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FLORIDA TAX REVIEW

Volume 21

2017

Number 1

(ANTI)POVERTY MEASURES EXPOSED

by

Francine J. Lipman*

ABSTRACT

Few economic indicators have more salience and pervasive financial impact on everyday lives in the United States than poverty measures. Nevertheless, policymakers, researchers, advocates, and legislators generally do not understand the details of poverty measure mechanics. These detailed mechanics shape and reshape poverty measures and the too often uninformed responses and remedies. This Article will build a bridge from personal portraits of families living in poverty to the resource allocations that failed them by exposing the specific detailed mechanics underlying the Census Bureau's official (OPM) and supplemental poverty measures (SPM). Too often, when we confront the problem of poverty, the focus is on the lives and behavior of those suffering the burdens of poverty and not on the inadequacy of resource allocations in antipoverty programs. The purpose of poverty measures should be to expose the effectiveness and failures of antipoverty programs so that they can be improved, not to scrutinize the lives and characteristics of those who are enduring these hardships.

This Article exposes poverty measures through the details of the United States' current antipoverty programs, including the demographics of the populations who are included as beneficiaries and those that are left without adequate resources to survive. After reverse engineering the OPM and SPM, the Article describes the raw data from the starting population universes but then reveals the details of U.S. citizens and residents who have been intentionally excluded from the poverty analysis. The Article reveals that the excluded population is likely disproportionately poor and, thus, their erasure from the starting population universe understates derived poverty rates. Therefore, as a starting point, the OPM and SPM exclude millions of vulnerable Americans from the Census Bureau's poverty measurement analyses. Nevertheless, the Article continues its poverty measure analysis using the Census Bureau's original databases and rebuilds the OPM and SPM from the original population universes by applying each resource allocation program by program until demographic patterns emerge of who is lifted out of poverty proportionately or disproportionately in accordance with their pre-allocation poverty percentages in the population universes. By shifting the focus from Americans who suffer scarcity to the details of each antipoverty program and the demographics of who and in what proportion they are served by these programs, we better understand why almost 50 million Americans, including 16 million children, are not adequately provided for; do not have the necessary life resources; are struggling day in and day out; have been "nickel and dimed"; and are not getting by in the United States; and who, because of the misallocation (not lack) of resources, suffer the persistent and pernicious plight of poverty.

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I. INTRODUCTION

“Few topics in American society have more myths and stereotypes surrounding them than poverty, misconceptions that distort both our politics and our domestic policy making.”¹

A. *What Is Poverty?*

If I keep missing school, then I see my future poor, on the streets, in a box, not even, and asking for money everywhere, everybody, and then stealing stuff from stores. And, yeah, I don’t want to steal stuff. I don’t want to do any of that stuff. I want to get an education and a good job. I believe that I’m going to get a perfect job that I like and that I want to do. People can’t stop you from believing in your own dreams. [Kaylie, age ten.]²

Mollie Orshansky was a government economist in the 1960s who designed the poverty thresholds that the U.S. Census Bureau uses today to define poverty in the official poverty measure (OPM).³ However, her goal was not to measure poverty but rather “to assess the relative risks of low economic status (or, more broadly, the differentials in opportunity) among different demographic groups of families with children.”⁴ After President Lyndon Johnson declared “war on poverty” in January 1964, the newly formed Office of Economic Opportunity (OEO), which administered most of the antipoverty programs under the leadership of R. Sargent Shriver, adopted Orshansky’s poverty thresholds as a working definition of poverty for statistical, planning, and budget purposes in May 1965.⁵

After the OEO adopted her poverty thresholds, Ms. Orshansky answered the illusive question “What is poverty?” as follows: “[P]overty, like beauty, lies in the eye of the beholder. Poverty is a value judgment; it is not something one can verify or demonstrate, except by inference and suggestion, even with a measure

1. Mark R. Rank, *Poverty in America Is Mainstream*, N.Y. TIMES: OPINIONATOR (Nov. 2, 2013, 2:30 PM), <https://opinionator.blogs.nytimes.com/2013/11/02/poverty-in-america-is-mainstream/> (demonstrating that poverty in America is pervasive and a result of certain life cycle events that cause reduced cash flow and increased expenses, resulting in the inability to sustain a basic quality of life).

2. Jezza Neumann & Lauren Mucciolo, *Poor Kids*, FRONTLINE (PBS television broadcast Nov. 20, 2012), <http://www.pbs.org/wgbh/frontline/film/poor-kids/transcript/> [hereinafter *Poor Kids*] (“My name is Kaylie Hegwood and I live in Stockton, Iowa. [Doing cartwheels] Oh, yay! That one was good! That one was good. I am 10 years old, and I live with my mother and my brother, Tyler. And he is 12 years old. I don’t think we’re a rich family but, like, I think we’re kind of a poor family. I’m hungry.”).

3. Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, 55 SOC. SECURITY BULL., no. 1, 1992, at 3 (describing a detailed history of the development of the poverty thresholds in 1963–64 that are used today in the U.S. official poverty measurements).

4. *Id.* at 3.

5. *Id.* at 3–4.

of error. . . . [W]hen it comes to defining poverty, you can only be more subjective or less so. You cannot be nonsubjective.”⁶

The analogy of “defining poverty” to “beholding beauty” is jarring because, subjectively or objectively, there is nothing particularly beautiful about poverty.⁷ Poverty is hunger,⁸ homelessness,⁹ and harmful to the

6. Mollie Orshansky, *How Poverty Is Measured*, MONTHLY LAB. REV., Feb. 1969, at 37, 37 (setting forth a description of poverty from a Social Security Administration economist who was the original designer of the U.S. poverty guidelines implemented in connection with President Lyndon Johnson’s War on Poverty in 1963–64 and still used today in the OPM); see also Fisher, *supra* note 3 (describing how Mollie Orshansky, an economist in the Social Security Administration, developed a poverty threshold that the federal government adopted as its official statistical definition of poverty in August of 1969).

7. Linda Tirado, *This Is Why Poor People’s Bad Decisions Make Perfect Sense*, HUFFINGTON POST: THE BLOG (Nov. 22, 2013, 5:18 PM), http://www.huffingtonpost.com/linda-tirado/why-poor-peoples-bad-decisions-make-perfect-sense_b_4326233.html (“We don’t apply for jobs because we know we can’t afford to look nice enough to hold them. I would make a super legal secretary, but I’ve been turned down more than once because I ‘don’t fit the image of the firm,’ which is a nice way of saying ‘gtfo, pov.’ I am good enough to cook the food, hidden away in the kitchen, but my boss won’t make me a server because I don’t ‘fit the corporate image.’ I am not beautiful. I have missing teeth and skin that looks like it will when you live on B12 and coffee and nicotine and no sleep. Beauty is a thing you get when you can afford it, and that’s how you get the job that you need in order to be beautiful. There isn’t much point trying.”). But see Pam Fessler, *In Appalachia, Poverty Is in the Eye of the Beholder*, NAT’L PUB. RADIO (Jan. 18, 2014, 10:38 AM), <http://www.npr.org/2014/01/18/263629452/in-appalachia-poverty-is-in-the-eye-of-the-beholder> (describing that some poor individuals in Appalachia do not believe they are poor when faith and family are included in the analysis and feel that the stigma of poverty in Appalachia might be worse than the status itself).

8. INTERFAITH FOOD PANTRY, ADVOCACY ACADEMY HANDBOOK 6 (2016), <http://mcifp.org/wp-content/uploads/2014/10/Advocacy-Handbook.pdf> (“More than 48.1 million Americans lived in households that struggled against hunger in 2014. The 2014 numbers were a slight decline (of fewer than a million people) from 2013, with the rate declining from 15.8 to 15.4 percent. The number of individuals in households that faced the deepest struggles with hunger—‘very low food security’—was 5.5 percent in 2014. 15.3 million children lived in food insecure households in 2014, compared to 15.8 million in 2013.” (quoting Food and Research and Action Center (www.frac.org) webpage that is no longer available)); see also ALISHA COLEMAN-JENSEN ET AL., U.S. DEP’T OF AGRIC., ERR-194, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2014, at 8–10 (2015), https://www.ers.usda.gov/webdocs/publications/45425/53740_err194.pdf?v=42515 (finding that 14% of households or 17.4 million households were food insecure which is significantly lower statistically than in 2011 when the percentage reached a high of 14.9%).

9. NAT’L ALLIANCE TO END HOMELESSNESS, THE STATE OF HOMELESSNESS IN AMERICA 3 (2016) (“On a single night in January 2015, 564,708 people were experiencing homelessness—meaning they were sleeping outside or in an emergency shelter or transitional housing program. From 2014 to 2015, overall homelessness decreased by 2.0 percent and homelessness decreased among every major sub-population: unsheltered persons (1.2 percent), families (4.6 percent), chronically homeless individuals (1.0 percent), and veterans (4.0 percent). . . . In 2014, 7 million people in poor households were doubled up with family and friends, the most common prior living situation before becoming homeless. This represents a 9 percent decrease from 2013 and the first significant decrease in the size of this at-risk population since the Great Recession. Forty-seven states and D.C. had decreases. Still, the number of people in poor households living doubled up is 52 percent higher now than in 2007, prior to the recession.” (footnotes omitted)); see also HUD 2015 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations, U.S. DEP’T HOUS. & URB. AFF. (Oct. 27, 2015), https://www.hudexchange.info/resource/reportmanagement/published/CoC_PopSub_NatlTerrDC_2015.pdf.

mind, body, and soul.¹⁰ Poverty is situational,¹¹ generational,¹² urban,¹³ rural,¹⁴ with an absolutist core and relative qualities.¹⁵ Poverty is expensive,¹⁶ persistent,¹⁷ pervasive,¹⁸ and criminalized in the United States today.¹⁹

10. ERIC JENSEN, *TEACHING WITH POVERTY IN MIND: WHAT BEING POOR DOES TO KIDS' BRAINS AND WHAT SCHOOLS CAN DO ABOUT IT* 6–7 (2009) (defining poverty as “a chronic and debilitating condition that results from multiple adverse synergistic risk factors and affects the mind, body, and soul” and noting “It’s safe to say that poverty and its attendant risk factors are damaging to the physical, socioemotional, and cognitive well-being of children and their families. Data from the Infant Health and Development Program show that 40 percent of children living in chronic poverty had deficiencies in at least two areas of functioning (such as language and emotional responsiveness) at age 3.” (citations omitted)).

11. See JOEL F. HANDLER & YEHESEKEL HASENFELD, *BLAME WELFARE, IGNORE POVERTY AND INEQUALITY* (2007).

12. See, e.g., JILL DUERR BERRICK, *FACES OF POVERTY: PORTRAITS OF WOMEN AND CHILDREN ON WELFARE* 3 (1995); SHARON HAYS, *FLAT BROKE WITH CHILDREN: WOMEN IN THE AGE OF WELFARE REFORM* (2003).

13. See, e.g., JAY MACLEOD, *AIN’T NO MAKIN’ IT: ASPIRATIONS AND ATTAINMENT IN A LOW-INCOME NEIGHBORHOOD* (3d ed. 2009); KATHERINE S. NEWMAN, *NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY* (1999).

14. For an evocative understanding of the myths and realities of rural poverty, see CYNTHIA M. DUNCAN, *WORLDS APART: WHY POVERTY PERSISTS IN RURAL AMERICA* (1999); Lisa R. Pruitt, *Missing the Mark: Welfare Reform and Rural Poverty*, 10 J. GENDER RACE & JUST. 439, 447–51 (2007) (finding that welfare reform has compromised antipoverty programs for women and children living in rural areas so that they are overrepresented in measurements of poverty and underrepresented among those receiving resources); Lisa R. Pruitt, *Spatial Inequality As Constitutional Infirmary: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1, 17 (2010) (finding that “rural poor tend to be spatially marginalized just as they are also socially marginalized” similar to racial minorities and that one study found that “half of all rural poor are segregated in high poverty areas,” but that rural minorities have even greater rates of concentrations of poverty (citations omitted)).

15. JENSEN, *supra* note 10 (discussing the definition of poverty as situational, generational, absolute, relative, urban, and rural).

16. Poor families suffer financial penalties relative to their wealthier counterparts because many of their necessary goods and services cost more due to the facts and circumstances of their economic status. A. Yesim Orhun, *Frugality Is Hard to Afford*, MICH. ROSS (Feb. 24, 2016), <https://michiganross.umich.edu/rtia-articles/frugality-hard-afford> (demonstrating that low-income households suffer a “poverty penalty” as they pay 5.5% more per roll of toilet paper than higher income households who can take advantage of bulk purchases and other cost-savings strategies).

17. An important aspect of poverty is the amount of time it is experienced or its persistence. “Persistent poverty also demonstrates a strong regional pattern, with nearly 84 percent of persistent-poverty counties in the South, comprising of more than 20 percent of all counties in the region.” *Geography of Poverty*, U.S. DEP’T AGRIC. ECON. RES. SERV., <http://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/geography-of-poverty.aspx> (last updated Mar. 1, 2017).

18. JOHN ICELAND, *POVERTY IN AMERICA: A HANDBOOK* (3d ed. 2013) (describing the pervasiveness of poverty in America); *Child Poverty Pervasive in Large American Cities*, *New Census Data Show*, NAT’L CTR. FOR CHILD. POVERTY, http://www.nccp.org/media/releases/release_162.html (last visited Nov. 14, 2017) (“At 30.6 percent, the child poverty rate for all U.S. large cities (defined as the 71 cities with a total population of 250,000 or higher in 2007) is substantially higher than the 19.9 percent poverty rate for all children in the United States in 2013.”).

19. Karen Dolan & Jodi L. Carr, *The Poor Get Prison: The Alarming Spread of the Criminalization of Poverty*, INST. FOR POL’Y STUD. 5, 6 (Mar. 18, 2015), <http://www.ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf> (“Poor people, especially people of color, face a far greater risk of being fined, arrested, and even incarcerated for minor offenses than other Americans. A broken taillight, an unpaid parking ticket, a minor drug offense, sitting on a sidewalk, or sleeping in a park can all result in jail time. . . . Poverty leads easily to criminal charges from unpaid debts, unrenewed licenses and the like. Criminal charges in turn lead to ever-mounting debt and, despite laws prohibiting debtor’s prisons, to incarceration.”); see also KAARYN S. GUSTAFSON, *CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY* (2011) (demonstrating that the boundaries between the

Defining poverty has been and continues to be politically charged and controversial,²⁰ “[a]lthough poverty is a concrete phenomenon for those that live it.”²¹ As Justice Stewart of the U.S. Supreme Court noted about pornography, poverty too may be indefinable, but you know it when you see it.²² After declaring “war on poverty” in 1964, President Johnson and his wife, “Lady Bird,” brought poverty into the living rooms of America’s upper and middle classes with their media-rich, televised, white-hat-and-heels poverty tour in Appalachia.²³ More recently, amidst the heat and humidity in August 2011, Tavis Smiley and Cornel West embarked on, and later televised, an 18-city “Call to Conscience” poverty tour designed to highlight and humanize the plight of America’s poor during the most recent unprecedented economic downturn.²⁴ They wrote a poverty manifesto, which attempts to define, describe, demystify, demythologize, deconstruct, and propose a remedy for poverty in the twenty-first century.²⁵ Nevertheless, poverty continues to be elusive to encapsulate. However, the federal government does measure it annually.

B. How Is Poverty Measured?

When you look at a homeless shelter, there are an awful lot of people in there who do have an education, who did go to school, and all it took was one paycheck, one electricity or utility bill that they didn’t pay, that can cause things to start going wrong.²⁶

criminal justice and welfare systems have been compromised by implicit and explicit biases against those without resources and broken, racist social services institutions); Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643 (2009) (describing the pernicious intersection of poverty and crime and crime and poverty); Barbara Ehrenreich, *How America Turned Poverty into a Crime*, SALON (Aug. 9, 2011, 12:10 PM), http://www.salon.com/2011/08/09/america_crime_poverty/.

20. COUNCIL OF ECON. ADVISORS, *THE WAR ON POVERTY 50 YEARS LATER: A PROGRESS REPORT* 7 (2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/50th_anniversary_cea_report_-_final_post_embargo.pdf (noting that defining poverty requires determining what constitutes basic needs for various households and what resources should be included); U.S. DEP’T OF HEALTH, EDUC., & WELFARE, *A MEASURE OF POVERTY: A REPORT TO CONGRESS AS MANDATED BY THE EDUCATION AMENDMENTS OF 1974*, at 2 (1976) (“The dictionary assigns to the word poverty a limited if imprecise meaning: lack of money or personal possessions. However, even a cursory review of the literature on poverty reveals that for many people the word has connotations broader or more narrow than the dictionary definition.”); NAT’L RESEARCH COUNCIL, *MEASURING POVERTY: A NEW APPROACH* 19 (Constance F. Citro & Robert T. Michael eds., 1995) (describing the development of the poverty thresholds by Ms. Mollie Orshansky in the early 1960s and noting “We define poverty as economic deprivation.”).

21. ICELAND, *supra* note 18, at 12 (addressing the question of what is poverty).

22. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

23. *Poverty Tours April–May 1964* (Navy Films 1964), LYNDON B. JOHNSON PRESIDENTIAL LIBR., <http://www.lbjlibrary.org/press/civil-rights-tax-cuts-and-the-war-on-poverty> (President Lyndon B. Johnson and Lady Bird Johnson, in a highly publicized and produced media tour, visit Appalachia, including the rural home of Mr. Tom Fletcher and his wife and eight children. Mr. Fletcher was an unemployed sawmill worker living in Inez, Kentucky.).

24. TAVIS SMILEY & CORNEL WEST, *THE RICH AND THE REST OF US: A POVERTY MANIFESTO* 4, 6 (2012) (documenting Smiley and West’s poverty tour and a televised 2012 symposium at George Washington University in Washington D.C. titled “Remaking America: From Poverty to Prosperity”).

25. *Id.* at 169–72; *see also* HANDLER & HASENFELD, *supra* note 11, at 316–48 (setting forth a comprehensive remedy for poverty in America).

26. Azmat Khan, *Jezza Neumann on Making the Film & Helping the Kids*, FRONTLINE (Nov. 20, 2012), <http://www.pbs.org/wgbh/frontline/article/making-poor-kids-a-conversation-with-filmmaker-jezza-neumann/> (interviewing the filmmaker/producer of *Poor Kids*).

The federal government has officially measured poverty since the mid-1960s.²⁷ Beginning annually in 1969, the government has publicly released OPM statistics.²⁸ In response to decades of criticism of the OPM, the federal government has developed an alternative, more modern and relevant measure that they are now producing together with the OPM annually.²⁹ The new measure is titled the “supplemental poverty measure (SPM)” and has been generated and produced beginning in November of 2011 reflecting 2010 data.³⁰ The U.S. Census Bureau generates annual income and poverty reports summarizing the annual OPM and SPM statistics.³¹

As Mollie Orshansky, the creator of the U.S. poverty thresholds wisely observed, “[t]here is no particular reason to count the poor unless you are going to do something about them.”³² Reporting on the percentage of poor under the OPM and SPM is only useful if advocates and policy makers use the data to determine why, to what extent, how, and for whom the United States’ resource allocation systems have failed. Rather than focusing on the people living in poverty as the problem, scholars need to better understand our current resource allocation systems, how they are deficient, and how best to remedy the misallocation of resources.³³ The mechanics of deriving the OPM and SPM can provide some of this data and information. Once the details of antipoverty relief are exposed, advocates can better address and remedy poverty or the very serious long-term problem of misallocation of resources in the United States.

