women and their families.

- A. Using a slower measure of inflation does not change the reality that many women will still have low levels of income that preclude them from meeting their basic needs.

Women face a heightened risk of economic insecurity because of the wage gap,⁶ caregiving responsibilities,⁷ being overrepresented in the low-wage workforce⁸ that is plagued by unstable and unpredictable schedules,⁹ part-time work,¹⁰ sexual harassment and retaliation,¹¹ and more.

Compared to women's representation in the overall workforce, women of virtually all races, ethnicities, sexual orientations, and gender identities are overrepresented in the low-wage workforce (typically paying less than \$11.50 per hour):¹²

⁶ NAT'L WOMEN'S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO (Oct. 2018), *available at* <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>.

⁷ BRIGHT HORIZONS, MODERN FAMILY INDEX 2018 (Jan. 2019), *available at* https://www.brighthorizons.com/-/media/BH-New/Newsroom/Media-Kit/MFI_2018_Report_FINAL.ashx; KIM PARKER, JULIANA MENASCE HOROWITZ & MOLLY ROHAL, PEW RES. CTR., RAISING KIDS AND RUNNING A HOUSEHOLD: HOW WORKING PARENTS SHARE THE LOAD (Nov. 2015), *available at* https://www.pewresearch.org/wp-content/uploads/sites/3/2015/11/2015-11-04_working-parents_FINAL.pdf.

⁸ NAT'L WOMEN'S LAW CTR., INTERACTIVE MAP: WOMEN AND MEN IN THE LOW-WAGE WORKFORCE (July 20, 2018), <https://nwlc.org/resources/interactive-map-women-and-men-low-wage-workforce/>.

⁹ *See generally* NAT'L WOMEN'S LAW CTR., COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES (Apr. 2017), *available at* <https://nwlc.org/resources/collateral-damage-scheduling-challenges-workers-low-wage-jobs-and-their-consequences/>.

¹⁰ Women are 38% more likely than men to work part-time for economic reasons. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2017 (Aug. 2018), <https://www.bls.gov/opub/reports/race-and-ethnicity/2017/home.htm>. A report from the Economic Policy Institute found that "involuntary part-time work is increasing almost five times faster than part-time work and about 18 times faster than all work." LONNIE GOLDEN, ECON. POL'Y INST., STILL FALLING SHORT ON HOURS AND PAY (Dec. 2016), <http://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>.

¹¹ Between 2012 and 2016, 36% of women who filed sexual harassment charges also alleged retaliation, such as lost hours or job loss. AMANDA ROSSIE, JASMINE TUCKER & KAYLA PATRICK, NAT'L WOMEN'S LAW CTR., OUT OF THE SHADOWS: AN ANALYSIS OF SEXUAL HARASSMENT CHARGES FILED BY WORKING WOMEN 8 (Aug. 2018), *available at* <https://nwlc-ciww49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/08/SexualHarassmentReport.pdf>.

¹² NAT'L WOMEN'S LAW CTR. calculations based on U.S. CENSUS BUREAU, 2018 CURRENT POPULATION SURVEY using SARAH FLOOD ET AL., INTEGRATED PUBLIC USE MICRODATA SERIES (IPUMS): VERSION 6.0 [Machine-readable database] (Minneapolis: University of Minnesota, 2018) (hereinafter "2018 CURRENT POPULATION SURVEY").

- Of the nearly 22.6 million people working in low-wage jobs, two-thirds are women.¹³
- White, non-Hispanic women are one-third of low-wage workers but only 29.7% of the overall workforce.¹⁴
- Latinx women are 16% of low-wage workers but only 7.4% of the overall workforce.¹⁵
- Black women are 12% of low-wage workers but only 6.5% of the overall workforce are Black women.¹⁶
- More than 640,000 women in low wage jobs reported having a disability in 2017.¹⁷
- While there are limited data on lesbian, gay, bisexual, transgender, and queer (LGBTQ) women’s wages, given employment barriers they experience, many LGBTQ women are likely working in low-wage jobs¹⁸ with unstable schedules.
- Transgender people are also more likely to be in the income range impacted by a slower inflation measure—one survey found that 22% of transgender respondents had household incomes between \$10,000 and \$24,999 in 2014, compared to 12% of the U.S. adult population.¹⁹

If the Census Bureau uses a slower measure of inflation, many women will still have low levels of income that preclude them from meeting their basic needs. Moving the arbitrary and already inaccurate OPM goalpost used by the HHS Poverty Guidelines will deprive more low-income women and their families of public benefits and undermine their overall economic security.

¹³ *Id.*

¹⁴ *Id.* In this comment, the “white, non-Hispanic” race category includes those who identified themselves as white, but not of Hispanic origin in the source material.

¹⁵ *Id.* In this comment, the “Latinx” category includes people of any race who identified themselves to be of Hispanic, Latino, or Spanish origin.