The U.S. Census Bureau and Department of Labor provide explicit technical explanations of the OPM³⁴ and SPM,³⁵ but these explanations lack transparency, are not generally accessible, and do not resonate with non-number savvy individuals. On the other hand, sociologists including Barbara

27. JULIET BRODIE ET AL., *POVERTY LAW: POLICY & PRACTICE* 9 (2014) (introducing poverty through a brief historical discussion of poverty measures including poverty guidelines issued by the Department of Health and Human Services and poverty thresholds issued by the Bureau of Census).

28. COUNCIL OF ECON. ADVISORS, *supra* note 20, at 7 (recounting that the Office of Economic Opportunity has computed the official poverty measure internally since 1965).

29. See, e.g., TRUDI RENWICK AND LIANA FOX, U.S. CENSUS BUREAU, P60-258, *THE SUPPLEMENTAL POVERTY MEASURE: 2015*, at 1 (2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-258.pdf> [hereinafter *SPM 2015*].

30. See *id.*; see also NAT’L RESEARCH COUNCIL, *MEASURING POVERTY*, *supra* note 20; *Observations from the Interagency Technical Working Group on Developing a Supplemental Poverty Measure*, BUREAU LAB. STAT. (Mar. 2010), https://www.bls.gov/pir/spm/spm_twg_observations.pdf [hereinafter *Developing a Supplemental Poverty Measure*].

31. See ALEMAYEHU BISHAW AND BRIAN GLASSMAN, U.S. CENSUS BUREAU, ACSBR/15-01, *POVERTY: 2014 AND 2015* (2016), <https://census.gov/content/dam/Census/library/publications/2016/demo/acsbr15-01.pdf> (report regarding the 2014 and 2015 poverty measure results).

32. Orshansky, *supra* note 6, at 37 (describing poverty as a subjective value judgement).

33. See, e.g., Julie A. Nice, *Forty Years of Welfare Policy Experimentation: No Acres, No Mule, No Politics, No Rights*, 4 NW. J.L. & SOC. POL’Y 1, 1 (2009) (finding that America has spent “four decades funding massive policy experimentation designed to discover how best to keep poor people off the welfare rolls” and it has succeeded in its war against welfare despite having failed miserably in its war against poverty).

34. CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, P60-252, *INCOME AND POVERTY IN THE UNITED STATES: 2014* (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>.

35. KATHLEEN SHORT, U.S. CENSUS BUREAU, P60-254, *THE SUPPLEMENTAL POVERTY MEASURE: 2014* (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-254.pdf> [hereinafter *SPM 2014*].

Ehrenreich,³⁶ Kathryn J. Edin,³⁷ Matthew Desmond,³⁸ Jonathan Kozol,³⁹ Katherine S. Newman,⁴⁰ as well as others, including Smiley and West,⁴¹ have provided detailed ethnographies of families and individuals living in poverty.⁴² These stories are effective and resonate deeply by painting humanized portraits of the daily challenges of living without adequate resources.⁴³ However, this scholarship is not designed to present a macro view of poverty or even the legal and demographic details of antipoverty program successes and institutional failures. There is a telling gap between these two approaches and presentations in poverty scholarship.⁴⁴

The Census Bureau provides a macroanalysis of poverty using the exhaustive, annual statistics and data inherent in the OPM and SPM. Ethnographers present a micro view of poverty from ground zero, inside sparse apartments and trailers as our neighbors wake up in hunger to unsatisfying breakfasts of coffee and cigarettes in dangerously warm (or cold) spaces, because they kept the “stove burners on overnight to fend off winter’s chill.”⁴⁵ This Article intends to fill the void between these two levels of analysis, striving to find a middle ground analysis between the sterile, overwhelming statistics and raw data and the vibrant, in-the-living-room and on-the-streets visceral details of life stories. This Article fills this gap in the scholarship by tying antipoverty programs and statistics to the thoughts of the children and their parents who must navigate poverty and the related programs day in and day out, because the United States systematically misallocates our resources.

36. Barbara Ehrenreich is a bestselling author whose books include *BAIT AND SWITCH: THE (FUTILE) PURSUIT OF THE AMERICAN DREAM* (2005); *FEAR OF FALLING: THE INNER LIFE OF THE MIDDLE CLASS* (1989); *NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA* (2001) [hereinafter EHRENRICH, NICKEL AND DIMED]; *THE WORST YEARS OF OUR LIVES: IRREVERENT NOTES FROM A DECADE OF GREED* (1981); *THIS LAND IS THEIR LAND: REPORTS FROM A DIVIDED NATION* (2008).

37. KATHRYN J. EDIN & H. LUKE SHAEFER, *\$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA* (2015).

38. MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

39. Jonathan Kozol is the author of *AMAZING GRACE: THE LIVES OF CHILDREN AND THE CONSCIENCE OF A NATION* (1995); *CHILDREN OF THE REVOLUTION: A YANKEE TEACHER IN THE CUBAN SCHOOLS* (1978); *FREE SCHOOLS* (1972); *ILLITERATE AMERICA* (1985); *ON BEING A TEACHER* (1981); *ORDINARY RESURRECTIONS: CHILDREN IN THE YEARS OF HOPE*; (2000); *RACHEL AND HER CHILDREN*; (2006); *SAVAGE INEQUITIES: CHILDREN IN AMERICA’S SCHOOLS* (1991); *THE NIGHT IS DARK AND I AM FAR FROM HOME: A POLITICAL INDICTMENT OF THE U.S. PUBLIC SCHOOLS* (1975).

40. KATHERINE S. NEWMAN & ROURKE L. O’BRIEN, *TAXING THE POOR: DOING DAMAGE TO THE TRULY DISADVANTAGED* (2011).

41. See *supra* note 24 and accompanying text.

42. For an excellent analysis of the “poor voices literature,” see Ezra Rosser, *Getting to Know the Poor*, 14 YALE HUM. RTS. & DEV. L.J. 66, 69 (2011) (describing the strengths and limitations of this literature and noting that “unless such voices inspire greater commitment to anti-poverty efforts and lead to policy improvements, the efforts may amount to little more than poverty as entertainment”).

43. *Id.*

44. *Id.* at 71 (agreeing with Mari Matsuda’s statement that “It is a lie that there is no knowledge, no theory, no eloquence among the poor. . . . Pragmatic method is enriched, I believe, by weighting it to retrieve subordinated voices in order to attain a truer account of social reality and human possibilities” (quoting Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763, 1768 (1990) (alteration in original))).

45. DESMOND, *supra* note 38, at 137 (recounting the stories of eight poor families in Milwaukee and their landlords).

While few economic indicators have the salience and pervasive financial impact on the lives of countless Americans as have measures of poverty, many policymakers, researchers, advocates, and legislators do not fully comprehend the detailed mechanics used to derive them.⁴⁶ These detailed mechanics meaningfully shape the resulting poverty measures and in turn, the United States' failed response. By exposing the specific mechanics underlying poverty measures, this Article will try to build a bridge from in-depth personal portraits of families living in poverty to specific resource allocations that have failed. The Article unpacks and rebuilds the Census Bureau's poverty measures by using the Census Bureau's database. By using the Census Bureau's raw data and by rebuilding the OPM and SPM step-by-step through each antipoverty resource allocation and the imposition of necessary expenses, this Article exposes the demographics of individuals lifted out, pushed into, or left behind at each step. By looking at the before and after allocation demographics, the Article evaluates how each resource allocation is disproportionate or proportionate to the needs of these individuals and their representation in the population universes. This exercise informs our ability to evaluate the success or failure of these programs, including any inherent biases that undermine antipoverty goals. For example, the most significant antipoverty programs' resource allocations (e.g., Social Security retirement and unemployment benefits) track "compensation" and, thus, exacerbate demonstrable, systemic, and institutional biases resulting in higher compensation for White men.

When we evaluate poverty measurements, too often the focus is on the lives and characteristics of the poor and not on the failure of the process and institutions that caused their poverty, but, as Orshansky describes, the only reason to measure poverty is to do something about it. The purpose of poverty measures should be to expose the effectiveness or failure of antipoverty programs, not to denigrate its victims. This Article will expose the strengths and weaknesses in poverty measurements by focusing on the design and effectiveness of antipoverty programs including revealing the populations they serve and those who are left behind. By shifting the focus from the poor to current antipoverty programs, we will better understand why almost 50 million Americans, including about 16 million children,⁴⁷ are not adequately provided for; do not have the necessary life resources; are struggling day in and day out; have been "nickel and dimed"; and are not getting by in America; and who, because of the misallocation of resources, are suffering the pervasive, persistent, and pernicious plight of poverty.⁴⁸

II. POVERTY MEASURES 101

A. *Who Is Measured? Who Is Excluded?*

When we can't afford to pay our bills, like, our house bills and stuff, I'm afraid, like, we'll get homeless and me and my brother will starve. You never know what'll happen in your life . . . [Kaylie, age ten.]⁴⁹

46. Bruce D. Meyer & James X. Sullivan, *Identifying the Disadvantaged: Official Poverty, Consumption Poverty, and the New Supplemental Poverty Measure*, J. ECON. PERSP., Summer 2012, at 111.

47. Jason M. Breslow, *By the Numbers: Childhood Poverty in the U.S.*, FRONTLINE (Nov. 20, 2012), <http://www.pbs.org/wgbh/frontline/article/by-the-numbers-childhood-poverty-in-the-u-s/>; Andrew Soergel, *More Than 50 Million Americans Living in Economic Distress*, U.S. NEWS (Feb. 25, 2016, 1:57 PM), <https://www.usnews.com/news/blogs/data-mine/2016/02/25/study-more-than-50-million-americans-living-in-economic-distress>.

48. See EHRENREICH, NICKEL AND DIMED, *supra* note 36 (setting forth ethnographies on the plight of low-wage workers in America struggling to stretch cash input to cash output and not making it work despite working hard day in and day out).

49. *Poor Kids*, *supra* note 2.

The OPM and SPM poverty measurements are used broadly to describe who is living in poverty today. However, the population universe that is the starting point for these measurements excludes millions of people who are disproportionately likely to be poor. Both the OPM and the SPM are based upon data from the Current Population Survey (CPS) Annual Social and Economic Supplement (ASEC), which is conducted by the Department of Labor and the Census Bureau to obtain employment, social, and demographic data.⁵⁰ The CPS is a household survey performed monthly, primarily to obtain labor force statistics. The CPS ASEC is an annual supplemental survey generally performed in March to gather data from the prior calendar year.⁵¹ The CPS ASEC data is collected from households in all fifty states and the District of Columbia through a sample of about 100,000 addresses.⁵² The estimates derived from these household surveys “are controlled to independent national population estimates by age, sex, race, and Hispanic origin.”⁵³ National population “estimates are based on 2010 Census population counts and are updated annually taking into account births, deaths, emigration, and immigration.”⁵⁴

The population universe used for the OPM and the SPM is the “resident civilian noninstitutionalized population of the United States,”⁵⁵ plus military personnel who live in a household with another civilian adult (either on or off a military compound),⁵⁶ limiting the calculation to certain U.S. residents in noninstitutionalized civilian households, regardless of immigration status.⁵⁷ However, this population specifically excludes millions of U.S. citizens and residents who reside outside of the fifty states and Washington D.C. as well as millions of institutionalized and homeless individuals.⁵⁸ Specifically, all of the roughly 3.8 million residents (whether or not U.S. citizens) of the Commonwealth of Puerto Rico and the Island areas under U.S. sovereignty or jurisdiction (principally American Samoa, Guam, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands) are excluded from the starting population used to measure poverty.⁵⁹ In addition, all 1.4 million members of the Armed Forces who do not

50. See *History of the Current Population Survey*, U.S. CENSUS BUREAU, <http://www.census.gov/programs-surveys/cps/about/history-of-the-cps.html> (last revised Aug. 25, 2015).

51. FED. INTERAGENCY FORUM ON CHILD & FAMILY STATISTICS, AMERICA’S CHILDREN: KEY NATIONAL INDICATORS OF WELL-BEING, 2017, at 193 (2017), https://www.childstats.gov/pdf/ac2017/ac_17.pdf.

52. DENAVAS-WALT & PROCTOR, *supra* note 34, at 1.

53. *Id.*

54. *Id.* Population counts are mandated by the U.S. Constitution every ten years. U.S. CONST. art. I, § 2, cl. 3. The data collected determines the number of seats each state has in the U.S. House of Representatives and is also used to distribute billions in federal funds to local communities. *What Is the Census?*, U.S. CENSUS BUREAU, <http://www.census.gov/2010census/about/> (last visited Nov. 15, 2017); see also *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> (last visited Nov. 15, 2017).

55. See DENAVAS-WALT & PROCTOR, *supra* note 34, at 1.

56. *Id.*; see also U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY: 2015 ANNUAL SOCIAL AND ECONOMIC (ASEC) SUPPLEMENT 2-2, <https://www2.census.gov/programs-surveys/cps/techdocs/cpsmar15.pdf>.

57. The Current Population Survey with ASEC supplement does include data as to whether an individual is born in the United States or a foreign country, but does not include immigration status. Therefore, the poverty data includes unauthorized immigrants.

58. U.S. citizens who are residents of Puerto Rico, American Samoa, Guam, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands are specifically excluded from the starting population that is analyzed for purposes of determining the poverty rate. See U.S. CENSUS BUREAU, *supra* note 56, at 2-1 to 2-2.

59. See *infra* Table 1 (setting forth the excluded populations in the OPM and SPM). The impact of the 2017 hurricane season on the population of Puerto Rico and of the U.S. Virgin Islands may be significant but is still unknown. See Dylan Matthews, *What the Hurricane Maria Migration Will Do to Puerto Rico—and the US*, VOX (Oct 5, 2017, 9:30 AM), <https://www.vox.com/policy-and-politics/2017/10/5/16403952/hurricane-maria-puerto-rico-migration>.

live in a household with a civilian and all institutionalized and homeless individuals are excluded from the starting population.⁶⁰

Because the U.S. resident civilian noninstitutionalized population universe is based upon household surveys, people who are homeless or are living in institutions are excluded from its data set.⁶¹ Accordingly, U.S. residents living in institutions such as prisons, long-term care hospitals, dormitories, and nursing homes are excluded from the OPM and SPM analysis and results.⁶² Students who live in dormitories are only included in the population to the extent their parents include them in their own household survey.⁶³ The Census Bureau and Department of Labor exclude these various categories from the OPM and SPM data sets for arguably practical and statistically sound reasons. For example, the homeless population is transitory, difficult to count, and generally neither the Census Bureau nor the Department of Labor include these individuals in the CPS or CPS ASEC.⁶⁴ Individuals who are living in institutions often have basic services provided to them and are not able to work, so employment or work is generally not a relevant concept.

The Census Bureau does survey and determine population estimates and economic and social data for Puerto Rico, but that data is separately reported from the OPM and SPM.⁶⁵ The Census Bureau's most recent poverty rate for Puerto Rico was about three times that of the OPM and SPM, or 43.5%.⁶⁶ While poverty rates are not readily available for all of the U.S. territories, the following statistics are telling. The

60. U.S. CENSUS BUREAU, *supra* note 56, at 2-1 to 2-2, 9-9 (describing the universe as only including members of the Armed Forces who are residents in the United States, that is, excluding all members of the Armed Forces on active duty stationed outside of the United States as well as all Armed Forces living without a civilian adult in the fifty states and the District of Columbia); *see infra* Table 1 (setting forth the population of excluded individuals from the OPM and SPM population universe).

61. *See* DENAVAS-WALT & PROCTOR, *supra* note 34, at 1 (describing the source of estimates).

62. *Id.*; *see also* *Group Quarters/Residence Rules*, U.S. CENSUS BUREAU, <http://www.census.gov/topics/income-poverty/poverty/guidance/group-quarters.html> (last revised Apr. 13, 2016) (defining "Group Quarters" and specifying that institutions include correctional facilities, nursing homes, and mental hospitals).

63. *Group Quarters/Residence Rules*, *supra* note 62 (noting that the CPS ASEC includes individuals who are "usual residents" at a sample address, with usual "defined as the place where the person lives and sleeps most of the time, or the place he or she considers to be his or her usual residence"). Therefore, even though a college dorm or shelter would be included in the CPS ASEC sample, most students living in dorms or homeless individuals sheltering for a short period would not be included in the population universe. *Id.*; *see also* *Poverty Glossary*, U.S. CENSUS BUREAU, <http://www.census.gov/topics/income-poverty/poverty/about/glossary.html> (last revised May 16, 2016) (defining "Institutional Group Quarters" as "facilities for people under formally authorized, supervised care or custody at the time of interview, such as correctional facilities, nursing facilities, in-patient hospice facilities, mental (psychiatric) hospitals, group homes for juveniles, and residential treatment centers for juveniles").

64. BERNADETTE D. PROCTOR, JESSICA L. SEMEGA, & MELISSA A. KOLLAR, U.S. CENSUS BUREAU, P60-256(RV), *INCOME AND POVERTY IN THE UNITED STATES: 2015*, at 1, <http://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf> ("Since the CPS is a household survey, people who are homeless and not living in shelters are not included in the sample."); *see also* AMY SYMENS SMITH, CHARLES HOMBERG & MARCELLA JONES-PUTHOFF, U.S. CENSUS BUREAU, C2010SR-02, *THE EMERGENCY AND TRANSITIONAL SHELTER POPULATION: 2010* (2012), <https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010sr-02.pdf>.

65. *Puerto Rico*, U.S. CENSUS BUREAU, <http://www.census.gov/search-results.html?q=poverty+in+puerto+rico&search.x=0&search.y=0&search=submit&page=1&stateGeo=none&searchtype=web&cssp=SERP> (last visited Nov. 16, 2017) (search result yielding demographic data for Puerto Rico).

66. *Id.*

unemployment rate in American Samoa was almost 30% in 2005,⁶⁷ and Northern Mariana Islands suffered an 11.2% unemployment rate in 2010.⁶⁸ The poverty rate in Guam in 2001 was 23%⁶⁹ and almost 29% in the Virgin Islands in 2002.⁷⁰ Thus, the exclusion of these U.S. individuals from the OPM and SPM understates not only the official number of people living in poverty, but the percentage of poor in the United States as well.

Excluding 3.2 million institutionalized individuals from the OPM and SPM population universe makes some sense given that their costs of living may be covered by the government or are significantly different from more traditional households due to communal living and other nontraditional living circumstances. People who are incarcerated generally do not have any meaningful source of income, yet their housing, food, and clothing costs are covered by other sources. Similarly, members of the armed services living in military barracks have different costs of living than traditional households. However, consistent with the 3.8 million residents of Puerto Rico and the U.S. island territories and the 600,000 homeless, the 2.2 million incarcerated individuals⁷¹ and 1.4 million members of the armed forces not included in the population used for determining the OPM and SPM are likely to be disproportionately poor.⁷²

Since the 1970s, the prison population has increased 500%,⁷³ with more than 11 million admissions annually.⁷⁴ People who are incarcerated are disproportionately male and people of color.⁷⁵ Although the rate of incarceration of women is growing at a much faster rate than the rate of incarceration of men,⁷⁶

67. *The World Factbook: American Samoa*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/aq.html> (last visited Nov. 16, 2017) (reporting the unemployment statistic for American Samoa for 2005).

68. *The World Factbook: Northern Mariana Islands*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/cq.html> (last visited Nov. 16, 2017) (reporting the unemployment statistic for Northern Mariana Islands).

69. *The World Factbook: Guam*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/gq.html> (last visited Nov. 16, 2017) (reporting the Guam poverty rate as of 2001 and recounting an 8.4% unemployment rate in 2013).

70. *The World Factbook: Virgin Islands*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/vq.html> (last visited Nov. 16, 2017) (reporting the USVI poverty rate and reporting the unemployment rate at 13% as of 2014).

71. *Fact Sheet: Trends in U.S. Corrections*, SENTENCING PROJECT 2, <http://www.sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> (last updated June 2017) [hereinafter *Trends in U.S. Corrections*].

72. See *infra* Table 1 (setting forth specific categories of individuals who are not included in the OPM and SPM population universe).

73. *Trends in U.S. Corrections*, *supra* note 71, at 2.

74. Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017*, PRISON POL'Y INITIATIVE (Mar. 14, 2017), <https://www.prisonpolicy.org/reports/pie2017.html> ("Every year, 641,000 people walk out of prison gates, but people go to jail over 11 million times each year.").

75. *Trends in U.S. Corrections*, *supra* note 71, at 5.

76. *Id.* at 4; see also Marie A. Failing, *Lessons Unlearned: Women Offenders, the Ethics of Care, and the Promise of Restorative Justice*, 33 FORDHAM URB. L.J. 487, 489 (describing the explosion in rates of incarceration of women, while the overall crime rates in the same courts have dropped significantly); *New Report Sheds Light on Women in Jail, the Fastest Growing Population Behind Bars*, VERA INST. JUST. (Aug. 17, 2016), <https://www.vera.org/newsroom/press-releases/new-report-sheds-light-on-women-in-jail-the-fastest-growing-population-behind-bars> (describing the challenges women face in prison).

presently about 5%, or only 110,000 of the 2.2 million people incarcerated, are women.⁷⁷ “More than 60% of the people in prison today are people of color.”⁷⁸ Specifically, Black and Hispanic⁷⁹ men are, respectively, nearly 6 and 2.3 times as likely to be incarcerated as their White male counterparts.⁸⁰

“Our national data systems, and the social facts they produce, are structured around normative domestic and economic life, systematically excluding prison inmates.”⁸¹ “Prisoners, though drawn from the lowest rungs in society, appear in no measures of poverty or unemployment. As a result, the full extent of the disadvantage of groups with high incarceration rates is underestimated.”⁸² Demographic data demonstrates that incarcerated individuals are disproportionately poor.⁸³ While incarceration itself is tied to high unemployment rates and poverty,⁸⁴ the poor are disproportionately likely to be incarcerated.⁸⁵ According to a recent report “people in prison were, before they went to prison, some of the poorest people in this country.”⁸⁶ The findings indicate that incarcerated people “in all gender, race, and ethnicity groups earned substantially less prior to their incarceration than their non-incarcerated counterparts of similar ages.”⁸⁷ Incarcerated individuals had a median 2014 income of “\$19,185 prior to their incarceration, which

77. *Trends in U.S. Corrections*, *supra* note 71, at 4.

78. *Id.* at 5.

79. The term “Hispanic” versus the more inclusive term “Latinx” will be used throughout this Article consistent with its defined use in the OPM and SPM. While Latinx is the preferred term given that it is gender neutral and inclusive for those who are transgender or queer, “Hispanic” is a broadly defined term for purposes of poverty measures. For a robust discussion among scholars regarding the term “Latinx,” see Catalina (Kathleen) M. de Onis, *An Exchange about the Politics of “Latinx”*, IU PRESS, http://www.iupress.indiana.edu/em/email_images/Jrnl/deOnis_Latinx%20exchange_final_website.pdf (last visited Dec. 11, 2017). Consistent with U.S. federal government standards issued by the Office of Management and Budget (OMB), this term is used not to denote race but rather Hispanic origin (also known as ethnicity). *About Hispanic Origins*, U.S. CENSUS BUREAU, <http://www.census.gov/topics/population/hispanic-origin/about.html> (last revised Jan. 26, 2017). The OMB defines “Hispanic” as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. “Persons who report themselves as Hispanic can be of any race and are identified as such in [our] data tables.” *Id.*

80. *Id.*

81. Bruce Western & Becky Pettit, *Incarceration and Social Inequality*, DAEDALUS, Summer 2010, at 8, 16.

82. *Id.* at 8.

83. Melissa S. Kearney et al., *Ten Economic Facts About Crime and Incarceration in the United States* 7 (Hamilton Project at Brookings Inst., Policy Memo, 2014), https://www.brookings.edu/wp-content/uploads/2016/06/v8_THP_10CrimeFacts.pdf (noting that low-income youths are more likely to engage in violent and property crimes than are youths from middle- and high-income families and are significantly more likely to attack someone, join a gang, or steal something worth more than fifty dollars).

84. Western & Pettit, *supra* note 81, at 16 (“Workers with prison records experience significant declines in earnings and employment. Parents in prison are likely to divorce or separate, and through the contagious effects of the institution, their children are in some degree ‘prisonized,’ exposed to the routines of prison life through visitation and the parole supervision of their parents. Yet much of this reality remains hidden from view. In social life, for all but those whose incarceration rates are highest, prisons are exotic institutions unknown to the social mainstream.”).

85. Dolan & Carr, *supra* note 19, at 5 (“The poor, and especially poor people of color, have long been overrepresented in the prison population. This used to be attributed to the fact that the poor are more likely to be tempted by criminal activities such as theft and drug dealing. Just in the last ten years, however, it has become apparent that being poor is in itself a crime in many cities and counties, and that it is a crime punished by further impoverishment.”).

86. Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, PRISON POL’Y INITIATIVE (July 9, 2015), <http://www.prisonpolicy.org/reports/income.html>.

87. *Id.*

[was] 41% less than non-incarcerated people of similar ages.”⁸⁸ The incarceration population data reveals that “[n]ot only are the median incomes of incarcerated people prior to incarceration lower than non-incarcerated people, but incarcerated people are dramatically concentrated at the lowest ends of the national income distribution.”⁸⁹

Consistent with the economic demographic factors of the prison population, as well as the data for the population at large, incarcerated individuals suffer higher rates of serious mental illness and cognitive disability. Twenty percent of prison and jail populations are people with a serious mental illness.⁹⁰ Moreover, “[p]rison inmates are four times as likely and jail inmates more than six times as likely to report a cognitive disability than the general population.”⁹¹ This data confirms that incarcerated individuals are disproportionately poor and are people with disabilities. And people with disabilities are disproportionately poor because of higher rates of incarceration and of “barriers to employment, stable housing, and other necessary elements of economic security.”⁹² In short, excluding incarcerated individuals from poverty measures understates the already high rates of poverty for people with disabilities as well as other demographic groups, including but, not limited to men and people of color.

Members of the armed forces also suffer poverty rates that are disproportionately high as compared to the population at large.⁹³ “For decades, base pay for enlisted military members has hovered around the poverty line, as defined by the Department of Health and Human Services.”⁹⁴ “According to a survey conducted by Jewish Family Service of San Diego . . . 60 percent of active duty military households reported being food insecure and 50 percent reported they cut the size of their meals or skipped meals because there wasn’t enough money for food.”⁹⁵ Every military base in the country has a food bank and, in 2013, 23,000 active duty members of the armed services qualified for and received federal food stamp subsidies.⁹⁶ From September 2014 to August 2015, active duty military service members spent \$24,000,000

88. *Id.*

89. *Id.*

90. Rebecca Vallas, *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America’s Jails and Prisons* 2 (Ctr. for Am. Progress, 2016), <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf> (“The Bureau of Justice Statistics reports that fully 1 in 5 prison inmates have a serious mental illness.”).

91. *Id.* (noting that “[c]ognitive disabilities—such as Down syndrome, autism, dementia, intellectual disabilities, and learning disorders—are among the most commonly reported”).

92. *Id.* at 3.

93. For a discussion on the demographics of those who serve in the military, see Amy Lutz, *Who Joins the Military?: A Look at Race, Class, and Immigration Status*, 36 J. POL. & MIL. SOC. 167, 184 (2008) (concluding that socioeconomic background is the most significant determinant of whether or not an individual joins the military).

94. Wendy Innes, *The New Face of Poverty in America: Service Members and Veterans*, INDEP. VOTER NETWORK (Sept. 22, 2014), <https://ivn.us/2014/09/22/new-face-poverty-america-service-members-veterans/>.

95. Kelcey Ellis, *Food Helps Provide a “Home Away from Home,”* FEEDING AM.: HUNGER BLOG (July 1, 2016), <http://www.feedingamerica.org/hunger-in-america/news-and-updates/hunger-blog/food-helps-provide-a-home.html> (explaining that “San Diego has three naval bases, three Marine Corps bases and one U.S. Coast Guard station, with approximately 95,000” members of the armed forces—with family members this population almost doubles to 175,000).

96. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-16-561, *MILITARY PERSONNEL: DOD NEEDS MORE COMPLETE DATA ON ACTIVE-DUTY SERVICE MEMBERS’ USE OF FOOD ASSISTANCE PROGRAMS* (2016); Sabrina Tavernise, *Food Stamps Helped Reduce Poverty Rate, Study Finds*, N.Y. TIMES (Apr. 9, 2012), <http://www.nytimes.com/2012/04/10/us/food-stamp-program-helping-reduce-poverty.html>.

in federal food subsidy benefits and 45% of military school children are eligible for free or reduced price school lunches.⁹⁷

These food insecurity statistics are not surprising given the demographic data of new recruits entering the armed services. A recent “analysis of recruiting data revealed that low- and middle-income families are supplying far more Army recruits than families with incomes of more than \$60,000 a year.”⁹⁸ The same study found that 30% of new recruits joining the Army did not have a high school diploma, which was 20 percentage points higher than the Army’s goal of having a maximum of 10% of new recruits lacking high school diplomas.⁹⁹ Given these attributes of the population who are entering the armed services it would be consistent with poverty measures to suggest that members of the armed services are more likely to be disproportionately poor than the OPM and SPM population universes.

Finally, consistent with the aging of the U.S. population, the number of individuals residing in nursing homes has been increasing and is expected to continue to increase.¹⁰⁰ In 2014, there were about 1.37 million nursing home residents who were predominately eighty-five years and older, women, and poor.¹⁰¹ Sixty-three percent of these nursing home residents were Medicaid payers.¹⁰² In a demographic study of nursing home residents over more than a twenty-year period, Medicaid was the foremost payment source in all surveys and across all age groups.¹⁰³ Thus, consistent with the other excluded categories of individuals, nursing home residents are likely to be disproportionately poor as compared to the general OPM and SPM population universes.

Thus, almost nine million Americans, who are demographically disproportionately poor, are not even considered in U.S. poverty measures. The poverty suffered by these individuals is effectively made invisible by this exclusion and thus not even included in the resulting analysis and discourse. Unfortunately, homeless and incarcerated populations have grown dramatically in recent decades and they are, for obvious reasons, meaningfully poorer than traditionally-housed Americans.¹⁰⁴

97. Mike Ludwig, *US Soldiers Are Relying on Millions of Dollars in Food Stamps to Survive*, TRUTHOUT (Aug. 17, 2016), <http://www.truth-out.org/news/item/37259-us-soldiers-are-relying-on-millions-of-dollars-in-food-stamps-to-survive> (describing the need for more data and information regarding food insecurity and poverty among members of the armed services).

98. Carissa Wyant, *Who’s Joining the U.S. Military? Poor, Women and Minorities Targeted*, MINTPRESS NEWS (Dec. 18, 2012), <http://www.mintpressnews.com/whos-joining-the-us-military-poor-women-and-minorities-targeted>; see also Lutz, *supra* note 93, at 167 (citing a 2006 study concluding that “blacks are overrepresented in the military” and that “people who serve in the military come from more well-off neighborhoods than those who have not joined the military although the economic elite are underrepresented in armed service”).

99. See Johnny Edwards, *War Toll Is Heaviest in Poor, Rural Areas*, AUGUSTA CHRON. (Sept. 1, 2010), <http://chronicle.augusta.com/news/metro/2010-09-01/war-toll-heaviest-poor-rural-areas#> (“Allendale and Barnwell counties have suffered South Carolina’s highest and second-highest death rates per capita during the Iraq war. At the same time, they are among the state’s most sparsely populated areas and make several top 10 lists for poverty and unemployment rates.”).

100. Jose Ness et al., *Demographics and Payment Characteristics of Nursing Home Residents in the United States: A 23-Year Trend*, 59A JS. GERONTOLOGY 1213, 1217 (2004) (concluding that “[t]he oldest-old, women, and African Americans are at higher risk for nursing home placement”).

101. Lauren Harris-Kojetin et al., *Long-term Care Providers and Services Users in the United States: Data from the National Study of Long-Term Care Providers, 2013–2014*, VITAL & HEALTH STAT., Feb. 2016, at x, xi, 36–39 (finding that nursing home residents were approximately 67% women, 42% 85-or-older, and 14% African American).

102. *Id.* at 39.

103. *Id.*

104. See *supra* notes 9, 64, 71–89, and accompanying text.

Thus, as a threshold issue, the OPM and SPM exclude almost 3% of the population, thereby understating the number of poor individuals as well as the percentage of Americans who live in poverty. These excluded individuals are estimated and generally categorized as follows:

Table 1: Americans Excluded from OPM and SPM Populations

American Samoa ¹⁰⁵	51,504
Northern Mariana Islands ¹⁰⁶	52,263
Guam ¹⁰⁷	167,358
Virgin Islands ¹⁰⁸	107,268
Puerto Rico ¹⁰⁹	3,411,307
Total PR and U.S. Island Areas	3,789,700
Armed Forces (including overseas) ¹¹⁰	1,449,480
Institutionalized individuals ¹¹¹	3,233,815
Homeless individuals ¹¹²	564,708
Total Not in OPM and SPM	9,094,231 (2.9% of 316,168,000 SPM pop.¹¹³)

Excluding these Americans from the OPM and SPM databases effectively removes their voices from the poverty measurement and general poverty discourse. This exclusion is offensive to the dignity of these individuals; that many scholars and advocates do not even know these individuals are excluded is

105. *World Factbook: American Samoa*, *supra* note 67 (reporting estimated population of American Samoa as of July 2017).

106. *World Factbook: Northern Mariana Islands*, *supra* note 68 (reporting an estimated population of Northern Mariana Islands as of July 2017).

107. *World Factbook: Guam*, *supra* note 69 (population estimated of Guam as of July 2017).

108. *World Factbook: Virgin Islands*, *supra* note 70 (reporting an estimated population of the Virgin Islands as of July 2017).

109. *Quick Facts: Puerto Rico*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/PR#viewtop> (last visited Nov. 16, 2017) (reporting an estimated population of Puerto Rico on July 1, 2016).

110. *American FactFinder*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?src=bkmk> (last visited Nov. 16, 2017) (reporting population as of March 2015 for U.S. resident plus armed forces overseas at 320,851,295, less civilian population of 319,401,815 = 1,449,480 armed forces, including 240,063 overseas. (Resident population plus armed forces overseas of 320,851,295, less 320,611,232 resident population = 240,063 overseas armed forces.)).

111. *American FactFinder*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?src=bkmk> (last visited Sept. 16, 2017) (reporting population as of March 2015 for civilian population at 319,401,815 less 315,462,107 civilian noninstitutionalized population = 3,939,708 institutionalized population, less members of the armed services living with civilians and dorm residents counted by families of 705,893 (derived from the total population included in the 2014 SPM all population of 316,168,000 (*see* SPM 2014, *supra* note 35, at tbl.2))).

112. U.S. DEP'T OF HOUSING & URB. DEV., THE 2015 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 2: ESTIMATES OF HOMELESSNESS IN THE UNITED STATES xix (2016). "Of all people experiencing homelessness on a single night in January 2015, 206,286, or 37 percent, were in families with children" and "36,907 people were experiencing homelessness as unaccompanied youth (under age 25)." *Id.* at xix–xx.

113. *See* SPM 2014, *supra* note 35, at tbl.2 (SPM population of civilian noninstitutionalized population plus military living with an adult civilian = 316,168,000).

even more disconcerting. Yet, their life stories inform, disturb, and demonstrate without doubt that U.S. institutions have failed these individuals.

These individuals include people like Dee Dee, who was twenty-four years old when she was incarcerated for second degree assault.¹¹⁴ Her story informs the misallocation of resources in America, but yet it is completely erased from the federally designed poverty measurement and resulting discourse.

Dee Dee's experience while growing up was brutal and chaotic. She was removed from her parent's home and placed in state-supervised care at the age of seven. Her parents were alcoholics and never registered their children in school. Dee Dee and her three siblings were neglected, malnourished, and physically abused. They were first placed in the care of an aunt, but she died when Dee Dee was eleven. Dee Dee was placed in the care of a second aunt for several years, but because this aunt could not effectively control the children, they moved on to another aunt and their third caretaker. By their early teens, Dee Dee and one brother were diagnosed as "emotionally disturbed." She completed eight years of schooling and began to abuse alcohol in her teens.¹¹⁵

These individuals are excluded from the population universe, but how are the individuals who are included organized for measuring whether they have enough resources? The next section will describe how the population universe is broken down into measurement units for the OPM and SPM.

1. *How Are Measurement Units Determined?*

The payment on our house was due in two weeks, and I guess my parents just didn't have the money at the time because he was explaining to us business was slow. And we lost our whole house and everything, so we was back to ground zero. Then we moved to a homeless shelter. Anything that could fit in a book bag or a suitcase, you could take it. [Jonny, age 13.]¹¹⁶

Both of the poverty measures, OPM and SPM, compare resources for one or more individuals, who are analyzed together as a measurement unit, to a specific poverty threshold tailored for the size and demographics of the measurement unit to determine if all members of the unit should be characterized as poor.¹¹⁷ Financial resources are aggregated for all individual unit members before the total amount is compared to the relevant poverty threshold, because the government assumes that members of the unit share resources.¹¹⁸ The determination of who is or is not included in a unit could be dispositive with respect to the poverty determination for all of the unit members. One of many distinctions between the OPM and SPM is that they include different populations in their measurement units to analyze whether a

114. Kathleen Daly, *Women's Pathways to Felony Court: Feminist Theories of Lawbreaking and Problems of Representation*, 2 S. CAL. REV. L. & WOMEN'S STUD. 11, 29–30 (1992) (describing the demographic data and fact patterns that lend themselves to criminal behavior for women who commit felonies).

115. *Id.* at 30.

116. *Poor Kids*, *supra* note 2.

117. See Ashley Provencher, *Unit of Analysis for Poverty Measurement: A Comparison of the Supplemental Poverty Measure and the Official Poverty Measure* (U.S. Census Bureau Working Paper No. SEHSD-WP2010-14, 2011), https://www.census.gov/content/dam/Census/library/working-papers/2011/demo/unit-of-analysis_provencher.pdf.