¹⁶ *Id.* In this comment, the “Black” race category includes those who identified themselves as Black or African American.

¹⁷ NAT’L WOMEN’S LAW CTR. calculations based on U.S. CENSUS BUREAU, 2017 AMERICAN COMMUNITY SURVEY using IPUMS. Those with a disability reported at least one of the following: being blind or having serious difficulty seeing even with corrective lenses; being deaf or having serious difficulty hearing; cognitive difficulties because of a physical, mental, or emotional condition; serious difficulty walking or climbing stairs; any physical, mental, or emotional condition that makes it difficult or impossible to perform basic activities outside the home alone lasting 6 months or more; or any physical or mental health condition that makes it difficult to care of own personal needs such as bathing, dressing, or getting around inside the home lasting six months or more.

¹⁸ CAITLIN ROONEY & SARAH HASSMER, CTR. FOR AM. PROGRESS & NAT’L WOMEN’S LAW CTR., PROGRAMS THAT SUPPORT BASIC LIVING STANDARDS FOR LGBTQ WOMEN SHOULD BE STRENGTHENED – NOT CUT (Mar. 2019), <https://nwlc.org/resources/programs-that-support-basic-living-standards-for-lgbtq-women-should-be-strengthened-not-cut/>.

¹⁹ S.E. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 56, (Dec. 2016), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (comparing results of a national survey with 27,715 transgender respondents to income data from the U.S. Census Current Population Survey (CPS)).

- B. Using a lower, less accurate inflation index to calculate the annual adjustments to the OPM will impact the poverty guidelines produced annually by HHS and will result in benefit cuts for women and their families.

The HHS guidelines are based on the previous year's poverty thresholds; therefore, if the Census Bureau uses a lower inflation measure to calculate the OPM, a year later, HHS will set a lower poverty threshold than it would have under the CPI-U. Consequently, fewer people will be eligible for programs that use the HHS poverty guidelines, and this problem would be exacerbated over time.

Below are some of the programs that would be impacted if the Census Bureau uses the C-CPI-U to calculate the annual adjustments to the OPM:²⁰

Children's Health Insurance Program (CHIP) and Medicaid

CHIP is jointly funded by states and the federal government to provide health care coverage for children whose families cannot afford private insurance but whose income is not low enough to qualify them for Medicaid. It covers 8.9 million children²¹ and is an important source of coverage for children of color,²² providing them with critical coverage that includes routine doctor visits, preventive care, prescription medication, dental services, and immunizations. In addition, a number of states also cover certain adults and pregnant women under CHIP. Nineteen states²³ extend coverage to approximately 320,000 pregnant women,²⁴ with 16 of those states providing coverage regardless of immigration status,²⁵ giving them coverage they would not otherwise be able to afford.²⁶

Medicaid is a joint federal-state health coverage program that plays a critical role in providing coverage for women of all ages and needs.²⁷ The Affordable Care Act's (ACA)

²⁰ Using the PCEPI would lead to more people losing benefits under these programs.

²¹ CTR. FOR MEDICARE & MEDICAID SERVS., 2016 NUMBER OF CHILDREN EVER ENROLLED REPORT (2017), available at <https://www.medicaid.gov/chip/downloads/fy-2016-childrens-enrollment-report.pdf>.

²² KAISER FAMILY FOUND., NEXT STEPS FOR CHIP: WHAT IS AT STAKE FOR CHILDREN? (June 13, 2017), available at <http://files.kff.org/attachment/Fact-Sheet-Next-Steps-for-CHIP-What-is-at-Stake-for-Children>.

²³ KAISER FAMILY FOUND., MEDICAID AND CHIP INCOME ELIGIBILITY LIMITS FOR PREGNANT WOMEN AS A PERCENT OF THE FEDERAL POVERTY LEVEL (Jan. 1, 2018), available at <https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-pregnant-women-as-a-percent-of-the-federal-poverty-level>.

²⁴ KATE HONSBERGER, NAT'L ACAD. FOR STATE HEALTH POL'Y, CHIP COVERAGE IS IMPORTANT FOR PREGNANT WOMEN TOO (Nov. 15, 2016), <https://nashp.org/chip-coverage-is-important-for-pregnant-women-too/>.

²⁵ In 2002, the Bush Administration finalized a rule revising the definition of "child" under CHIP to include an "unborn child" who is eligible for CHIP if other applicable state eligibility requirements are met. While this rule change has been an important way for states to extend eligibility to pregnant women who do not meet the immigration status requirements of Medicaid, because it requires states to give services to the "unborn child" and not the pregnant woman, the full range of recommended pre- and post-natal services are not always paid for by CHIP or provided by every state that is participating.