118. See *Measuring America: How the U.S. Census Bureau Measures Poverty*, U.S. CENSUS BUREAU (Sept. 2017), https://census.gov/library/visualizations/2017/demo/poverty_measure-how.html.

family/household/measurement unit is poor.¹¹⁹

a. OPM Family Unit. The OPM uses the census-defined family as its measurement unit. This measurement unit “includes all individuals residing together who are related by birth, marriage, or adoption” and treats unrelated individuals aged 15 and above as a separate family unit.¹²⁰ Thus, all related family unit members have the same poverty status.¹²¹ Unrelated individuals aged 15 and above are treated separately as a unit of one. As marriage rates have been on the decline for decades and correspondingly cohabitation has been on the rise, this approach to aggregating income seems inconsistent with social trends and household budget realities.¹²² A recent report by the Pew Research Center found that, after decades of declining marriage rates, the rate of Americans aged 25 and older who have never been married reached 42 million or 20% of the population in 2012, an historic high.¹²³ Children under 15 who are not related to anyone who is at least 15 in the household (e.g., foster children) are excluded entirely from the OPM, because the survey does not ask for income data from anyone under 15. In 2014, this approach excluded another 354,000 children from the OPM population data set.¹²⁴ These individuals are included in the SPM, because the SPM’s household measurement “unit” is broader.¹²⁵

OPM Family Unit Example: Assume Jane and her three children live with Jo, her live-in partner, and an unrelated ten-year-old foster child, Dick. Under the OPM, Jane and her three children will constitute one family unit. Jo will constitute a separate family unit of one. Assume Jo provides enough cash income to exceed the highest poverty threshold for a family of six. Under these circumstances, Jane and her three children will be classified as living in poverty with no income and a poverty threshold for four. Jo will be treated as not living in poverty under a poverty threshold for one. Because Dick is an unrelated individual under fifteen, he will be excluded from the OPM population. Thus, under the OPM, four residents are living under the poverty threshold, one resident is living above the threshold, and one individual is excluded completely from any analysis.

b. SPM Household Unit. The SPM uses a broader unit for measuring resources that acknowledges that household members may share resources even if not married or related. This approach to analyzing

119. *Id.*

120. See SPM 2014, *supra* note 35, at 3.

121. See DENAVAS-WALT & PROCTOR, *supra* note 34, at app. B (describing how to calculate poverty under the OPM).

122. See *The Decline of Marriage and Rise of New Families*, PEW RES. CTR. (Nov. 18, 2010), <http://www.pewsocialtrends.org/2010/11/18/the-decline-of-marriage-and-rise-of-new-families/> (concluding that while marriage rates have been declining for decades, “family—in all its emerging varieties—remains resilient. The survey finds that Americans have an expansive definition of what constitutes a family. And the vast majority of adults consider their own family to be the most important, most satisfying element of their lives.”).

123. Wendy Wang & Kim Parker, *Record Share of Americans Have Never Married: As Values, Economics and Gender Patterns Change*, PEW RES. CTR. (Sept. 24, 2014), <http://www.pewsocialtrends.org/2014/09/24/record-share-of-americans-have-never-married/> (describing the never married rate as 23% for men and 17% for women in 2012 compared to 10% and 8% in 1960).

124. All people in the SPM population of civilian noninstitutionalized population plus military living with an adult civilian = 316,168,000 (SPM 2014, *supra* note 35, at tbl.2), less same population universe in the OPM but without under age 15 unrelated individuals of 315,804,000 (DENAVAS-WALT & PROCTOR, *supra* note 34, at tbl.B-1) = 364,000 unrelated under age 15 individuals (e.g., foster children).

125. See SPM 2014, *supra* note 35, at 1.

household resources and expenses is more consistent with the current state of how households manage their resources and budgets. The SPM “unit” includes all individuals at the same address if related by marriage, birth, adoption, or if they cohabitate, plus related children and any unrelated children that are cared for at that address by the household members (e.g., foster children).¹²⁶ Thus, all members of the household “unit” as defined above have the same poverty status.

SPM Household Unit Example: Assume Jane and her three children live with Jo, her live-in partner, and an unrelated ten-year-old foster child, Dick. Under the SPM, Jane, her three children, Jo, and Dick will constitute one family unit. Assume Jo provides enough cash income to exceed the highest poverty threshold for a family of six. Under these facts and circumstances, the entire household of six would be classified as living above the applicable poverty threshold for six.

2. What Are the Poverty Thresholds?

a. Overview: Poverty Thresholds ≠ Poverty Guidelines

i. *Poverty Thresholds Generally.* Poverty thresholds and poverty guidelines are annual dollar amounts used by the government for different purposes to determine whether a family or household unit is considered poor.¹²⁷ Poverty thresholds are used to determine poverty measurements for statistical analysis.¹²⁸ Poverty thresholds are generated annually in January of the following year and are adjusted again in September of that year in connection with the Census Bureau’s issuance of the poverty measures for the prior year.¹²⁹ For example, poverty thresholds for 2016 were issued by the Census Bureau in January 2017 and adjusted in September 2017 when the 2016 OPM and SPM were issued. The Census Bureau uses these poverty thresholds to compare against the aggregate income of a measurement unit (family or household as defined under the OPM or SPM, respectively) to determine if the individuals in that unit have adequate annual resources—that is, whether they are living above, at, or below poverty.¹³⁰

ii. *Poverty Guidelines Generally.* Poverty guidelines are different from poverty thresholds and are used to determine eligibility for some, but not all,¹³¹ federal, state, and local government programs.¹³² Poverty guidelines are created for prospective administrative use, and the U.S. Department of Health and Human Services publishes them in the Federal Register in January of each year.¹³³

126. *Id.* at 3.

127. See *What Are Poverty Thresholds and Poverty Guidelines?*, U. WIS. INST. FOR RES. ON POVERTY, <http://www.irlp.wisc.edu/faqs/faq1.htm> (last visited Nov. 16, 2017) [hereinafter WIS. IRP].

128. *Frequently Asked Questions Related to the Poverty Guidelines and Poverty*, U.S. DEP’T HEALTH & HUM. SERVS., ASSISTANT SEC’Y FOR PLAN. & EVALUATION, <https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty> [hereinafter ASPE FAQ].

129. *Id.*

130. See WIS. IRP, *supra* note 127; see also *How the Census Bureau Measures Poverty*, U.S. CENSUS BUREAU, <http://www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html> (last revised Aug. 11, 2017).

131. Examples of federal programs that do not use the poverty guidelines are the Earned Income Tax Credit (I.R.C. § 32) and the Child Tax Credit (I.R.C. § 24).

132. ASPE FAQ, *supra* note 128.

133. *Id.* The 2016 poverty guidelines are at Annual Update of the HHS Poverty Guidelines, 81 Fed. Reg. 4036 (Jan. 25, 2016), <https://www.federalregister.gov/articles/2016/01/25/2016-01450/annual-update-of-the-hhs-poverty-guidelines> [hereinafter 2016 HHS Poverty Update]. See also Annual Update of the HHS Poverty Guidelines, 82 Fed. Reg. 8831 (Jan. 31, 2017) (2017 guidelines).

The government calculates the poverty guidelines by adjusting the prior year's poverty thresholds for price changes using the Consumer Price Index (CPI-U).¹³⁴ For example, poverty guidelines issued in January 2017 for that year's government programs will be calculated using the 2015 poverty thresholds (finalized in September of 2016), adjusted for price differences from 2015 to 2016 using the CPI-U.¹³⁵ Poverty guidelines include simple adjustments for families of different sizes through standardizing an additional amount to be added for each individual (rounded to the nearest \$10 increment) and geographic locations "(with different guidelines for the 48 contiguous states and the District of Columbia; Alaska; and Hawaii)."¹³⁶ For example, the increments for each additional person under the 2017 guidelines are as follows: \$4,180 for the 48 contiguous states and the District of Columbia; \$5,230 for Alaska; and \$4,810 for Hawaii.¹³⁷

Government programs often use a multiple of the poverty guidelines (such as 125%, 150%, 185%, or 250% of the poverty line) to determine whether a family is eligible for certain social benefits.¹³⁸ Examples of federal programs that use the guidelines in determining eligibility are Head Start, Low-Income Home Energy Assistance, Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamp Program), National School Lunch Program, Weatherization Assistance for Low-Income Persons, and Job Corps.¹³⁹

b. OPM Poverty Thresholds. The poverty thresholds used in the OPM derive from the original version of the federal poverty measure, which was developed by economist Mollie Orshansky of the Social Security Administration in 1963–64.¹⁴⁰ "Orshansky presented the poverty thresholds as a measure of income inadequacy, not income adequacy" in her January 1965 article.¹⁴¹ She stated, "if it is not possible to state unequivocally 'how much is enough,' it should be possible to assert with confidence how much, on an average, is too little."¹⁴² Orshansky's poverty thresholds were intended to be applied to after-tax income,

134. 2016 HHS Poverty Update, *supra* note 133, at 4036.

135. For examples of calculating the poverty guidelines from the poverty thresholds see *Computations for the 2016 Annual Update of the HHS Poverty Guidelines for the 48 Contiguous States and the District of Columbia*, U.S. DEP'T HEALTH & HUM. SERVS., ASSISTANT SEC'Y FOR PLAN. & EVALUATION (Apr. 25, 2016), <https://aspe.hhs.gov/basic-report/computations-2016-poverty-guidelines>; *Computations for the 2015 Annual Update of the HHS Poverty Guidelines for the 48 Contiguous States and the District of Columbia*, U.S. DEP'T HEALTH & HUM. SERVS., ASSISTANT SEC'Y FOR PLAN. & EVALUATION (Dec. 1, 2015), <https://aspe.hhs.gov/computations-2015-annual-update-hhs-poverty-guidelines-48-contiguous-states-and-district-columbia>.

136. WIS. IRP, *supra* note 127; see also 2016 HHS Poverty Update, *supra* note 132, at 4036–37.

137. The poverty guideline additional amounts are set forth at ASPE, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, U.S. DEP'T HEALTH & HUM. SERVS., ASSISTANT SEC'Y FOR PLAN. & EVALUATION, <https://aspe.hhs.gov/poverty-guidelines> (last visited Nov. 17, 2017) [hereinafter *U.S. Federal Poverty Guidelines*].

138. See 2016 HHS Poverty Update, *supra* note 133, at 4037; see also ASPE FAQ, *supra* note 128 (Q: "I have a chart showing multiples (e.g., 125 percent, 150 percent, etc.) of last year's poverty guidelines. How can I get an updated version of that chart based on this year's guidelines?" A: "The only way to get an official update of a chart showing percentage multiples of the poverty guidelines is to contact the organization or office that prepared it."); WIS. IRP, *supra* note 127.

139. WIS. IRP, *supra* note 127.

140. See ASPE FAQ, *supra* note 128; Gordon M. Fisher, *The Development and History of the U.S. Poverty Thresholds—A Brief Overview*, U.S. DEP'T HEALTH & HUM. SERVS., ASSISTANT SEC'Y FOR PLAN. & EVALUATION (Jan. 1, 1997), www.aspe.hhs.gov/history-poverty-thresholds; WIS. IRP, *supra* note 127.

141. Fisher, *supra* note 140; see Mollie Orshansky, *Counting the Poor: Another Look at the Poverty Profile*, SOC. SECURITY BULL., Jan. 1965, at 3.

142. Orshansky, *supra* note 141, at 3.

but, under the OPM, they are applied to before-tax income as provided by the Census Bureau.¹⁴³ Given regressive sales, payroll, and property tax systems for lower-income households¹⁴⁴ this obvious misapplication leads to a meaningful understatement of households suffering poverty in the OPM.

Orshansky derived the poverty thresholds from “the Department of Agriculture’s 1955 Household Food Consumption Survey (the latest available such survey at the time) [showing] that families of three or more persons spent about one third of their after-tax money income on food.”¹⁴⁵ Orshansky “calculated poverty thresholds for families of three or more persons by taking the dollar costs of the economy food plan for families of those sizes and multiplying the costs by a factor of three.”¹⁴⁶ In addition, “[s]he derived poverty thresholds for two-person families by multiplying the dollar cost of the food plan . . . by a somewhat higher multiplier (3.7) also derived from the 1955 survey.”¹⁴⁷ Orshansky “derived poverty thresholds for one-person units directly from the thresholds for two-person units. . . .”¹⁴⁸ Several years later, “[i]n August 1969, the [U.S.] Bureau of the Budget [predecessor of the Office of Management and Budget] designated the poverty thresholds with [certain] revisions as the federal government’s official statistical definition of poverty.”¹⁴⁹

The original threshold matrix had 124 alternatives that included distinctions for farm and nonfarm families, gender of the head of the household, age of the household members, and family size.¹⁵⁰ The current threshold matrix has 48 alternatives including family size and age of the head of household (for families with one or two adults and up to one child), as well as additional number of children (capped at “eight or more” children).¹⁵¹ Each year the original poverty thresholds derived from the 1955 survey data have been updated for price changes using the CPI-U.¹⁵²

c. SPM Poverty Thresholds. The SPM poverty thresholds are designed to represent the “amount spent on a basic set of goods that includes food, clothing, shelter, and utilities (FCSU), and a small additional amount to allow for other needs (e.g., household supplies, personal care, and nonwork-related transportation).”¹⁵³ The Bureau of Labor Statistics produces the thresholds based upon five years of quarterly expenditure data for family units with “exactly two children using Consumer Expenditure Survey

143. Fisher, *supra* note 140.

144. NEWMAN & O’BRIEN, *supra* note 40, at 86–124 (demonstrating the regressive tax rates for low-income families inherent in state and local sales and property taxes). Payroll tax rates are routinely described as regressive given that they start on dollar one of earned income and are capped generally at higher income dollar amounts. *Policy Basics: Federal Payroll Taxes*, CTR. ON BUDGET & POL’Y PRIORITIES (Mar. 23, 2016), <https://www.cbpp.org/research/federal-tax/policy-basics-federal-payroll-taxes> (affirming that payroll taxes are regressive and that about 33% of all tax revenue is generated by federal payroll taxes that disproportionately burden lower income households).

145. Fisher, *supra* note 140.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*; see also Directives for the Conduct of Federal Statistical Activities: Directive No. 14: Definition of Poverty for Statistical Purposes, 43 Fed. Reg. 19,260, 19,269 (May 4, 1978).

150. Fisher, *supra* note 140.

151. *Poverty Thresholds*, U.S. CENSUS BUREAU (last visited Nov. 17, 2017) <http://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html> [hereinafter *Poverty Thresholds*] (open the excel sheet by clicking on the 2014 hyperlink).

152. See *id.* (current and historical poverty thresholds); see also *supra* note 134 and accompanying text.

153. SPM 2014, *supra* note 35, at 1. The threshold is determined based upon the average expenditures on FSUC over all two-child consumer units in the 30th to 36th percentile range in Consumer Expenditure Surveys multiplied by 1.2 (to account for expenditures in addition to FSCU). *Id.* at 16.

(CE) data.”¹⁵⁴ The Bureau adjusts the thresholds to reflect the needs of different family sizes and composition, incorporating economies of scale, number of adults versus children,¹⁵⁵ and geographic differences in housing costs.¹⁵⁶ Expenditures on shelter and utilities are determined differently for renters, owners with mortgages, and owners without mortgages.¹⁵⁷ The government is required to adjust the thresholds “to reflect real change in expenditures on this basic bundle of goods around the 33rd percentile of the expenditure distribution.”¹⁵⁸ The calculation of FSCU must also include noncash benefits that are counted on the resource side for FSCU so that the concept of a threshold functions properly for the SPM calculations.¹⁵⁹ So any FSCU noncash benefits (e.g., housing vouchers, SNAP, utility subsidies) must be included in the threshold so that poverty is not underestimated (e.g., included as a resource for the household unit, but not included in the threshold for the same unit).

d. Sample Poverty Thresholds and Poverty Guidelines. Not surprisingly, SPM poverty thresholds (for the majority of units that are renters and mortgagees) are higher than the OPM poverty thresholds, which are higher than the arguably backward-in-time looking poverty guidelines.¹⁶⁰

Table 2: Two Adults, Two Children Household

	2017	2016 ¹⁶¹	2015 ¹⁶²	2014	2013	2012
Poverty Guidelines ¹⁶³	\$24,600	\$24,300	\$24,250	\$23,850	\$23,550	\$23,050
Poverty Thresholds: ¹⁶⁴						
OPM	N/A	24,339	24,036	24,008	23,624	23,283

154. *Id.* at 1; see *Research Experimental Poverty Thresholds*, BUREAU LAB. STAT., www.bls.gov/pir/spmhome.htm (last visited Nov. 17, 2017).

155. The parameters allow for differing needs of adults and children and for economies of scale for consumption within the consumer unit. SPM 2014, *supra* note at 35, at 3.

156. *Id.* (describing that American Community Survey data on rents is used to adjust housing costs for different geographic regions).

157. *Id.*

158. See *id.* at 1; *Developing a Supplemental Poverty Measure*, *supra* note 30, at 3–4.

159. See SPM 2014, *supra* note at 35, at 1.

160. The poverty guidelines are issued in January each year so that households can use them to determine if they qualify for certain programs during that year. As such, they are based upon the most up to date OPM poverty thresholds, which is finalized in September of the prior year for the preceding calendar year. While the poverty threshold is adjusted with the CPI-U, as evidenced, the poverty guidelines are lower than the poverty thresholds. See *supra* notes 134–137 and accompanying text.

161. LIANA FOX, U.S. CENSUS BUREAU, P60-261, THE SUPPLEMENTAL POVERTY MEASURE: 2016, at 24 (2017), <https://www.census.gov/content/dam/Census/library/publications/2017/demo/p60-261.pdf> (Appendix Table A-3 sets forth OPM and SPM thresholds for 2015 and 2016).

162. SPM 2015, *supra* note 29, at 3; see also PROCTOR, SEMEGA & KOLLAR, *supra* note 64, at 43.

163. *U.S. Federal Poverty Guidelines*, *supra* note 137. For prior guidelines, see *Prior HHS Poverty Guidelines and Federal Register References*, U.S. DEP’T HEALTH & HUM. SERVS., ASSISTANT SEC’Y FOR PLAN. & EVALUATION, <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> (last visited Dec. 4, 2017).

164. *U.S. Federal Poverty Guidelines*, *supra* note 137.

SPM: ¹⁶⁵ Owners w/out mortgage	N/A	22,298	21,806	21,380	21,397	21,400
SPM: Owners w/mortgage ¹⁶⁶	N/A	26,336	25,930	25,844	25,639	25,784
SPM: Renters ¹⁶⁷	N/A	26,104	25,583	25,460	25,144	25,105

B. What Resources Are Included for Each Unit to Determine If They Are Poor?

A primary purpose of poverty measurements is to determine the demographics of those who are not allocated sufficient resources.¹⁶⁸ This Article has presented the mechanics of the poverty thresholds under the OPM and the SPM as well as the different compositions of the units for analysis under the two measures. The OPM and SPM also include different financial resources to compare to the relevant poverty threshold to determine if a household is poor. Both the OPM and SPM include as financial resources all cash income including most significantly pre-tax market income (i.e., wages, self-employment income, business income, interest, dividends, rents, royalties, income from estates and trusts, alimony, retirement and pension income, but excludes capital gains and losses).¹⁶⁹ OPM and SPM cash resources also include Social Security retirement, survivor, and disability benefits; Supplemental Security Income (SSI);¹⁷⁰ unemployment compensation; and veterans' benefits.¹⁷¹ Finally, cash benefits from Temporary Aid to Needy Families (TANF)¹⁷² and from child support are also included as resources for both measures.¹⁷³ This is the total aggregate resource accumulation for OPM. As noted by critics, OPM only includes pre-tax cash benefits even though in-kind benefits are a meaningful part of many low-income household resources.¹⁷⁴

The SPM is more expansive and includes noncash, in-kind benefits including food security benefits in the form of Supplemental Nutrition Assistance Program (SNAP), school lunches, and Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) as resources.¹⁷⁵ In addition to

165. SPM 2014, *supra* note at 35, at tbl.1; KATHLEEN SHORT, U.S. CENSUS BUREAU, P60-251, THE SUPPLEMENTAL POVERTY MEASURE: 2013, at tbl.1 (2014), <https://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-251.pdf> [hereinafter SPM 2013].