²⁶ The CHIP program withholds insurance coverage for abortion, except in extremely limited circumstances where a woman is pregnant as a result of rape or incest, or when her life is in danger. 42 U.S.C. § 1397jj(a)(16) (2018).

²⁷ Federal law withholds insurance coverage of abortion from women qualified and eligible for the Medicaid program, except in the extremely limited circumstances where a woman is pregnant as a result

expansion of Medicaid eligibility to most individuals with incomes less than 138% of the Federal Poverty Level (FPL) extended Medicaid coverage to an additional 4.4 million non-elderly adult women who gained coverage between 2013 and 2016.²⁸ Medicaid covers an array of services including prenatal care, well-child visits, preventive services like mammograms, pap smears, birth control, and long-term care services, including nursing home coverage. Between Medicaid expansion and traditional Medicaid eligibility, over 33 million women and girls get their health coverage from Medicaid, and more than half of adult Medicaid recipients are women.²⁹ According to a national survey, 28% of LGBTQ women reported that they or their family participated in Medicaid,³⁰ and bi+ women³¹ were more likely than lesbians to report participating.³²

In addition, in 22 of the 25 states that provide Medicaid coverage for family planning services to people otherwise not eligible for Medicaid, eligibility for family planning service coverage is based on income relative to the federal poverty line.³³

If the Census Bureau uses the C-CPI-U to calculate the annual adjustments to the OPM, then:

- more than 300,000 children and some pregnant women would lose Medicaid or CHIP coverage over 10 years;³⁴
- more than 250,000 adults who gained Medicaid coverage through the ACA expansion would lose it over 10 years;³⁵ and
- thousands of people, mostly women, would lose Medicaid coverage for family planning services.

of rape or incest or when her life is in danger. See, e.g., Continuing Appropriations Act, 2019, Pub L. No. 115-245 (2018).

²⁸ NAT'L WOMEN'S LAW CTR. calculations based on AMERICAN COMMUNITY SURVEY (ACS) 2013 & 2016 (1-year average), using STEVEN RUGGLES, KATIE GENADEK, RONALD GOEKEN, JOSIAH GROVER, AND MATTHEW SOBEK, INTEGRATED PUBLIC USE MICRODATA SERIES: VERSION 6.0 (IPUMS) [Machine-readable database] (Minneapolis: University of Minnesota, 2016), *available at* <https://usa.ipums.org/usa/>.

²⁹ NAT'L WOMEN'S LAW CTR. calculations based on U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY, 2017 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT TABLE CREATOR, <http://www.census.gov/cps/data/cpstablecreator.html> (last visited Mar. 13, 2018).

³⁰ Government data is not available on the percentage of Medicaid recipients who are LGBT. The data provided comes from a nationally representative survey conducted by the Center for American Progress in 2017. CAITLIN ROONEY, CHARLIE WHITTINGTON & LAURA E. DURSO, CTR. FOR AM. PROGRESS, PROTECTING BASIC LIVING STANDARDS FOR LGBTQ PEOPLE (Aug. 2018), *available at* <https://cdn.americanprogress.org/content/uploads/2018/08/10095627/LGBT-BenefitCuts-report.pdf>.

³¹ Bi+ women in this context refers to respondents who identified as female or as a trans woman and who also identified as bisexual or queer.

³² SHABAB AHMED MIRZA, CTR. FOR AM. PROGRESS, DISAGGREGATING THE DATA FOR BISEXUAL PEOPLE 3 (Sept. 2018), *available at* <https://cdn.americanprogress.org/content/uploads/2018/09/21133117/BiCommunityStats-factsheet1.pdf>.

³³ ARON-DINE & BROADDUS, *supra* note 3.

³⁴ ARON-DINE & BROADDUS, *supra* note 3.

³⁵ ARON-DINE & BROADDUS, *supra* note 3.

ACA Marketplace

The ACA makes “cost-sharing reductions” available to low- and moderate-income families. These payments effectively lower the enrollees’ cost-sharing obligations.

If the Census Bureau uses the C-CPI-U to calculate the annual adjustments to the OPM, then more than 200,000 consumers would lose at least some of their cost-sharing assistance, significantly increasing their out-of-pocket costs.³⁶ Based on the Center on Budget and Policy Priorities’ initial calculations:

- More than 50,000 people would have deductibles increase by about \$600 (from about \$250 to \$850), based on 2019 cost-sharing levels.³⁷
- Another 50,000 or more people would have deductibles increase by about \$2,350 (from about \$850 to \$3,200).³⁸
- Tens of thousands more would have deductibles increase by about \$1,200 (from about \$3,200 to about \$4,400).³⁹

In addition, the ACA provides premium tax credits (PTCs), adjusted for income and geographic variations in insurance costs, to help low- and moderate-income women and families purchase health insurance. As of 2014, over 9 million women, who would otherwise have gone without affordable health insurance, were eligible to benefit from the tax credits, including a disproportionate number of women of color.⁴⁰

If the Census Bureau uses the C-CPI-U to calculate the annual adjustments to the OPM, then tens of thousands of consumers would lose their eligibility for PTCs, which would increase premiums by hundreds, and in many cases, thousands of dollars.⁴¹ And premiums will increase for most of the 8.2 million people who use PTCs to buy private insurance that costs more than their PTC, because they will receive a smaller PTC.⁴²

Title X

The Title X family planning program provides family planning and related preventive health services to low-income people. In 2017, the program served more than 4 million

³⁶ ARON-DINE & BROADDUS, *supra* note 3.

³⁷ ARON-DINE & BROADDUS, *supra* note 3.

³⁸ ARON-DINE & BROADDUS, *supra* note 3.

³⁹ ARON-DINE & BROADDUS, *supra* note 3.

⁴⁰ Brief for National Women’s Law Center et al. as Amici Curiae Supporting Respondents at 8, King v. Burwell, 576 U.S. ___, 135 S. Ct. 2480 (2015).

⁴¹ ARON-DINE & BROADDUS, *supra* note 3.

⁴² STAN DORN, FAMILIES USA, TRUMP ADMINISTRATION PROPOSAL REDEFINES POVERTY TO RAISE HEALTH CARE COSTS FOR MIDDLE-CLASS FAMILIES (May 2019), available at <https://familiesusa.org/product/trump-administration-proposal-redefines-poverty-raise-health-care-costs-middle-class>. For analysis of the state-by-state impact, see STAN DORN, FAMILIES USA, TRUMP ADMINISTRATION PROPOSAL REDEFINES POVERTY TO RAISE HEALTH CARE COSTS FOR MIDDLE-CLASS FAMILIES (May 2019), available at https://familiesusa.org/sites/default/files/product_documents/COV_Redefining-Poverty-to-Raise-Costs_Fact-Sheet.pdf.

people, 88% of whom were women.⁴³ A Title X-supported health care center was the *sole* source of medical care for 60% of women receiving contraceptive care at a Title X-supported provider.⁴⁴

In 2017, 3.6 million users of Title X health services qualified for either subsidized or no-charge services, and 67% (nearly 2.7 million) had family incomes at or below 100% of the poverty guidelines.⁴⁵ If the Census Bureau uses the C-CPI-U to calculate the annual adjustments to the OPM, then more low-income people will lose access to no-charge services, which are available to individuals with incomes at or below the HHS poverty guidelines. And more low-income people would be unable to receive subsidized services, which are available to families with incomes between 101% and 250% of the poverty guideline. These numbers will only grow over time, threatening vital family planning access for these women. Even small out-of-pocket costs can cause women to postpone or forgo preventive services, including birth control.⁴⁶

Supplemental Nutrition Assistance Program (SNAP)

SNAP, previously called Food Stamps, helps millions of families put food on the table. SNAP served more than 40.4 million people in more than 20.1 million households on average each month in fiscal year 2018.⁴⁷ SNAP is particularly important for women and children:

- In FY 2017, women were nearly 63% of adult recipients.⁴⁸
- In 2017, women of color were 35% of adult, non-elderly SNAP recipients were women of color.⁴⁹
- Over half (53%) of SNAP households with children were headed by a single adult, 94% of which were headed by women.⁵⁰

⁴³ C.I. FOWLER ET AL., RTI INT'L, FAMILY PLANNING ANNUAL REPORT: 2017 NATIONAL SUMMARY (Aug. 2018), available at <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2017-national-summary.pdf> (Exhibit 4).

⁴⁴ MEGHAN KAVANAUGH, USE OF HEALTH INSURANCE AMONG CLIENTS SEEKING CONTRACEPTIVE SERVICES AT TITLE X-FUNDED FACILITIES IN 2016, GUTTMACHER INST. (June 2018), <https://www.guttmacher.org/journals/psrh/2018/06/use-health-insuranceamong-clients-seeking-contraceptive-services-title-x>.

⁴⁵ FOWLER, *supra* note 43 (Exhibit 15).

⁴⁶ NAT'L WOMEN'S LAW CTR., THE AFFORDABLE CARE ACT'S BIRTH CONTROL BENEFIT: TOO IMPORTANT TO LOSE (June 2018), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/06/BC-Benefit-Whats-At-Stake-MH.pdf>.

⁴⁷ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM, FY 18 THROUGH FY 18 NATIONAL VIEW SUMMARY, <https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-4.pdf> (last updated May 3, 2019).

⁴⁸ KATHRYN CRONQUIST & SARAH LAUFFER, MATHEMATICA POL'Y RESEARCH, CHARACTERISTICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS: FISCAL YEAR 2017, xvi (Feb. 2019), available at <https://fns-prod.azureedge.net/sites/default/files/ops/Characteristics2017.pdf>.