166. Renters and homeowners with a mortgage represent 76% of all household units. SPM 2014, *supra* note 35, at 3–4.

167. SPM 2015, *supra* note 29, at tbl.1; SPM 2014, *supra* note at 35, at tbl.1; SPM 2013, *supra* note 165, at tbl.1.

168. Gordon M. Fisher, *Remembering Mollie Orshansky—The Developer of the Poverty Thresholds*, 68 SOC. SECURITY BULL., no. 3, 2008, at 79 (describing how Orshansky's poverty thresholds resulted out of the declaration of war on poverty and the desire of the government to better understand the demographics of poverty to structure remedies).

169. *How the Census Bureau Measures Poverty*, *supra* note 130; *see also* SPM 2014, *supra* note 35.

170. *See infra* Part II.B.2.

171. *See infra* Part II.B.3.

172. *See infra* Part II.B.4.

173. Because child support is paid to a family from an individual who has an obligation to support a child in the household, it is not separately analyzed as a government antipoverty program in this Article. However, it is included as a resource for data analysis. The 2014 SPM report indicates that child support payments received lifted about 950,000 individuals, predominately children, out of poverty (calculated by multiplying the difference made by child support by total SPM population). *See* SPM 2014, *supra* note 35, at tbl.2, 9 & tbl.4a. Note, however, that that the difference determined with respect to child support is within the margin of error. *Id.*

174. Anupama Jacob, *The Supplemental Poverty Measure: A Better Measure for Poverty in America?*, 1 CTR. FOR POVERTY RES.: POL'Y BRIEF, no. 6, https://poverty.ucdavis.edu/sites/main/files/file-attachments/jacob_poverty_measures_brief.pdf (describing the OPM as long described as outdated and imperfect).

175. *See infra* Part II.B.5.

food security benefits, SPM includes as a resource housing security benefits, which include rental supplements and subsidies and utility assistance programs.¹⁷⁶ In addition to cash income and in-kind benefits, SPM reduces these resources by state, local, and federal income and payroll taxes,¹⁷⁷ work and related child care expenses,¹⁷⁸ child support paid,¹⁷⁹ and medical out-of-pocket expenses (MOOP).¹⁸⁰ Once this net amount is calculated for each household unit, it is compared to the relevant threshold to determine if the household lives in poverty.

This Article will next present and explain each of the household resources as well as the demographics and percentages of the individuals that are lifted out of poverty by these resources. The first and most significant by far of any of the household resources is market income.

1. Market Income

When it was good, it was good. I can remember having five or six jobs a month that were lined up back to back, and I mean decent paying jobs, \$4,000, \$5,000, \$7,000, whatever it was. And all of a sudden, just right about the time when everybody was saying, you know, the recession is coming about, the recession is coming about, people just plain old stopped fixing on their houses, stopped making repairs. [Tom Davis, father of Jonny, Jaylan, Joshua, and Jasmine.]¹⁸¹

The Census Bureau includes as a financial resource a household or family unit's pre-tax cash income from all earnings (including wages, salaries, tips, commissions, bonuses, self-employment, and partnership income), worker's compensation, pension or retirement income, interest, dividends, net rental and royalty income, income from estates and trusts, alimony, and any miscellaneous income.¹⁸² Capital gains and losses are explicitly excluded from this income measure.¹⁸³

176. See *infra* Part II.B.6.

177. See *infra* Part II.B.7.

178. See *infra* Part II.B.9.

179. Child support received is included in the OPM and the SPM as a financial resource. SPM 2014, *supra* note 35, at 9 & tbl.4a. Therefore, child support payments are included as an expense so that child support received is not double counted in the aggregate. *Id.* This Article does not separately analyze child support payments received or paid as it is not a traditional antipoverty government program. Nevertheless, child support payments are regulated by state law to a certain extent so there is an argument that child support has as its foundation a government program. See Elizabeth Stuart, *How Anti-Poverty Programs Marginalize Fathers*, ATLANTIC (Feb. 25, 2014), <https://www.theatlantic.com/politics/archive/2014/02/how-anti-poverty-programs-marginalize-fathers/283984/> (noting that after welfare reform in the 1990s, child support enforcement became more aggressive as states pursued fathers to support their children so that the state did not have to in their absence). Child support payments pushed about 317,000 individuals into poverty. SPM 2014, *supra* note 35, at tbl.2, 9 & tbl.4a. Given that approximately 950,000 individuals, predominately children, were lifted out of poverty with child support payments received, the net impact on the SPM rate is a decrease of .2% or about 633,000 individuals. *Id.*; see also *supra* note 173 and accompanying text.

180. See *infra* Part II.B.8.

181. *Poor Kids*, *supra* note 2.

182. *How the Census Bureau Measures Poverty*, *supra* note 130.

183. *Id.*

Not surprisingly, market income is the most meaningful antipoverty relief of any resource for all demographics.¹⁸⁴ Under the OPM and SPM, more than 77% of the population universe, or about 244 to 245 million individuals, are lifted above poverty thresholds with market income.¹⁸⁵ However, consistent with income inequality data, market income is not uniformly allocated among all populations.¹⁸⁶ Under the current structure, if we only consider market income, about 22% of the analyzed population universe lives without adequate resources or in poverty.¹⁸⁷ Market income disproportionately lifts working-age, able-bodied White men out of poverty under the OPM and SPM.¹⁸⁸ Blacks, Native Americans, senior citizens, and people with disabilities are disproportionately excluded from their proportionate share of market income based upon population.¹⁸⁹ Whites and Asians receive a disproportionately greater share of market income than their population percentage under the OPM and the SPM.¹⁹⁰ Whites are 61.8% of the population universe under the OPM and SPM, but received, respectively, 64.6% and 65.2% of market income. Blacks are 12.2% of the population universe, but they received only 10.3% of total market income under the OPM and SPM. People with disabilities were 9.4% of the population and received only 5.9% and 6.0% under the OPM and SPM measurements, respectively. Given that market income is by far the most significant household unit resource lifting more household units out of poverty than all other resources these inconsistent allocations are meaningful to families who do not receive their pro rata share.

Hispanics are 16.7% of the population universe and received only 16.3% and 15.8% of market income under the OPM and SPM, respectively. “Hispanic” is defined for purposes of poverty measurement consistently with the U.S. federal government standards issued by the Office of Management and Budget (OMB). These standards specify that race and Hispanic origin (also known as ethnicity) are two separate and distinct concepts.¹⁹¹ The OMB defines “Hispanic” as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. “Persons who report themselves as Hispanic can be of any race and are identified as such in [our] data tables.”¹⁹²

As a result of this disproportionate allocation of market income, poverty rates vary dramatically among races, ethnicity, gender, age, and disability.¹⁹³ Asians, Whites and working-age people have the lowest poverty rates, ranging from 17 to 19%, because they receive the most significant allocations of market income relative to their representation in the population universes used by the Census Bureau.¹⁹⁴ Hispanic, Black, Native American, Pacific Islander, and multi-racial individuals suffer the highest poverty rates, ranging from 20 to 37%, as a result of disproportionate market income allocation.¹⁹⁵ While the poverty

184. See *infra* Table 3 (demonstrating that about 244 million individuals are lifted out of poverty with market income as compared to all the other relief described in each of the charts set forth in this Article).

185. See *infra* Table 3.

186. See *infra* Table 3.

187. See *infra* Table 3.

188. See *infra* Table 3.

189. See *infra* Table 3.

190. See *infra* Table 3.

191. *Hispanic Origins*, *supra* note 79.

192. *Id.*

193. See *infra* Table 3.

194. See *infra* Table 3. Statistics are derived from U.S. Census Bureau data and have been determined using the *Poverty Calculator*, USPOVERTYDATA, <http://uspovertydata.com/povcal/> (last visited Dec. 7, 2017) [hereinafter *Poverty Calculator*]. Unless otherwise stated, statistics sourced to the *Poverty Calculator* have been disentangled using the features of that tool. For information regarding development of the tool, see Matt Breunig, *Introducing the Interactive Poverty Calculator*, DEMOS (Sept. 3, 2014), <http://www.demos.org/blog/9/3/14/introducing-interactive-poverty-calculator>.

195. *Poverty Calculator*, *supra* note 194; see *infra* Table 3.

rates for these demographic groups vary between the OPM and SPM calculations, this trend is consistent and prominent.

Table 3: Antipoverty Relief of 2014 Market Income Under the OPM and SPM

OPM-2014	Population ¹⁹⁶		Lifted Out of Poverty w/Market ¹⁹⁷		Pop. in Poverty Post Market Income ¹⁹⁸		
	Total (millions)	% of Total	Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	315.804	100	243.622	100 ¹⁹⁹	72.182	100	22.9
Race							
White	195.208	61.8	157.387	64.6	37.821	52.4	19.4
Hispanic	55.504	17.6	39.656	16.3	15.848	22.0	28.6
Black	38.518	12.2	25.102	10.3	13.416	18.6	34.8
Asian	17.322	5.5	14.641	6.0	2.681	3.7	15.5
Multi-Racial	5.807	1.8	4.545	1.9	1.262	1.7	21.7
Native	2.465	.8	1.565	.6	.900	1.2	36.5
Pacific Islander	.981	.3	.726	.2	.255	.4	26.0
Sex							
Male	154.639	49.0	122.596	50.3	32.043	44.4	20.7
Female	161.164	51.0	121.025	49.7	40.139	55.6	24.9
Age							
0–17	73.556	23.3	56.10	23.0	17.448	24.2	23.7
18–64	196.254	62.1	161.574	66.3	34.680	48.0	17.7
65+	45.994	14.6	25.93	10.6	20.055	27.8	43.6
Disability	29.61	9.4	14.434	5.9	15.176	21.0	51.3

196. *Poverty Calculator*, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: none; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”). OPM has a smaller population universe (about 364,000 children under 15) because it excludes unrelated children under 15 (e.g., foster children) as they are not asked about their sources of income. *How the Census Bureau Measures Poverty*, *supra* note 130. Recall that the OPM, unlike the SPM, does not include unrelated children in the household unit. *See supra* notes 124–125 and accompanying text.

197. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: none; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

198. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income”; Step 2: None; Step 3: “Official Poverty Line”; Step 4: “2014”).

199. The number lifted out of poverty (243.622M) over the total population (315.804M) equals 77.1%.

SPM-2014	Population ²⁰⁰		Lifted Out of Poverty w/Market ²⁰¹		Pop. in Poverty Post Market Income ²⁰²		
	Total (millions)	% of Total	Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	316.168	100	245.408	100 ²⁰³	70.76	100	22.4
Race							
White	195.352	61.8	159.977	65.1	35.375	50.0	18.1
Hispanic	55.614	17.6	38.854	15.8	16.76	23.7	30.1
Black	38.605	12.2	25.391	10.3	13.214	18.7	34.2
Asian	17.328	5.5	14.177	5.8	3.151	4.5	18.2
Multi-Racial	5.815	1.8	4.608	1.9	1.207	1.7	20.8
Native	2.473	.8	1.685	.7	.788	1.1	31.9
Pacific Islander	.981	.3	.716	.3	.265	.4	27.0
Sex							
Male	154.815	49.0	122.989	50.1	31.826	45.0	20.6
Female	161.353	51.0	122.419	49.9	38.934	55.0	24.1
Age							
0–17	73.920	23.4	57.272	23.3	16.648	23.5	22.5
18–64	196.254	62.1	162.341	66.2	33.913	47.9	17.3
65+	45.994	14.5	25.795	10.5	20.199	28.5	43.9
Disability	29.61	9.4	14.671	6.0	14.939	21.1	50.5

Median household income was stagnant or decreased from 2008 through 2014.²⁰⁴ In 2014, median household income was 6.5% lower than median household income levels immediately before the recession in 2007.²⁰⁵ In 2015, after seven years of decreases or stagnation, median household income experienced a record-breaking one year increase of 5.2%.²⁰⁶ However, 2015 median household income was 1.6% lower than pre-recession median household income and 2.4% lower than peak median household income in 1999.²⁰⁷ In 2016, median household income increased again by 3.2% for all units in the population universe.

200. *Poverty Calculator*, supra note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: none; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

201. *Id.* ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: none; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

202. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

203. The number lifted out of poverty (245.408M) over the total population (316.168M) equals 77.6%.

204. DENAVAS-WALT & PROCTOR, *supra* note 34, at 5.

205. *Id.* at 5.

206. PROCTOR, SEMEGA & KOLLAR, *supra* note 64; Binyamin Appelbaum, *U.S. Household Income Grew 5.2 Percent in 2015, Breaking Pattern of Stagnation*, N.Y. TIMES (Sept. 13, 2016), http://www.nytimes.com/2016/09/14/business/economy/us-census-household-income-poverty-wealth-2015.html?_r=0 (finding that the bottom 10th percentile household income rose by 7.9%; 6.3% for those in the 20th percentile; and only 2.9% for those in the 90th percentile).

207. PROCTOR, SEMEGA & KOLLAR, *supra* note 64, at 7.

This was the second annual increase for non-Hispanic White, Black, and Hispanic households.²⁰⁸ Although there were more women working full-time in 2014 than immediately before the recession, the female-to-male earnings ratio remained statistically static from 2007 through 2015, but increased by 1.1% to 80.5% in 2016.²⁰⁹ Real median household income by sex and race or Hispanic origin is consistent with these market income allocation statistics. In 2014 through 2016, median household income was as follows:²¹⁰

Table 4: 2014–16 Median Household Income Data

Median Household Income 2014-2016 (Nominal Dollars) ²¹¹	2014		2015		2016	
	\$ Amount	% of Median	\$ Amount	% of Median	\$ Amount	% of Median
All	53,657	100	56,516	100	59,039	100
Asian	74,297	138	77,166	137	81,431	138
White	60,256	112	62,950	114	65,041	110
Hispanic	42,491	79	45,148	80	47,675	81
Black	35,398	66	36,898	65	39,490	67
Full-time, year-round worker						
Men	50,383	93.9	51,212	90.6	51,640	87.5
Women ²¹²	39,621	73.8	40,742	72.1	41,554	70.4

Efforts to equalize pay between men and women and increase the minimum wage might mitigate the disproportionate allocation of market income to White men who are statistically less likely to suffer minimum-wage working conditions.²¹³ As the data further indicates, market income in the form of

208. JESSICA L. SEMEGA, KAYLA R. FONTENOT, & MELISSA A. KOLLAR, U.S. CENSUS BUREAU, P60-259, INCOME AND POVERTY IN THE UNITED STATES: 2016, at 5, <https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf>.

209. PROCTOR, SEMEGA & KOLLAR, *supra* note 64, at 10.

210. DENAVAS-WALT & PROCTOR, *supra* note 34, at 5, 10; PROCTOR, SEMEGA & KOLLAR, *supra* note 64, at 6, 10 (noting that real median household income increased for the first time since 2007 by 5.2% from 2014); SEMEGA, FONTENOT & KOLLAR, *supra* note 208, at 5-7.

211. The dollar amounts for each year are stated in that year's dollars (e.g., 2014 amounts are in 2014 dollars, not 2015 or 2016 dollars) because they are not adjusted for inflation to current year values. *See, e.g.*, SEMEGA, FONTENOT & KOLLAR, *supra* note 208, at 2 n.2 & 6 tbl.1 (describing that the numbers for 2015 and 2016 are inflation adjusted to 2016 dollars).

212. In 2014, women's median income was 78.6% of the median amount for men, and in 2015, it was 79.6% of the median amount for men.

213. An increase to the minimum wage would disproportionately benefit women and their children. David Cooper, *Raising the Federal Minimum Wage to \$10.10 Would Lift Wages for Millions and Provide a Modest Economic Boost* 7 (Econ. Policy Inst. Briefing Paper No. 371, 2014), <http://www.epi.org/files/2014/EPI-1010-minimum-wage.pdf> (noting that almost 30 million individuals would enjoy the benefit of an increased minimum wage); *see also Raise the Wage*, OBAMA WHITE HOUSE, <https://obamawhitehouse.archives.gov/node/272066> (last visited Nov. 18, 2017); U.S. Dept. of Labor, *Minimum Wage Mythbusters*, archived at <https://web.archive.org/web/20160713071506/https://www.dol.gov/featured/minimum-wage/mythbuster> (last visited Nov. 18, 2017) (noting that small businesses support gradual increases in the minimum wage and that increasing the minimum wage does not hurt the economy or decrease the number of jobs) (original webpage, <https://www.dol.gov/featured/minimum-wage/mythbuster>, no longer available at Department of Labor website). *But see*, David Neumark, *Reducing Poverty via Minimum Wages, Alternatives*, FED. RES. BANK S.F. ECON. LETTER 2015-

investment income and private retirement pensions has not proportionately replaced earnings for seniors as they receive disproportionately less than their population share of market income.²¹⁴ Seniors comprise about 15% of the OPM and SPM population universes but represent about 28% of individuals living in poverty.²¹⁵ Almost 44% of all senior citizens aged 65 or older would live in poverty if only market income was considered as a financial resource; by race, the percentage of seniors living in poverty includes 42% of White, 50% of Hispanic, and 54% of Black senior citizens.²¹⁶ Social Security benefits mitigate what would otherwise be a market income shortfall crisis by providing more than 90% of total income for about one-third of all senior citizens, including more than 90% of total income for 52% of Hispanic seniors, 45% of Black seniors, and 41% of Asian seniors.²¹⁷ Social Security retirement benefits are an intentionally targeted antipoverty program that has had long-lasting and meaningful success. This dramatically successful antipoverty program is described in detail below.

Market income allocations are most disproportionate for people with disabilities, who represent over 9% of the population universe, but only receive 6% of market income allocations.²¹⁸ This shortfall results in an after-market income poverty rate for people with disabilities greater than 50%.²¹⁹

Disability rights groups, like Disability Visibility²²⁰ and Work Without Limits, are affirmatively trying to better allocate market income to its community members, including people like Jessie Hampton.²²¹ “Jessie Hampton always knew she wanted to work. . . . What she really wanted was a job she could call her own. . . . Today, Jessie works at a local supermarket as a porter and is a union member.”²²² Jessie “enjoys . . . making her own money. . . . [and] having a job which gives [her] freedom and responsibility.”²²³ Another alternatively-abled colleague, Stephanie Major, while working at the University of Massachusetts Medical School, was recently described by her supervisor as someone who was hired for her abilities, not her disability.²²⁴ Similarly, Peter Johnson, working at Plymouth Rock Studios has not only secured market

38 (Dec. 28, 2015), <http://www.frbsf.org/economic-research/publications/economic-letter/2015/december/reducing-poverty-via-minimum-wages-tax-credit/> (arguing that minimum wage is not as well targeted to low-income families as other antipoverty strategies, including the earned income tax credit).

214. See *supra* Table 3.

215. See *supra* Table 3.

216. *Poverty Calculator*, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income”; Step 2: none; Step 3, “Official Poverty Line”; Step 4: “2014”).

217. Paul N. Van de Water & Kathy Ruffing, *Social Security Benefits Are Modest*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/sites/default/files/atoms/files/1-11-11socsec.pdf> (noting that as seniors age they become even more dependent on Social Security benefits) (last updated Aug. 7, 2017).

218. *Poverty Calculator*, *supra* note 194; see *supra* Table 3.

219. See *supra* Table 3.

220. See *#CripTheVote: Ours Voices, Our Vote*, DISABILITY VISIBILITY PROJECT (Jan. 27, 2016), <https://disabilityvisibilityproject.com/2016/01/27/cripthevote-our-voices-our-vote/> (working to #cripthevote as well as getting the voices and equal rights of people with disabilities heard, seen, felt, and in place); see also Francine J. Lipman, *Enabling Work for People with Disabilities: A Post-Integrationist Revision of Underutilized Tax Incentives*, 53 AM. U. L. REV. 393 (2003) (evaluating failed tax incentives in the context of disability rights theories and determining that people with disabilities need to affirmatively promote their alternatively-abled assets to employers with tax incentives that can mitigate costs for employers creating a more equitable allocation of market income).

221. See WORK WITHOUT LIMITS, www.workwithoutlimits.org (last visited Nov. 18, 2017) (for community resources).

222. *Jesse Hampton*, WORK WITHOUT LIMITS, <http://www.workwithoutlimits.org/profiles-in-employment/jessie-hampton> (last visited Nov. 18, 2017).

223. *Id.*

224. *Stephanie Major*, WORK WITHOUT LIMITS, <http://www.workwithoutlimits.org/profiles-in-employment/stephanie-major> (last visited Nov. 18, 2017).

income for his household, but has improved his employer's bottom line.²²⁵ The lack of allocation of market income to people with disabilities is a failure of our resource allocation systems.

More than twenty-five years after the enactment of the Americans With Disabilities Act, individuals with disabilities continue to suffer extreme income inequality in a system sometimes described as designed to fail for these non-traditionally-abled Americans.²²⁶ People with disabilities "are three times more likely than their non-disabled peers to live at or below the poverty line, twice as likely to be unemployed and seven times more likely to have a majority of their total income be from" government sources.²²⁷ The next section of this Article describes how and to what extent Old-Age, Survivors, and Disability Insurance Programs (OASDI) and SSI fill this gaping gap.

2. OASDI and SSI

My mom can't work and my mom can't drive and my mom's sick. [Brittany, age nine.]²²⁸

a. Social Security (OASDI) Antipoverty Benefits. After market income, OASDI lifts more individuals out of poverty than any other resource by almost 400%.²²⁹ During the Social Security Administration's 2014 fiscal year, the government delivered \$848.5 billion to 59 million beneficiaries.²³⁰ Seventy-one percent of beneficiaries were retired individuals and their families, 10% were survivors of deceased workers, and the remaining 19% were disabled individuals and their families.²³¹ In 2014, without OASDI benefits 26 million more individuals would be living in poverty.²³² The poverty rate would increase by 8% from 15% to 24% overall and to 50% for senior citizens aged 65 and older.²³³ By comparison, without SSI (and assuming no behavioral modifications), about 3.8 million more individuals would suffer poverty in 2014 under the SPM.²³⁴

Assuming only market income is allocated among the OPM and SPM population universes, OASDI and SSI benefits considered together would lift about 24 million more individuals out of poverty.²³⁵ White

225. Peter Johnson, WORK WITHOUT LIMITS, <http://www.workwithoutlimits.org/profiles-in-employment/peter-johnson> (last visited Nov. 18, 2017).

226. Pam Fessler, *Why Disability and Poverty Still Go Hand in Hand 25 Years After Landmark Law*, NAT'L PUB. RADIO (July 23, 2015, 3:38 PM), <http://www.npr.org/sections/health-shots/2015/07/23/424990474/why-disability-and-poverty-still-go-hand-in-hand-25-years-after-landmark-law> (describing the system as set up not to succeed and with employers afraid to hire individuals who are differently abled).

227. Michael Morris & Johnette Hartnett, *What Can the White House Do to Have a Real Economic Impact for Americans With Disabilities?* (Nat'l Disability Inst., 2009), <https://www.realeconomicimpact.org/public-policy/research> (suggesting a myriad of economic and financial initiatives for people with disabilities).

228. *Poor Kids*, *supra* note 2.

229. SPM 2014, *supra* note 35, at 9.

230. SOC. SEC. ADMIN., Pub. No. 13-11700, ANNUAL STATISTICAL SUPPLEMENT TO THE SOCIAL SECURITY BULLETIN, 2015, at 2 (2016), <https://www.ssa.gov/policy/docs/statcomps/supplement/2015/supplement15.pdf> [hereinafter SSA STATISTICAL SUPPLEMENT].

231. *Id.*

232. SPM 2014, *supra* note 35, at 9.

233. *Id.* at 9–10.

234. *Id.* (assuming a 1.2% poverty rate increase from 15.3% to 16.5% and a 316,168,000 population universe, 3,794,016 more individuals would have suffered poverty without SSI in 2014).

235. This calculation assumes that none of the other financial resources (unemployment, veteran's benefits, Temporary Aid to Needy Families, or in-kind benefits for food, utilities or housing) or costs (e.g., taxes, medical out of pocket, child care and work related expenses) inherent in the poverty measures are allocated. *See infra* Table 5.

senior citizens disproportionately receive the most significant percentage of OASDI and SSI antipoverty benefits. Of the 24 million individuals lifted out of poverty by these benefits, about 17 to 18 million, or over 70%, are White including more than 12 million White senior citizens.²³⁶ Whites represent just over 50% of the poor population after only considering market income, but they represent over 70% of those lifted out of poverty by these benefits. While White senior citizens represent less than 30% of the population of poverty after-market income, they receive more than 60% of OASDI and SSI antipoverty benefits.²³⁷

All other races and Hispanics receive disproportionately less in benefits than their share of the after-market income poor population.²³⁸ For example, while Hispanics represent more than 20% of the after-market income poverty rate, they represent less than 10% of those lifted out of poverty by these antipoverty benefits.²³⁹ Black, Asian, Native American, and Pacific Islander poor populations are treated similarly under the system, as demonstrated in the chart below.²⁴⁰ Notably, women as compared to men receive a slightly higher than proportionate share of antipoverty OASDI and SSI benefits, reportedly because they live longer than men.²⁴¹ Finally, consistent with targeted goals of these programs, people with disabilities who represent just over 20% of the poor population after-market income represent almost 35% of the people who are lifted out of poverty by OASDI and SSI benefits.²⁴² Thus, the targeting of these benefits seems to be effective, although after the allocations people with disabilities remain disproportionately poor so the allocations are not adequate to fill the shortfall of market income allocations.

In 2014, 3.2 million children received direct OASDI benefits as surviving dependents or as dependents of a retiree or disabled worker; moreover, another 3.2 million children benefited from OASDI indirectly.²⁴³ Thus, 9% of all U.S. children under the age of 18 are Social Security beneficiaries, representing 11% of all Social Security beneficiaries.²⁴⁴ Average monthly OASDI benefits for children are about \$548, with 43% of qualifying children receiving the highest average amount of \$821 on behalf of deceased workers, 15% receiving \$621 on average on behalf of retired workers, and 42% receiving only \$335 on behalf of disabled workers.²⁴⁵

About 67% of these “indirect child beneficiaries live in multigenerational families consisting of three or more generations or in” households comprised of only grandparents and grandchildren.²⁴⁶ From 2001 to 2014, the number of children living in intergenerational families rose from 8% to 11% across all racial and ethnic groups.²⁴⁷ Consistent with this pattern, the number of multigenerational households has increased 70% since 1990, due to an aging population, stagnant wages, increasing unemployment and underemployment, increased immigration, diversity, and rising housing costs.²⁴⁸ “In 2014, a record 60.6

236. *See infra* Table 5.

237. *See infra* Table 5.

238. *See infra* Table 5.

239. *See infra* Table 5.

240. *See infra* Table 5.

241. *See infra* Table 5.

242. *Compare* Table 3 *supra*, with Table 5 *infra*.

243. *Overlooked but Not Forgotten: Social Security Lifts Millions More Children Out of Poverty*, CTR. FOR GLOBAL POL’Y SOLUTIONS 1 (July 2016), <http://globalpolicysolutions.org/wp-content/uploads/2016/07/Social-Security-Child-Poverty-FINAL.pdf>.

244. *Id.*

245. *Id.* at 4–5.

246. *Id.* at 2.

247. *Id.*

248. *Id.* at 4.

million people, or 19% of the U.S. population” lived in multi-generational households, including 26.9 million in three-generation households.²⁴⁹

As a result of these multi-generational households children are directly and indirectly lifted out of poverty with OASDI benefits and SSI. Without these benefits about 1.5 to 1.625 million more children would live in poverty²⁵⁰ and the overall child poverty rate would increase by about 20% up to 23–24%.²⁵¹ White children are by far the largest group of children receiving antipoverty OASDI and SSI benefits.²⁵² More than 700,000 White children were lifted out of poverty by these benefits, reducing the poverty rate for White children from 14.7% to 12.8% (by 1.9% or about 13% of the pre-allocation poverty rate).²⁵³ More than 600,000 Black and Hispanic children, evenly distributed between the two groups, would be added to the ranks of children living in poverty without these benefits under the OPM.²⁵⁴ As a result, Black and Hispanic children received poverty rate reductions of 3% and 1.7%, reducing their OPM rates down to 37.9% and 32.8%, respectively.²⁵⁵ Nevertheless, these extremely high OPM rates for children of color are 250–300% of the OPM rates for White children after only accounting for market income, OASDI, and SSI benefits.²⁵⁶ Thus, while these benefits are reaching children, the reach is discriminatory based upon race and ethnic origin.

Table 5: Antipoverty Relief of 2014 Market Income, OASDI, and SSI Under the OPM and SPM

OPM-2014	% of Total Pop. ²⁵⁷	% of No. in Poverty	Lifted Out of Poverty w/OASDI & SSI ²⁵⁹	Pop. in Poverty Post Mrkt Income, OASDI & SSI ²⁶⁰
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249. D’Vera Cohn & Jeffrey S. Passel, *A Record 60.6 Million Americans Live in Multigenerational Households*, PEW RES. CTR. (Aug. 11, 2016), <http://www.pewresearch.org/fact-tank/2016/08/11/a-record-60-6-million-americans-live-in-multigenerational-households/>.

250. See *infra* Table 5.

251. *Overlooked but Not Forgotten*, *supra* note 243, at 2.

252 *Poverty Calculator*, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income,” “Social Security,” and “Supplemental Security Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

253. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

254. *Id.* (use the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

255. *Id.* (use the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

256. 32.8% OPM for Hispanic children /12.8% OPM for White Children = 256% and 37.9% OPM for Black children /12.8% OPM for White Children = 296%. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

257. Reproduces data from Table 3, OPM-2014, *supra*, at col. 3.

259. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

260. *Id.* (use the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income,” “Social Security,” “Supplemental Security Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

		Post Mrkt Income²⁵⁸	Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	24.057	100 ²⁶¹	48.125	100	15.2
Race							
White	61.8	52.4	17.463	72.6	20.358	42.3	10.4
Hispanic	17.6	22.0	2.381	9.9	13.467	28.0	24.3
Black	12.2	18.6	3.069	12.8	10.347	21.5	26.9
Asian	5.5	3.7	.621	2.6	2.060	4.3	11.9
Multi-Racial	1.8	1.7	.275	1.1	.987	2.0	17.0
Native	.8	1.2	.213	.9	.687	1.4	27.9
Pac. Islander	.3	.4	.035	.1	.220	.5	22.4
Sex							
Male	49.0	44.4	10.53	43.8	21.513	44.7	13.9
Female	51.0	55.6	13.527	56.2	26.612	55.3	16.5
Age							
0–17	23.3	24.2	1.479	6.1	15.969	33.2	21.7
18–64	62.1	48.0	7.313	30.4	27.367	56.9	13.9
65+	14.6	27.8	15.265	63.5	4.790	10.0	10.4
Disability	9.4	21.0	8.396	34.9	6.780	14.1	22.9

SPM-2014	% of Total Pop.²⁶²	% of No. in Poverty Post Mrkt Income²⁶³	Lifted Out of Poverty w/OASDI & SSI²⁶⁴		Pop. in Poverty Post Mrkt Income, OASDI & SSI²⁶⁵		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	24.735	100 ²⁶⁶	46.025	100	14.6
Race							
White	61.8	50.0	17.945	72.5	17.430	37.9	8.9
Hispanic	17.6	23.7	2.370	9.6	14.390	31.3	25.9
Black	12.2	18.7	3.257	13.2	9.957	21.6	25.8
Asian	5.5	4.5	.632	2.6	2.519	5.5	14.5

258. Reproduces data from Table 3, OPM-2014, *supra*, at col. 7.

261. The number lifted out of poverty (24.057M) over the total OPM population (315.804M) equals 7.62%.

262. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

263. Reproduces data from Table 3, SPM-2014, *supra*, at col. 7.

264. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

265. *Id.*, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “After Market Income,” “Social Security,” “Supplemental Security Income”; Step 2: None; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

266. The number lifted out of poverty (24.735M) over the total SPM population (316.168M) equals 7.82%.

Multi-Racial	1.8	1.7	.295	1.2	.912	2.0	15.7
Native	.8	1.1	.218	.9	.570	1.2	23.0
Pac. Islander	.3	0.4	.023	.1	.242	.5	24.7
Sex							
Male	49.0	45.0	10.855	43.9	20.971	45.6	13.5
Female	51.0	55.0	13.880	56.1	25.054	54.4	15.5
Age							
0–17	23.4	23.5	1.625	6.6	15.023	32.6	20.3
18–64	62.1	47.9	7.783	31.5	26.130	56.8	13.3
65+	14.5	28.5	15.327	62	4.872	10.6	10.6
Disability	9.4	21.1	8.609	34.8	6.330	13.8	21.4

b. OASDI Benefits Details. The Social Security Administration provides OASDI monthly benefits to qualified retired and disabled workers and their dependents and survivors.²⁶⁷ Eligibility and benefit amounts are determined by workers' lifetime wages and corresponding contributions to Social Security through payroll or earnings taxes.²⁶⁸ Social Security benefits are not means-tested, but they are reduced for individuals below full retirement age with earned income above certain thresholds and are subject to federal income tax for higher income individuals.²⁶⁹

Social Security taxes are regressive, although benefits tend to be progressive.²⁷⁰ A person contributes to and qualifies for Social Security through payroll taxes or self-employment taxes under the Federal Insurance Contributions Act (FICA) or Self-Employment Contributions Act (SECA).²⁷¹ Employers match employee contributions of 6.2%, while self-employed workers pay both the employer and employee contributions on the maximum yearly amount of earnings, which is \$127,200 for 2017.²⁷² Average annual benefits for retired workers using January 2017 monthly averages were \$16,320; \$14,052 for disabled workers; and \$15,600 for nondisabled surviving spouses.²⁷³ Average annual family benefits similarly computed were \$32,340 for widowed spouses and two children; \$23,952 for disabled workers, their spouses, and children; and \$27,120 for retired couples.²⁷⁴ While these benefits are modest compared to average annual worker wages of about \$48,000, they are by far the most significant and long-term resource presently distributed by the government in the United States.²⁷⁵

267. SSA STATISTICAL SUPPLEMENT, *supra* note 230, at 9.

268. For a comprehensive overview on the calculation of Social Security benefits, see Francine J. Lipman & James E. Williamson, *Social Security Benefits Formula 101: A Practical Primer*, ABA SEC. TAX'N NEWSQUARTERLY, Summer 2010, at 15.

269. SSA STATISTICAL SUPPLEMENT, *supra* note 230 at 9. *But see* Francine J. Lipman, *Shrinking Boomer Social Security Retirement Benefits*, ABA SEC. TAX'N NEWSQUARTERLY, Fall 2007, at 19, 21.

270. Lipman, *supra* note 269.

271. SSA STATISTICAL SUPPLEMENT, *supra* note 230, at 9.

272. *Fact Sheet: 2017 Social Security Changes*, SOC. SECURITY ADMIN., <https://www.ssa.gov/news/press/factsheets/colafacts2017.pdf> [hereinafter *SSA Fact Sheet 2017*].

273. *Id.*

274. *Id.*

275. *National Average Wage Index*, SOC. SECURITY ADMIN., <https://www.ssa.gov/oact/cola/AWI.html> (last visited Nov. 18, 2017).

Workers become qualified for OASDI benefits through quarterly credits.²⁷⁶ A quarterly credit is earned with Social Security covered earnings of \$1,300 (in 2017) or up to four quarterly credits a year for at least \$5,200 of covered earnings.²⁷⁷ To be fully insured, workers need the greater of (1) six quarters; or (2) a number of quarters equal to the number of years from age 21 to the first of: attaining age 62, becoming disabled, or dying.²⁷⁸ If a worker dies before she qualifies as “fully insured,” benefits will be paid to certain survivors if the worker was “currently insured.”²⁷⁹ Workers are “currently insured” if they have earned six quarterly credits in the 13 quarters ending with death.²⁸⁰ Survivor benefits are paid to a worker’s children and to a surviving spouse who takes care of the deceased’s children who are under age 16 or disabled and receiving Social Security benefits.²⁸¹

A worker receives disability benefits only if she is “fully insured” and has “recent work activity.”²⁸² Recent work activity for a non-blind individual who is age 31 or older means she has earned at least 20 quarterly credits during the 40-calendar quarter period ending with the first quarter of disability.²⁸³ If she becomes disabled before age 31, the number of quarterly credits is basically the greater of (1) six or (2) one-half of the calendar quarters from age 21 until she became disabled.²⁸⁴ Workers for whom blindness is their disability qualify for benefits if they are fully insured regardless of recent work activity.²⁸⁵ If individuals do not qualify for these benefits, SSI is a back-up benefit that is needs-based.

c. SSI Details. While Social Security is described as an earned or “entitlement” benefit, SSI is a needs-based program for individuals who are disabled or for senior citizens with limited income and resources (at or below \$2,000 for individuals, \$3,000 for couples).²⁸⁶ SSI fills the needs-based income gap for senior citizens and people with disabilities who do not meet the worker’s credit requirements described above for OASDI.²⁸⁷ SSI lifted about 2.5 million individuals out of poverty, after market income, in 2014.²⁸⁸ While these individuals are included in the tables and demographic discussion above, this subsection will describe the requirements for and the mechanics of SSI.

276. See *Quarter of Coverage*, SOC. SECURITY ADMIN., <https://www.ssa.gov/oact/cola/QC.html> (last visited Nov. 18, 2017) (also describing how this dollar amount is computed and indexed for inflation annually).

277. *SSA Fact Sheet 2017*, *supra* note 272.

278. SSA STATISTICAL SUPPLEMENT, *supra* note 230, at 11 (determining that the number of quarters a non-disabled worker living past age sixty-two needs is forty quarters (one for each of the forty years from age twenty-one to attaining age sixty-two)).

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* at 12.

283. *Id.*

284. *Id.*

285. *Id.*

286. *Fact Sheet: Social Security and Supplemental Security Income: What’s the Difference?*, SOC. SECURITY ADMIN. (Nov. 2009), <https://www.ssa.gov/sf/FactSheets/aianssavssfinalrev.pdf>.