⁴⁹ NAT'L WOMEN'S LAW CTR. calculations based on 2018 CURRENT POPULATION SURVEY, *supra* note 12.

⁵⁰ NAT'L WOMEN'S LAW CTR. calculations based on Cronquist & Lauffer, *supra* note 48, at 52 (Table A.14).

- Over 26% of LGBTQ women reported that they or their family received SNAP, compared to nearly 10% of non-LGBTQ women.⁵¹ Bi+ women are more likely than both lesbians and straight women to report that they or their family received SNAP.⁵²

The U.S. Department of Agriculture found that 15 million households with 40 million people faced food insecurity in 2017 – that is, they experienced difficulty in affording food.⁵³ Food insecurity is a widespread problem across a multitude of communities:

- More than 30% of people below 185% of the poverty line were food insecure.⁵⁴
- In 2017, about 14% of women living alone faced food insecurity.⁵⁵
- In 2014, same-sex couples were almost twice as likely as different-sex couples to experience food insecurity.⁵⁶
- In 2013, 33% of households with an adult age 18 to 64 with a disability who was not in the labor force, and 25% of households with adults age 18 to 64 with other reported disabilities, were food insecure.⁵⁷
- Food insecurity heightens the risk of rape, physical violence, or stalking by an intimate partner.⁵⁸
- In 2017, 12.5 million children (one in six children) in the U.S. lived in a household faced food insecurity.⁵⁹
- In 2017, over 30% of households with children headed by a single woman faced food insecurity.⁶⁰
- Studies have consistently found that households that include children with disabilities face high rates of food insecurity.⁶¹

⁵¹ Government data is not available on the percentage of SNAP recipients who are LGBT. The data provided comes from a nationally representative survey conducted by the Center for American Progress in 2017. ROONEY, WHITTINGTON & DURSO, *supra* note 30.

⁵² MIRZA, *supra* note 32, at 3.

⁵³ ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD INSECURITY IN THE UNITED STATES IN 2017, at 6 (Sept. 2018), *available at* <https://www.ers.usda.gov/webdocs/publications/90023/err-256.pdf?v=0>.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.* at 13.

⁵⁶ TAYLOR N.T. BROWN, ADAM P. ROMERO & GARY J. GATES, THE WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

⁵⁷ ALISHA COLEMAN-JENSEN & MARK NORD, U.S. DEP'T OF AGRIC., ECONOMIC RESEARCH SERVICE, FOOD INSECURITY AMONG HOUSEHOLDS WITH WORKING-AGE ADULTS WITH DISABILITIES (2013), *available at* https://www.ers.usda.gov/webdocs/publications/45038/34589_err_144.pdf?v=41284. Individuals with other reported disabilities are individuals “who had a disability but did not indicate they were out of the labor force due to disability.” For comparison, 12% of households with no disabled adult were food insecure. *Id.*

⁵⁸ MATTHEW J. BREIDING, MICHELE C. BLACK & JIERU CHEN, CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES — 2010 (2014), *available at* https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf.

⁵⁹ COLEMAN-JENSEN ET AL., *supra* note 53, at 9.

⁶⁰ COLEMAN-JENSEN ET AL., *supra* note 53, at 13.

⁶¹ SUSAN L. PARISH ET AL., LURIE INST. FOR DISABILITY POL'Y, Presentation at the National Association for Welfare Research and Statistics Annual Workshop: FOOD INSECURITY AMONG U.S. CHILDREN WITH

- A longitudinal survey found that nearly 29% of former foster youth at age 23 or 24 face food insecurity.⁶²

Households are ineligible for SNAP if their gross income exceeds an amount that is tied to 130% of the HHS poverty guidelines (between 130% and 200%, depending on the option the state adopts). For example, for a household of four people, the current gross monthly income cannot exceed the low range of \$2,720.⁶³ Each year, that figure is adjusted for inflation.

As the nation's largest federal food assistance program, SNAP is the first line of defense against food insecurity. SNAP works effectively by providing families struggling to make ends meet with monthly funds specifically designated for food purchases. The government should not be increasing the number of women, children, and families that do not qualify for SNAP assistance when so many beyond even the current guidelines find it difficult to afford an adequate diet. But this is exactly what will happen if the inflation adjustment shrinks. The Center on Budget and Policy Priorities estimates that nearly 2000,000 people would lose all their SNAP benefits if the C-CPI-U is used for the annual adjustments to the OPM.⁶⁴ Working families with small earnings gains over time will find themselves ineligible despite high housing, child care, or other work-related expenses. While SNAP allows households with gross income below the 130% of the poverty cutoff to qualify for higher benefits if they have high shelter costs, if their income exceeds the gross income standard, then they will be denied assistance altogether. Over 2.3 million people between 130% and 185% of the poverty line and over four million people above 185% of the poverty line *already* struggle with food insecurity,⁶⁵ further evidence of the inadequacy of the current federal poverty line as a measure of hardship, and this rule will exacerbate this problem.