287. *Id.*

288. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income” and “Social Security”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” and “Supplemental Security Income”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

SSI is paid to individuals who are disabled, blind, or at least 65 years old and have limited income and resources.²⁸⁹ In 2014, over eight million individuals received federal SSI payments, including about two million who were aged 65 or older, 1.3 million of whom were children, and over seven million who were disabled.²⁹⁰ In most states, SSI beneficiaries also qualify for Medicaid and may also be eligible for food assistance.²⁹¹ The monthly benefit is up to \$735 for individuals in their own household and \$1,103 for an eligible couple.²⁹² These amounts are reduced based upon other cash income and in-kind resources provided to the beneficiary for food and shelter, not including government assistance.²⁹³ As a result, average monthly benefits for December 2014 were \$517 (or about \$6,200 annualized), aggregating to about \$51.6 billion.²⁹⁴ Some states provide a supplemental cash benefit, which averaged about \$142 per month, or an additional \$1,700 per year.²⁹⁵ Median monthly SSI benefits from 2009 to 2012 were \$698, or about \$8,400 per year.²⁹⁶ About four percent of the OPM and SPM population universes participated in SSI from 2009 to 2012, with the average monthly participation rates ranging below this rate at about three percent.²⁹⁷ During the same period, the length of coverage for all SSI recipients was as follows: 35.6% received SSI benefits for 1 to 12 months; 14.3% received benefits for 13 to 24 months; 11.9% received benefits for 25

289. *Supplemental Security Income (SSI) Overview*, SOC. SECURITY ADMIN., <https://www.ssa.gov/ssi/text-over-ussi.htm> (last visited Nov. 18, 2017) (individuals must be U.S. citizens or nationals, or in one of certain categories of legal residents). Individuals must also be a resident of one of the 50 states, the District of Columbia, or the Northern Mariana Islands, and not confined to a hospital or prison. *Supplemental Security Income (SSI) Eligibility Requirements*, SOC. SECURITY ADMIN., <https://www.ssa.gov/ssi/text-eligibility-ussi.htm> (last visited Nov. 18, 2017).

290. SOC. SEC. ADMIN., PUB. NO. 13-11785, FAST FACTS AND FIGURES ABOUT SOCIAL SECURITY 24, 27 (2015), https://www.ssa.gov/policy/docs/chartbooks/fast_facts/2015/fast_facts15.pdf [hereinafter SSA FAST FACTS].

291. *Supplemental Security Income (SSI) Overview*, *supra* note 289.

292. *Supplemental Security Income (SSI) General Information*, SOC. SECURITY ADMIN., <https://www.ssa.gov/ssi/text-general-ussi.htm> (last visited Nov. 20, 2017). For examples of how the monthly SSI benefit is computed, see *Supplemental Security Income (SSI) Income*, SOC. SECURITY ADMIN., <https://www.ssa.gov/ssi/text-income-ussi.htm> (last visited Nov. 20, 2017). Your total income is reduced by income that is not counted to determine your countable income. *Id.* The SSI federal benefit rate is reduced by the countable income to determine the amount of the SSI federal benefit. *Id.* As an example, suppose that your earned income was \$317 per month. *Id.* To determine your countable income, subtract \$20 (excluded income) and \$65 (excluded earned income) from your earned income and divide that amount in half $[(\$317 - \$20 - \$65) / 2 = \$116]$. *Id.* Then, to determine your SSI federal benefit, subtract your countable income from your SSI federal benefit rate $(\$735 - \$116 = \$619)$. *Id.*

293. *Supplemental Security Income (SSI) Resources*, SOC. SECURITY ADMIN., <https://www.ssa.gov/ssi/text-resources-ussi.htm> (last visited Nov. 20, 2017). Certain resources are disregarded for SSI eligibility purposes including, but not limited to, the house that applicant lives in, household goods, personal effects, life insurance and burial funds of \$1,500 or less, and one car if used for transportation by the applicant or a member of the applicant's household. *Id.*

294. SOC. SEC. ADMIN., PUB. NO. 13-11827, SSI ANNUAL STATISTICAL REPORT, 2014, at 16, 26 (2015), https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2014/ssi_asr14.pdf [hereinafter SSA 2014 REPORT]; SSA FAST FACTS, *supra* note 290, at 25.

295. SSA 2014 REPORT, *supra* note 294, at 16, 26; SSA FAST FACTS, *supra* note 290, at 25.

296. SHELLEY K. IRVING & TRACY A. LOVELESS, U.S. CENSUS BUREAU, P70-141, DYNAMICS OF ECONOMIC WELL-BEING: PARTICIPATION IN GOVERNMENT PROGRAMS, 2009–2012: WHO GETS ASSISTANCE? 13 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf> (describing participation and characteristics of means-tested government assistance programs, including SSI).

297. *Id.* at 4.

to 36 months; and 38.2% received benefits for between 37 and 48 months.²⁹⁸ Not surprisingly, this pattern of participation was consistent with Medicaid usage during the same period.²⁹⁹

3. *Unemployment Insurance and Veterans' Benefits*

We lived in a farmhouse. My dad lost his job from Picture Perfect. He got laid off and we got kicked out of there. We moved here. It's not very big. We didn't have enough room, so we had to put stuff in storage, and we lost it all because we couldn't pay it. [Roger, age 14.]³⁰⁰

a. *Details of Unemployment Insurance Benefits.* Unemployment Insurance (UE) benefits are designed to provide a safety net for regularly employed individuals who are involuntarily unemployed but “who are able and willing to accept suitable employment” opportunities.³⁰¹ UE covers employees in all 50 states, the District of Columbia, Puerto Rico, and all U.S. Virgin Islands.³⁰² Agricultural workers are covered on farms that employ ten or more employees on at least one day in 20 weeks of the year or with quarterly payrolls of at least \$20,000.³⁰³ Domestic employees are eligible for UE if they have reported wages of at least \$1,000 per quarter from an employer.³⁰⁴

UE benefits are not means-tested but rather require a certain amount of time or earnings in covered employment.³⁰⁵ UE benefits are based upon employment during a “base period.”³⁰⁶ “In most states, the base period is the first four quarters of the last five completed calendar quarters preceding” an individual’s UE benefits claim.³⁰⁷ The amount of an individual’s UE benefits depends upon past wages, with minimum and maximum limits; a typical benefit might be 50% of the highest quarter of base period wages subject to a maximum and minimum.³⁰⁸ Typically, there is a one-week waiting period after unemployment begins before benefits can start, and 13 states provide additional amounts for certain dependents.³⁰⁹ In all but eight jurisdictions, there is a maximum duration of 26 weeks of benefits in a benefit year.³¹⁰ However, during periods of high unemployment (e.g., the Great Recession), benefits are often extended for another 13 weeks.³¹¹ In 2013, UE benefits averaged about \$310 weekly for approximately 17 weeks for total individual benefits of about \$5,300 per year, aggregating almost \$39 billion.³¹²

b. *Details of Veterans' Benefits.* Veterans' Benefits (VBs) are paid to “veterans who are disabled by injury or disease incurred in or aggravated during active military service.”³¹³ Benefits depend upon the

298. *Id.*

299. *Id.*

300. *Poor Kids*, *supra* note 2.

301. SSA STATISTICAL SUPPLEMENT, *supra* note 230, at 65.

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.* at 66.

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.* at 67.

312. *Id.* at 5.

313. *Id.* at 73.

degree of the disability or functions lost.³¹⁴ “Veterans who have at least a 30 percent service-connected disability are entitled to an additional” amount for qualifying dependents.³¹⁵ Veterans who are discharged under other than honorable conditions generally are not eligible for benefits.³¹⁶ Benefits for service-connected disabilities are not means-tested.³¹⁷ About 4.25 million veterans received a disability pension in 2014, including about 3.95 million with a service-related disability.³¹⁸ These veterans received monthly benefits ranging “from \$133 a month for a 10 percent disability to \$2,907 a month for a total disability,” or about \$1,600 and \$35,000 annually, respectively.³¹⁹

Monthly benefits are also paid “to wartime veterans with limited income and resources who are totally and permanently disabled” due to reasons other than military service.³²⁰ About 300,000 individuals qualified for these VBs in 2014, receiving amounts ranging from \$1,072 monthly (about \$13,000 annually) for qualifying individuals without any dependents to up to \$2,198 monthly (about \$26,000 annually) for veterans with one dependent and in need of attendance and aid.³²¹

c. Demographic Distribution for Unemployment Insurance Benefits & Veterans’ Benefits. Consistent with the distribution of market income and OASDI and SSI benefits, UE and VBs disproportionately lift individuals who are White out of poverty, after accounting for market income and OASDI and SSI benefits. Of the 1.1 million individuals lifted out of poverty by UE and VBs, more than 550,000 are White.³²² While Whites represent 62% of the OPM and SPM population universes, they only represent approximately 40% of the poverty population post-market, OASDI, and SSI resource allocations, and approximately 50% of the individuals who are lifted out of poverty by VBs and UE benefits.³²³ Correspondingly, Hispanic, Black, Asian, Pacific Islanders, and Native American individuals were disproportionately not lifted out of poverty by VBs and UE benefits.³²⁴ UE benefits are derived from wages, which are disproportionately higher for Whites as compared to people of color.³²⁵

Similarly, men, working-age individuals, and senior citizens are disproportionately lifted out of poverty by UE and VBs as compared to women and children.³²⁶ This finding is consistent with the facts that UE benefits are derivative from wages recently earned and that working-age, White men statistically

314. *Id.*

315. *Id.*

316. *Id.*

317. *See id.* (listing requirements to qualify, none of which relate to financial means).

318. *Id.* at 6.

319. *Id.* at 73.

320. *Id.*

321. *Id.* at 6, 73.

322. *See infra* Table 6 (showing demographics of individuals lifted out of poverty with UE and VBs under the OPM and SPM). Under the SPM, approximately 948,000 individuals would drop into poverty without unemployment benefits. *See* SPM 2014, *supra* note 35, at 5, 9 (estimating that there were approximately 316,168,000 in the United States in 2014, and that without UE benefits the poverty rate would increase by about 0.3%, or from 15.3% to 15.6%) (0.3% x 316,168,000 = 948,504). The U.S. Census Bureau does not provide any information as to whether VBs have a statistically significant effect on the poverty rate. SPM 2014, *supra* note 35, at 9.

323. *See infra* Table 6.

324. *See infra* Table 6.

325. SSA STATISTICAL SUPPLEMENT, *supra* note 230, at 66 (describing how UE benefits are based upon wages recently earned).

326. *See infra* Table 6 (showing demographics of individuals lifted out of poverty with UE and VB under the OPM and SPM).

receive higher wages than women.³²⁷ As such, their derivative benefits should be correspondingly higher. This finding is also consistent with the fact that VBs are dependent upon military service and disability.³²⁸ Therefore, older men who are more likely to have served in the armed services and suffer a disability are more likely to be lifted out of poverty with VBs than other demographic categories. Consistent with these targeted benefits, people with disabilities (who represent about 14% of the poor after accounting for market income and OASDI and SSI benefits) represent about 23% of those who are lifted out of poverty by UE and VB benefits.³²⁹ Nevertheless, even after these targeted benefits, people with disabilities suffer approximately a 21% poverty rate and represent approximately 14% of all people living in poverty, even though they constitute less than 10% of the OPM and SPM population universes.³³⁰

Table 6: Antipoverty Relief of 2014 Market Income, OASDI, SSI, VBs, and UE Benefits Under the OPM and SPM

OPM-2014	% of Total Pop. ³³¹	% of No. in Poverty Post Mrkt, OASDI & SSI ³³²	Lifted Out of Poverty w/UE & VBs ³³³		Pop. in Poverty Post Mrkt, OASDI, SSI, UE & VBs ³³⁴		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	1.099	100 ³³⁵	47.026	100	14.9
Race							
White	61.8	42.3	0.578	52.6	19.780	42.1	10.1
Hispanic	17.6	28.0	0.220	20.0	13.247	28.2	23.9
Black	12.2	21.5	0.213	19.4	10.134	21.5	26.3
Asian	5.5	4.3	0.031	2.8	2.029	4.3	11.7
Multi-Racial	1.8	2.0	0.038	3.5	0.949	2.0	16.3
Native	0.8	1.4	0.015	1.4	0.672	1.4	27.3
Pac. Islander	0.3	0.5	0.005	0.5	0.215	0.5	21.9
Sex							
Male	49.0	44.7	0.640	58.2	20.873	44.4	13.5
Female	51.0	55.3	0.459	41.8	26.153	55.6	16.2

327. Eileen Patten, *Racial, Gender Wage Gaps Persist in U.S. Despite Some Progress*, PEW RES. CTR. (July 1, 2016), <http://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress>.

328. *See generally Compensation*, U.S. DEP'T VETERANS AFF., <http://www.benefits.va.gov/compensation> (last updated Aug. 28, 2017).

329. *See infra* Table 6.

330. *See infra* Table 6.

331. Reproduces data from Table 3, OPM-2014, *supra*, at col. 3.

332. Reproduces data from Table 5, OPM-2014, *supra*, at col. 7.

333. *Poverty Calculator*, *supra* note 194 ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," and "Supplemental Security Income"; Step 2: none; Step 3: "Official Poverty Line"; Step 4: "2014"; (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," and "Veteran's Benefits"; Step 2: none; Step 3: "Official Poverty Line"; Step 4: "2014"; and (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page.

334. *Id.* (click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," and "Veteran's Benefits"; Step 2: none; Step 3: "Official Poverty Line"; Step 4: "2014").

335. The number lifted out of poverty (1.099M) over the total OPM population (315.804M) equals .35%.

Age							
0–17	23.3	33.2	0.268	24.4	15.701	33.4	21.3
18–64	62.1	56.9	0.644	58.6	26.723	56.8	13.6
65+	14.6	10.0	0.187	17.0	4.603	9.8	10.0
Disability	9.4	14.1	0.264	24.0	6.516	13.9	22.0

SPM-2014	% of Total Pop. ³³⁶	% of No. in Poverty Post Mrkt, OASDI & SSI ³³⁷	Lifted Out of Poverty w/UE & VBs ³³⁸		Pop. in Poverty Post Mrkt, OASDI, SSI, UE & VBs ³³⁹		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	1.115	100 ³⁴⁰	44.910	100	14.2
Race							
White	61.8	37.9	0.555	49.8	16.880	37.6	8.6
Hispanic	17.6	31.3	0.286	25.7	14.104	31.4	25.4
Black	12.2	21.6	0.206	18.5	9.751	21.7	25.3
Asian	5.5	5.5	0.029	2.6	2.490	5.5	14.4
Multi-Racial	1.8	2.0	0.023	2.1	0.889	2.0	15.3
Native	0.8	1.2	0.010	0.9	0.560	1.2	22.7
Pac. Islander	0.3	0.5	0.006	0.5	0.236	0.5	24.1
Sex							
Male	49.0	45.6	0.606	54.3	20.365	45.3	13.2
Female	51.0	54.4	0.509	45.7	24.545	54.7	15.2
Age							
0–17	23.4	32.6	0.267	23.9	14.756	32.9	20.0
18–64	62.1	56.8	0.672	60.3	25.458	56.7	13.0
65+	14.5	10.6	0.175	15.7	4.697	10.5	10.2
Disability	9.4	13.8	0.260	23.3	6.070	13.5	20.5

4. Temporary Aid to Needy Families (TANF)

336. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

337. Reproduces data from Table 5, SPM-2014, *supra*, at col. 7.

338. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” and “Supplemental Security Income”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” and “Veteran’s Benefits”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

339. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” and “Veteran’s Benefits”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

340. The number lifted out of poverty (1.115M) over the total SPM population (316.168M) equals .35%.

Grades is my only way out of here. If my grades are not good, I know I can't go to universities, like my dream is to go. I know if my grades are not good, I can't play football like I want to. If I don't succeed doing what I have to do in school and making good grades, I will fail. I'm going to live this life, life of shelter and going through hard times, can't feed my kids, trying to figure out where I'm going to lay my head every night. [Jonny, age 13.]³⁴¹

TANF replaced Aid to Families with Dependent Children (AFDC) in 1996 under President Clinton's bipartisan effort to address political focus on "welfare dependency."³⁴² As a consequence of these efforts, TANF is a shorter-term program than historical social benefits programs, and recipients must meet work participation requirements.³⁴³ However, this is not the first time that work has been required for welfare or basic subsistence benefits.³⁴⁴ From 1935 through the mid-1960s, welfare recipients were predominately white women who were not required to work.³⁴⁵ However, "[a]bout the same time that significant numbers of people of color became AFDC recipients . . . , Congress enacted the first work requirement for AFDC recipients" with the 1967 Work Incentive Program.³⁴⁶ Members of Congress stated

341. *Poor Kids*, *supra* note 2.

342. See GENE FALK, CONG. RES. SERV. R44668, THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT: A LEGISLATIVE HISTORY (2016), <https://fas.org/sgp/crs/misc/R44668.pdf>. "TANF jurisdictions use federal TANF funds to provide income support to low-income families with children, as well as to provide a wide range of services . . . designed to accomplish the program's four" statutory goals. *What We Do*, U.S. DEP'T HEALTH & HUM. SERVS., OFF. FAM. ASSISTANCE, <http://acf.hhs.gov/ofa/about/what-we-do> (last reviewed Dec. 20, 2016). The statutory goals are to

1. provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; 2. end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; 3. prevent and reduce the incidence of out-of-wedlock pregnancies; and 4. encourage the formation and maintenance of two-parent families.

While TANF jurisdictions must meet certain work participation and cost sharing requirements, they have considerable flexibility with TANF funds to implement programs that best serve their distinct communities.

Id.

343. *Policy Basics: An Introduction to TANF*, CTR. ON BUDGET & POL'Y PRIORITIES 4, <https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf> (updated June 15, 2015) (describing the general 60-month limit and work sanctions and requirements under TANF; "For a state to meet the federal work rates, half of the families receiving TANF assistance must be engaged in a work activity for at least 30 hours a week (20 hours a week for single parents with young children). States also must have 90 percent of two-parent families engaged in work, generally for 35 hours per week."); see Vicki Lens, *Work Sanctions Under Welfare Reform: Are They Helping Women Achieve Self-Sufficiency?*, 13 DUKE J. GENDER L. & POL'Y 255, 258–259 (2006) (describing the work requirements under TANF and noting the decrease in cash benefits and increase in employment and job training demands); see also Marie A. Failing, *A Truly Good Work: Turning to Restorative Justice for Answers to the Welfare-to-Work Dilemma*, 15 GEO. J. ON POVERTY L. & POL'Y 209 (2008) (demonstrating that work has long been an inherent, but unrealistic, requirement in welfare, even though that the requirement undermines welfare, and proposing using restorative justice theory to resolve the challenge rather than trying to undermine the puritanical work requirement).

344. See Julie A. Nice, *Welfare Servitude*, 1 GEO. J. ON FIGHTING POVERTY 340, 342 (1994) (describing historical work requirements for welfare recipients and commenting that "welfare amounts have never fully met recipients' economic needs, many recipients have worked to supplement their meager benefits").

345. *Id.*

346. *Id.*

that the work was required “to help each AFDC recipient ‘acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society.’”³⁴⁷

TANF cash assistance is modest with median monthly benefits per recipient between 2009 and 2012 of only \$321, or less than \$4,000 per year.³⁴⁸ TANF benefits are generally restricted by federal law to a period of no more than 60 cumulative months for any adult in the household.³⁴⁹ From 2009 to 2012, almost 63% of TANF recipients participated for between 1 and 12 months, with less than 10% participating for more than 36 months.³⁵⁰ Average monthly participation rates were about one percent in 2012.³⁵¹ TANF’s annual \$16 billion federal block grant is delivered to states, territories, the District of Columbia, and federally recognized Native American tribes.³⁵²

In 2016, there were only just under 2.7 million recipients of TANF nationwide, about 2 million of whom were children.³⁵³ Thus, nearly 75% of TANF recipients are children. Most of the TANF adult recipients are single mothers.³⁵⁴ Families who receive TANF assistance typically have one child, who most often is in pre-school.³⁵⁵ In 2013, “38.1% of families receiving TANF were composed of children in families cared for by” an adult who is ineligible for benefits,³⁵⁶ or “child-only” families.³⁵⁷ The most common “child-only” cases are families with (1) a disabled parent receiving SSI; (2) an ineligible, immigrant parent; and (3) children being cared for by a relative who is not their parent.³⁵⁸ California had the biggest caseload of any state, with about 40% of the beneficiaries.³⁵⁹

The largest ethnic group of TANF cash assistance children are Hispanic.³⁶⁰ In 2013, 36.3% of TANF children were Hispanic, 29.9% were African American, and 25.8% were non-Hispanic White.³⁶¹ “The growth in Hispanic children as a percent of all TANF assistance children is due entirely to their population growth—not an increase in the rate at which Hispanic children receive TANF.”³⁶² In 2014, TANF cash assistance, or traditional “welfare,” lifted just over 630,000 individuals out of poverty after considering all other cash income under the OPM and SPM.³⁶³ Consistent with the 2013 data, 2014 TANF

347. *Id.* (quoting *N.Y. State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 410 (1973)).