School Meals

National school meals programs are federally assisted meals programs that are administered in public and non-profit private schools and residential child care facilities.⁶⁶ The National School Lunch Program (NSLP) provided nutritious lunches to

DISABILITIES (Aug. 2015), *available at* <http://nawrs.org/wp-content/uploads/2015/09/2C-Parish-Food-Insecurity.pdf>.

⁶² MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGES 23 AND 24, at 36 (2010), *available at* <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-23-and-24.pdf> (providing data based on respondents answering yes to questions such as “did not eat as much as you should because you did not have enough money for food”).

⁶³ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SNAP ELIGIBILITY <https://www.fns.usda.gov/snap/recipient/eligibility> (Table 1) (last visited June 17, 2019).

⁶⁴ AVIVA ARON-DINE ET AL., CTR. ON BUDGET AND POL'Y PRIORITIES, ADMINISTRATION'S POVERTY LINE PROPOSAL WOULD CUT HEALTH, FOOD ASSISTANCE FOR MILLIONS OVER TIME (June 18, 2019), <https://www.cbpp.org/research/poverty-and-inequality/administrations-poverty-line-proposal-would-cut-health-food>.

⁶⁵ COLEMAN-JENSEN ET AL., *supra* note 53, at 14 (Table 2).

⁶⁶ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., NATIONAL SCHOOL LUNCH PROGRAM 1 (Nov. 2017), *available at* <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf>.

29.8 million children each school day in FY 2018, 74% of which were served as free or reduced-price meals.⁶⁷ National School Lunch participants were 19% Black, 25% Latinx, and 51% white, non-Hispanic.⁶⁸ The School Breakfast Program (SBP) served breakfast to more than 14.7 million children each school day in FY 2018, 85% of which were served as free or reduced-price meals.⁶⁹

Students in households with incomes at or below 130% of the poverty line are eligible for free school breakfasts or lunches. A student from a household with income between 130 – 185% of the poverty threshold is eligible for a reduced-price meal. If the C-CPI-U is used for the annual adjustments to the OPM, then an estimated 100,000 school-age children would lose eligibility for school meals and more than 100,000 other children would lose their free meal eligibility.⁷⁰

In addition, certain students are considered categorically eligible for free school meals, including those whose households participate in SNAP, TANF, or the Food Distribution Program for Indian Reservations, and students who are homeless, migrant, or in foster care or Head Start programs. Students whose families receive SNAP or other benefits will no longer automatically qualify for free school meals if their families' earnings bump them out of eligibility for means-tested programs because of the shrinking poverty measure. These families will be hit extra hard by having to pay for school meals in addition to losing their eligibility for other vital programs. There is overwhelming evidence of the importance of adequate nutrition to children's health, development, and learning.⁷¹ Using a slower measure of inflation would make proper nutrition for children in school harder for their families to afford.

Women, Infants, and Children (WIC) Special Supplemental Nutrition Program

WIC provides grants to states for supplemental food, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and postpartum women, and to infants and children up to age five. In FY 2018, WIC provided nutritious food to over 6.8 million low-income pregnant women, new mothers, and young children on average each month.⁷² Thus far in FY 2019, the program has served more than 557,000 pregnant women, more than 518,000 breastfeeding women, more than 452,000 postpartum

⁶⁷ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., NATIONAL SCHOOL LUNCH PROGRAM: PARTICIPATION AND LUNCHES SERVED, *available at* <https://www.fns.usda.gov/sites/default/files/pd/slsummar.pdf> (last visited May 17, 2019). FY 2018 data are preliminary.

⁶⁸ ELIZABETH POTAMITES ET AL., MATHEMATICA POL'Y RESEARCH, CHILDREN'S FOOD SECURITY AND INTAKES FROM SCHOOL MEALS (2010), *available at* <https://naldc.nal.usda.gov/download/42320/PDF>.

⁶⁹ U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., SCHOOL BREAKFAST PROGRAM: PARTICIPATION AND MEALS SERVED, <https://www.fns.usda.gov/sites/default/files/pd/sbsummar.pdf> (last visited May 17, 2019). FY 2018 data are preliminary.

⁷⁰ ARON-DINE ET AL., *supra* note 64.

⁷¹ STEVEN CARLSON ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, SNAP WORKS FOR AMERICA'S CHILDREN (Sept. 29, 2016), <https://www.cbpp.org/research/food-assistance/snap-works-for-americas-children>.

⁷² U.S. DEP'T OF AGRIC., SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC), MONTHLY DATA – NATIONAL LEVEL, https://www.fns.usda.gov/sites/default/files/pd/37WIC_Monthly.pdf (last visited May 17, 2019).

women, more than 1.6 million infants, and more than 3.3 million children overall, on average each month.⁷³

WIC income eligibility is set at 185% above the federal poverty threshold. If C-CPI-U is used for the annual inflation adjustment for the OPM, about 40,000 infants and young children would lose access to WIC's nutrition intervention and breastfeeding support.⁷⁴ WIC's preventative care reduces the risk of preterm birth, low birthweight, and infant death – saving significant healthcare costs associated with birth complications.⁷⁵ WIC's child food package, which supports children up to age five, is also associated with reducing childhood obesity and addressing micronutrient deficiencies.⁷⁶ WIC's early investments in a child's health and nutrition return dividends for the remainder of that child's life. This proposal would deprive infants and young children of the healthy start that they need in life.

Low Income Home Energy Assistance Program (LIHEAP)

LIHEAP helps families with low incomes heat and cool their homes. In FY 2017, an estimated 5.4 million households received LIHEAP heating assistance.⁷⁷ In FY 2014, nearly three-quarters (74%) of the households that received LIHEAP assistance had a household member who was elderly, a child, or a person with a disability.⁷⁸

Most states set income eligibility for LIHEAP at 150% of the HHS poverty guidelines.⁷⁹ Under law, states can choose to set a lower eligibility level, but at not less than 110% of the poverty guidelines. Over time, shrinking the inflation adjustment for the OPM will mean more households will exceed the 150% cutoff and consequently will be denied LIHEAP assistance.

Head Start

The Head Start program provides grants to public and private agencies to provide comprehensive early education and child development services to low-income children

⁷³ U.S. DEP'T OF AGRIC., SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC), MONTHLY DATA – AGENCY LEVEL, PARTICIPATION AND PROGRAM COSTS BY CATEGORY PER PERSON, <https://www.fns.usda.gov/sites/default/files/pd/WICAgencies2019ytd.xls> (last visited May 17, 2019). FY 2019 data are preliminary.

⁷⁴ ARON-DINE ET AL., *supra* note 64.

⁷⁵ Kathryn R. FINGAR ET AL., REASSESSING THE ASSOCIATION BETWEEN WIC AND BIRTH OUTCOMES USING A FETUSES-AT-RISK APPROACH, 21 J. MATERNAL AND CHILD HEALTH 825-835 (2017).

⁷⁶ Madeleine I.G. DAEPP ET AL., WIC FOOD PACKAGE CHANGES: TRENDS IN CHILDHOOD OBESITY PREVALENCE, 143 PEDIATRICS (May 2019), *available at* <https://pediatrics.aappublications.org/content/143/5/e20182841>.

⁷⁷ U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, LOW INCOME HOME ENERGY ASSISTANCE PROGRAM, at vi (Nov. 2019), *available at* https://www.acf.hhs.gov/sites/default/files/ocs/comm_ocs_liheap_factsheet_nov2018.pdf (hereinafter "LIHEAP FY 2017").

⁷⁸ U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES, LOW INCOME HOME ENERGY ASSISTANCE PROGRAM, REPORT TO CONGRESS 2014, at 56 (Dec. 2016), *available at* https://www.acf.hhs.gov/sites/default/files/ocs/fy14_liheap_rtc_final.pdf.

⁷⁹ LIHEAP FY 2017, *supra* note 74.

and families. The program helps preschool-age children build their cognitive, learning, and social-emotional skills to prepare them for school. The Head Start preschool program served 790,099 young children in 2018.⁸⁰ More than two in three families (69%) served by the program included at least one working parent.⁸¹ Among children in Head Start preschool, 31% were Black, non-Hispanic, 24% were white, non-Hispanic, and 35% were Latinx.⁸²

The Early Head Start program provides comprehensive early learning and child development services to low-income pregnant women and families with children under age three. The Early Head Start program served 224,596 children under age three and 15,265 pregnant women in 2018.⁸³ More than two in three families (69%) served by the program included at least one working parent.⁸⁴ Twenty-eight percent of children served by Early Head Start were Black, non-Hispanic, 24% were white, non-Hispanic, and 35% were Latinx.⁸⁵

Under the 2007 Head Start Act,⁸⁶ Head Start considers families' incomes when determining a child's eligibility, and the poverty guideline is the primary means for determining eligibility. Consequently, if the annual inflation adjustment for the poverty measure shrinks, fewer children will be eligible for Head Start's critical education and comprehensive services.

Other Programs

Below are some of the other vital programs for women, children, and families that also use the HHS Poverty Guideline and would have benefit cuts if a slower measure of inflation is used for the OPM:

- Community Services Block Grant
- Hill-Burton Uncompensated Services Program
- AIDS Drug Assistance Program
- Medicare – Prescription Drug Coverage (subsidized portion only)
- Community Health Centers
- Migrant Health Centers
- Health Professions Student Loans — Loans for Disadvantaged Students
- Health Careers Opportunity Program
- Scholarships for Health Professions Students from Disadvantaged Backgrounds
- Job Opportunities for Low-Income Individuals

⁸⁰ Unpublished Ctr. for Law and Social Pol'y analysis of 2018 Office of Head Start Program Information Report (PIR) data. This analysis includes children served in both Head Start preschool and AIAN Head Start.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Unpublished Ctr. for Law and Social Pol'y analysis of 2018 Office of Head Start Program Information Report (PIR) data. This analysis includes children served in both Early Head Start and AIAN Early Head Start.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 42 U.S.C. 9840 § 645(a)(1)(B).

- Assets for Independence Demonstration Program
- Expanded Food and Nutrition Education Program
- Weatherization Assistance for Low-Income Persons
- Job Corps
- National Farmworker Jobs Program
- Senior Community Service Employment Program
- Workforce Investment Act Youth Activities
- Low-Income Taxpayer Clinics
- Foster Grandparent Program
- Senior Companion Program
- Legal Services for the Poor

Before considering moving forward with any change, OMB should identify the full list of programs directly or indirectly affected by changing the guidelines, analyze the impact of the proposed change on these programs, and solicit public comment.

- C. The Administration cannot unilaterally make any change that would impact the OPM, including using a different inflation measure for its annual adjustments.

The Administration must work with Congress before moving forward with any change that would impact the poverty line methodology. Congress has passed many pieces of legislation over the last several decades related to Medicaid, WIC, SNAP and school meals eligibility, always under the assumption that the poverty line would continue to be calculated under the current methodology. For example, Congress has based its decisions on Congressional Budget Office analyses of how legislation would affect federal costs, the number of people with health insurance coverage, and other outcomes. These analyses have always assumed that the current poverty line methodology would remain in place. Any change to the inflation measure would be setting federal program eligibility limits in these programs below the levels that Congress intended to set and must be done in consultation with Congress and the public.

III. Using a slower inflation measure for the OPM will exacerbate underlying issues with the OPM itself.

Even if OMB were to reject slower inflation measures such as the C-CPI-U and PCEPI and instead choose a more accurate inflation estimate that matches the realities of low-income people's lives, a more accurate inflation estimate will not by itself create a more accurate OPM.

The current OPM is based on a decades-old formula that is incomplete and outdated. It was first set during the Johnson Administration after research showed that low-income families at the time spent about one-third of their income on food. Since then, it has basically been increased for inflation, but without a serious revision based on current spending patterns. Today's families with children, for example, spend a high percentage of their income on housing and child care.

The poverty line is already too low, at just \$24,858 a year for a family of four with children. According to the National Center for Children in Poverty's Basic Needs Budget Calculator, a family of four with two children living in Washington, D.C. needs an annual income of \$72,297 to meet its basic needs, which is nearly three times the current poverty threshold.⁸⁷ Rent for a modest two-bedroom apartment in many areas plus the cost of food alone consumes most of the poverty threshold for a two-adult family.⁸⁸

IV. OMB should reject any proposal to use a slower inflation rate because it will harm low-income women, children, and families.

Families below and just above the current OPM currently experience high rates of financial insecurity and hardship. Shrinking the annual rate of increase in the OPM will artificially push people over the poverty line even though they struggle to make ends meet. As set forth above, such a change would be inaccurate and would have harmful impacts—it would increase hardships for women with low incomes and their families, as well as for retirees whose earnings were never high and who were unable to build adequate savings.

OMB should not ignore all the evidence of low-income individuals' and families' spending and income patterns and simply shrink the annual inflation adjustment for the poverty measure. Far from making the annual assessment more accurate, it will make the current flaws worse. Women, especially women with multiple marginalized identities, children, and low-income retirees would be most adversely affected by this unsupported change. They need health care, nutrition assistance, LIHEAP, Head Start, and other programs that help them meet their basic needs. Denying them benefits by making the poverty line a less accurate reflection of their circumstances is contrary to Congressional intent and the national interest. Consequently, the Center urges OMB to reject any proposal to use a slower and less accurate measure of inflation.

Sincerely,



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⁸⁷ NAT'L CTR. FOR CHILDREN IN POVERTY, BASIC NEEDS BUDGET CALCULATOR, <http://www.nccp.org/tools/frs/budget.php> (last accessed May 22, 2019).

⁸⁸ ARLOC SHERMAN & PAUL N. VAN DE WATER, CTR. ON BUDGET AND POL'Y PRIORITIES, REDUCING COST-OF-LIVING ADJUSTMENT WOULD MAKE POVERTY LINE A LESS ACCURATE MEASURE OF BASIC NEEDS (June 11, 2019), <https://www.cbpp.org/research/poverty-and-inequality/reducing-cost-of-living-adjustment-would-make-poverty-line-a-less>.



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