348. IRVING & LOVELESS, *supra* note 296, at 13.

349. *TANF Final Rule—Executive Summary*, U.S. DEP’T HEALTH & HUM. SERVS., OFF. FAM. ASSISTANCE (April 12, 1999), <https://www.acf.hhs.gov/ofa/resource/exsumcl>.

350. IRVING & LOVELESS, *supra* note 296, at 4.

351. *Id.*

352. *What We Do*, *supra* note 342.

353. *TANF Caseload Data 2016*, U.S. DEP’T HEALTH & HUM. SERVS., OFF. FAM. ASSISTANCE (Jan. 12, 2017), <https://www.acf.hhs.gov/ofa/resource/tanf-caseload-data-2016>.

354. GENE FALK, CONG. RES. SERV., R43187 THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): SIZE AND CHARACTERISTICS OF THE ASSISTANCE CASELOAD 2 (2016), <https://fas.org/sgp/crs/misc/R43187.pdf> (reviewing 2013 TANF data and comparing it to historical data).

355. *Id.* at 10.

356. *Id.*

357. *Id.* at 1.

358. *Id.*

359. *Id.* at 15 (the sum of the percentages for the columns that include “Child-Only” data for California equals about 40%).

360. *Id.* at 5.

361. *Id.*

362. *Id.* at Summary.

363. *See infra* Table 7 (showing OPM and SPM demographic data for TANF). If TANF were not available under the SPM (assuming no behavioral changes) about 630,000 individuals, mostly children would drop into poverty in 2014. SPM 2014, *supra* note 35, at 9 (estimating that the poverty rate would increase by 0.2% under the SPM if

beneficiaries lifted out of poverty were disproportionately Hispanic and children.³⁶⁴ In excess of 70,000 Hispanic children were lifted out of poverty by TANF benefits.³⁶⁵ Similarly, about 66,000 people with disabilities were lifted out of poverty by TANF.³⁶⁶ TANF's modest benefits, among other reasons, leave poverty rates for people with disabilities and children in excess of 20%.³⁶⁷ Moreover, Hispanic children suffer a poverty rate in excess of 30% even though they disproportionately benefit from TANF's modest financial resources.³⁶⁸ By comparison, White children had a poverty rate of approximately 10% under the SPM after accounting for 41,000 White children being lifted out of poverty by TANF benefits.³⁶⁹ Less than 30,000 Black children were lifted out of poverty by TANF benefits; yet after accounting for TANF, Black children suffer a poverty rate of greater than 35%.³⁷⁰

TANF benefits were removed entirely from the measurement). This increase in the poverty rate applied to the population universe of 316,168,000 would result in just over 630,000 individuals suffering poverty.

364. See *infra* Table 7.

365. *Poverty Calculator*, *supra* note 194 ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: 2014; and (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page).

366. See *infra* Table 7.

367. See *infra* Table 7 (setting forth the post-TANF poverty rate of children and people with disabilities at 21.1% and 21.8%, respectively, under the OPM and 19.8% and 20.3%, respectively, under the SPM).

368. *Poverty Calculator*, *supra* note 194 (click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014").

369. *Id.* ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: 2014; (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; and (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page).

370. *Id.* ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation, Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; and (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page).

Table 7: Antipoverty Relief of 2014 Market Income, OASDI, SSI, VBs, UE, and TANF Benefits Under the OPM and SPM

OPM-2014	% of Total Pop. ³⁷¹	% of No. in Pov. Post Mrkt, OASDI, SSI, UE & VBs ³⁷²	Lifted Out of Pov. w/TANF ³⁷³		Pop. in Pov. Post Mrkt, OASDI, SSI, UE, VBs & TANF ³⁷⁴		
			Total (in millions)	% of Total	Total (in millions)	% of Total	Poverty Rate (%)
Overall	100	100	.369	100 ³⁷⁵	46.657	100	14.8
Race							
White	61.8	42.1	0.128	34.7	19.652	42.1	10.1
Hispanic	17.6	28.2	0.143	38.8	13.104	28.1	23.6
Black	12.2	21.5	0.076	20.6	10.058	21.6	26.1
Asian	5.5	4.3	0.010	2.7	2.019	4.3	11.7
Multi-Racial	1.8	2.0	0.011	3.0	0.938	2.0	16.2
Native	0.8	1.4	0.001	0.3	0.671	1.4	27.2
Pac. Islander	0.3	0.5	0.000	0.0	0.215	0.5	21.9
Sex							
Male	49.0	44.4	0.165	44.7	20.708	44.4	13.4
Female	51.0	55.6	0.204	55.3	25.949	55.6	16.1
Age							
0–17	23.3	33.4	0.161	43.6	15.540	33.3	21.1
18–64	62.1	56.8	0.196	53.1	26.527	56.9	13.5
65+	14.6	9.8	0.013	3.5	4.590	9.8	10.0
Disability	9.4	13.9	0.07	19.0	6.446	13.8	21.8

371. Reproduces data from Table 3, OPM-2014, *supra*, at col. 3.

372. Reproduces data from Table 6, OPM-2014, *supra*, at col. 7.

373. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” and “Veteran’s Benefits”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”); (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” and “Veteran’s Benefits”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”; and (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

374. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” and “Veteran’s Benefits”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”).

375. The number lifted out of poverty (.369M) over the total OPM population (315.804M) equals .12%.

SPM-2014	% of Total Pop. ³⁷⁶	% of No. in Pov. Post Mrkt, OASDI SSI, UE & VBs ³⁷⁷	Lifted Out of Pov. w/TANF ³⁷⁸		Pop. in Pov. Post Mkt. Inc., OASDI, SSI, UE, VBs & TANF ³⁷⁹		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	.367	100 ³⁸⁰	44.543	100	14.1
Race							
White	61.8	37.6	0.108	29.4	16.772	37.7	8.6
Hispanic	17.6	31.4	0.157	42.8	13.947	31.3	25.1
Black	12.2	21.7	0.085	23.2	9.666	21.7	25.0
Asian	5.5	5.5	0.011	3.0	2.479	5.6	14.3
Multi-Racial	1.8	2.0	0.004	1.1	0.885	2.0	15.2
Native	0.8	1.2	0.003	0.8	0.557	1.3	22.5
Pac. Islander	0.3	0.5	0.000	0	0.236	0.5	24.1
Sex							
Male	49.0	45.3	0.170	46.3	20.195	45.3	13.0
Female	51.0	54.7	0.197	53.7	24.348	54.7	15.1
Age							
0–17	23.4	32.9	0.150	40.9	14.606	32.8	19.8
18–64	62.1	56.7	0.204	55.6	25.254	56.7	12.9
65+	14.5	10.5	0.014	3.8	4.683	10.5	10.2
Disability	9.4	13.5	0.066	18.0	6.004	13.5	20.3

5. Food Security

I think there's a lot of people in America that need help with food because they're poor or they're either homeless or they're both. We need food for our family. I'm hitting my growth spurt, and I'm really hungry. My favorite food is Chinese. I'm craving that right now. You know what makes me mad? We can't afford it. [Brittany, age nine.]³⁸¹

There are six people in our family. But only five sit down to dinner. That's because my

376. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

377. Reproduces data from Table 6, SPM-2014, *supra*, at col. 7.

378. *Poverty Calculator*, *supra* note 194 ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page).

379. *Id.* (click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014").

380. The number lifted out of poverty (.367M) over the total SPM population (316.168M) equals .12%.

381. *Poor Kids*, *supra* note 2.

mom doesn't eat. She wants to make sure we have enough food. [Vanessa, age six.]³⁸²

We were homeless. My mom. My big sister and me. We slept in the car . . . We went to IHOP and we only got one pancake and we shared it. That was our breakfast. . . . When I was tired of sitting in the car, I would talk to my mom. She would always say a prayer so we could have a better life. We should buy kids good food when they are homeless. We should help them out. [Jasmine, age seven.]³⁸³

The OPM only includes in its analysis a family unit's pre-tax cash resources as described above. Therefore, among other in-kind resources, critical food security resources are not included in the OPM. The more current SPM does include in a household unit's resources in-kind benefits such as food security subsidies, like Supplemental Nutrition Assistance Program (SNAP), school lunches, and WIC.³⁸⁴

a. SNAP. SNAP, formerly called Food Stamps, is a means-tested program that provides qualifying beneficiaries with the opportunity to purchase a nutritionally adequate diet.³⁸⁵ The program is modest and provides qualifying households with about \$255 per month in food-value equivalents, which is an average of \$126 per person, per month, or about \$1.40 per person, per meal.³⁸⁶ Under federal rules, SNAP eligibility is not automatic and depends upon many dispositive factors.³⁸⁷

SNAP is a limited-means, income- and asset-tested resource primarily targeted for children, people with disabilities, and working individuals.³⁸⁸ Undocumented immigrants, individuals on strike, and legally present immigrants who have been in the country for less than five years are ineligible for SNAP benefits.³⁸⁹ Unemployed, childless adults who are not disabled may only receive SNAP for three months every three years unless this restriction is waived due to extreme unemployment.³⁹⁰

SNAP rules require satisfying three means-focused tests.³⁹¹ First, an eligible household's³⁹² gross monthly income must be at or below 130% of the poverty guideline.³⁹³ In federal fiscal year 2018, a family of three has a 130% poverty guideline of \$2,213 a month or \$26,600 per year.³⁹⁴ Gross income for this

382. Marian Wright Edelman, *The Hungry Child* (Apr. 16, 2014), https://www.huffingtonpost.com/marian-wright-edelman/the-hungry-child_b_4791364.html (noting that "physical health and brain development depend on access to nutritious food, especially in the earliest years of life" and that federal food security programs are critical to fill this void, but that too many states do not have year-long programs so that children go hungry during school breaks).

383. *Id.*

384. SPM 2014, *supra* note 35, at 17.

385. *Id.*

386. *A Quick Guide to SNAP Eligibility and Benefits*, CTR. ON BUDGET & POL'Y PRIORITIES 3 tbl.1, <https://www.cbpp.org/sites/default/files/atoms/files/11-18-08fa.pdf> (updated Sept. 14, 2017) (putting the maximum monthly benefits for 2017 at \$194 for a household size of one and \$649 for a household size of four).

387. *Id.* at 1.

388. *See id.* at 1–4.

389. *Id.* at 3 n.6.

390. *Id.* at 2.

391. *Id.* at 1. "Alaska, Hawaii, Guam, and the Virgin Islands participate in SNAP but are subject to somewhat different eligibility, benefit, and deduction levels. Puerto Rico does not participate in the regular program but instead receives a block grant for nutrition assistance." *Id.* at 1 n.2.

392. "A 'household' for SNAP consists of individuals who live in the same residence and who purchase and prepare food together." *Id.* at 1 n.1.

393. *Id.* at 1.

394. *Id.*

purpose includes all cash income from all sources including Social Security, unemployment income, child support, and wages or self-employment income.³⁹⁵ Households with an elderly or disabled member that receives SSI or TANF are not subject to the gross income test.³⁹⁶ Second, net income, or gross income less allowable deductions, must be at or below the poverty guideline.³⁹⁷ Finally, household assets must be at or below \$2,250 or, for households with an elderly or disabled member, \$3,500 or less.³⁹⁸

SNAP benefits are tied to the cost of the Department of Agriculture Thrifty Food Plan, and SNAP expects that households spend 30% of their net income on food.³⁹⁹ Allowable deductions include a standard deduction,⁴⁰⁰ a 20% earnings deduction, a dependent care deduction, a child support deduction, a medical expenses deduction, and an excess shelter deduction.⁴⁰¹ The example below demonstrates how these deductions are determined and how this formula is calculated.

Example: Consider a single parent, earning minimum wage with two children and dependent care costs of \$67 and shelter costs of \$881 per month. A full-time minimum wage worker's gross monthly income at \$7.25 per hour is \$1,256. The statutory SNAP standard deduction for a three-person family is \$160, the earnings deduction is 20% of \$1,256 or \$251, and the child care deduction is \$67. Thus, $\$1,256 - (\$160 + \$251 + \$67) = \$778$ countable income. The shelter deduction is determined by dividing the countable income by two or $\$778 / 2 = \389 , and subtracting that figure from the monthly shelter cost, or $\$881 - \$389 = \$492$. Countable income is reduced by this excess of \$492 as follows: $\$778 - \$492 = \$286$. Thirty percent of the net income is \$86. Therefore, the SNAP benefit is the maximum benefit for a family of three of \$504 reduced by \$86 for \$418 monthly SNAP benefit.⁴⁰²

To determine the amount of a household's SNAP benefits for purposes of the SPM, the Census Bureau asks survey respondents if anyone in the household received SNAP benefits in the previous calendar year as well as the face value of benefits received during the relevant period.⁴⁰³ From this information the Census Bureau determines the annual household amount and prorates it for SPM units within each household.⁴⁰⁴ This reverse engineered amount is included as an in-kind benefit resource for the unit.

b. National School Lunch Program.

Nutrition Club is a bag of food that you get every Friday and you have to make last the whole weekend. They announce in class that you have to go down for Nutrition Club if you're in it. You have to go to the office and you have to sign your name in for it. And then

395. *Id.* at 2.

396. *Id.* at 1 n.3.

397. *Id.* at 1.

398. *Id.* at 2.

399. *Id.* at 3.

400. The standard SNAP deduction varies based upon household size, but is \$160 in 2018 for one to three person households and "\$170, \$199, and \$228 for households with four, five, and six or more members, respectively." *Id.* at 4 n.10. These amounts are higher in Alaska, Hawaii, Guam, and the Virgin Islands. *Id.* at 3. Amounts are adjusted for inflation and can be found at *Cost of Living Adjustment (COLA) Information—Old*, .S.D.A. FOOD & NUTRITION SERV. (last published Sept. 28, 2017), www.fns.usda.gov/snap/government/cola.htm.

401. *Quick Guide to SNAP*, *supra* 386, at 3–4.

402. *Id.* at 5 (providing the numbers used in this example).

403. SPM 2014, *supra* note 35, at 17.

404. *Id.*

you go put it in your locker, and then you go back to class. Poor people get Nutrition Club because they can't afford to get other food. [Brittany, age nine.]⁴⁰⁵

The U.S. Department of Agriculture (USDA) has been providing funding and food for school children for more than 70 years.⁴⁰⁶ Congress formalized the school lunch program through the National School Lunch Act in 1946 and has since subsidized more than 224 billion school lunches.⁴⁰⁷ About 7.1 million children participated in the National School Lunch Program from 1946 to 1947.⁴⁰⁸ In 2012, more than 31.6 million children received their lunch and snacks daily through the National School Lunch Program at an aggregate national annual cost of \$11.6 billion.⁴⁰⁹

About 100,000 public and nonprofit private schools and residential child care institutions participate in the school lunch and snack programs.⁴¹⁰ Participating schools get cash subsidies and USDA food for qualifying meals and snacks.⁴¹¹ Schools must offer free or reduced-price lunches to eligible children through the National School Lunch Program.⁴¹² Children from households with incomes at or below 130% of the poverty guidelines are eligible for free meals.⁴¹³ Children whose households have incomes “between 130 percent and 185 percent of the Federal poverty level are eligible for reduced-price meals. Schools may not charge children more than 40 cents for a reduced price lunch.”⁴¹⁴ “Children from families with incomes over 185 percent of poverty pay a full price, though their meals are still subsidized to some extent.”⁴¹⁵ Afterschool snacks are free to all in the afterschool care program if “at least 50 percent of the enrolled children are eligible for free or reduced price meals.”⁴¹⁶ In all other cases, free snack policies must follow the same general guidelines as the lunch program.⁴¹⁷

The Census Bureau survey asks how many children in the household “usually” eat a school-provided lunch and if a child receives subsidized school lunches, then the Census Bureau assumes that the child received the lunches every day during the school year.⁴¹⁸ The Census Bureau acknowledges that this may overestimate the benefits received by a household, but it does not have sufficient data to better fine-

405. *Poor Kids*, *supra* note 2.

406. *National School Lunch Program: Program Fact Sheet*, U.S.D.A. FOOD & NUTRITION SERV., <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf> (updated Aug. 2017) [hereinafter *NSLP Fact Sheet*].

407. *Id.*; *School Nutrition Programs*, SCH. NUTRITION ASS'N, https://schoolnutrition.org/uploadedFiles/Legislation_and_Policy/SNA_Policy_Resources/School%20Nutrition%20Facts.pdf (last visited Nov. 25, 2017).

408. *NSLP Fact Sheet*, *supra* note 406.

409. *School Nutrition Programs*, *supra* note 407.

410. *National School Lunch Program*, U.S.D.A. ECON. RES. SERV., <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program/> (last updated Oct. 2, 2017).

411. *NSLP Fact Sheet*, *supra* note 406.

412. *Id.*

413. *Id.*

414. *Id.*

415. *School Breakfast Program*, U.S.D.A. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/sbp/fact-sheet> (last published Aug. 11, 2017).

416. *NSLP Afterschool Snack Service: Frequently Asked Questions*, U.S.D.A. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/school-meals/afterschool-snacks-faqs> (last published Sept. 26, 2017).

417. *Id.*

418. SPM 2014, *supra* note 35, at 17.

tune the amount of in-kind benefits received by each household.⁴¹⁹ The value of the lunches is determined from the cost to the administrators of the program, the USDA Food and Nutrition Service.⁴²⁰ While the Census Bureau's separate Survey of Income and Program Participation asks for information regarding the number of subsidized school breakfasts children receive, no value for these meals is included in household resources to date.⁴²¹ The amount of school lunch and snacks estimated for the 2009 calendar year was \$4.6 billion for all families.⁴²²

c. Supplemental Nutrition Program for Women, Infants, and Children Program (WIC).

I think it would be difficult for the baby to grow up here because we don't have a lot of money. . . . We don't have the money to buy diapers for it and food for it. And the good part is that my mom is happy, like, my family's happy. I don't really care if I'm happy or not. I just care if my family's happy. [Brittany, age nine.]⁴²³

WIC is one of the United States' most successful and cost-effective nutrition intervention programs.⁴²⁴ Since 1974, WIC has saved lives and improved the health and well-being of nutritionally at-risk women, infants, and children.⁴²⁵ Extensive research shows that WIC participation leads to "healthier infants, more nutritious diets and better health care for children, and subsequently to higher academic achievement for students."⁴²⁶ The program targets low-income, nutritionally-at-risk pregnant, postpartum, and breastfeeding moms, infants, and children up to five years old.⁴²⁷ WIC provides supplemental nutritious foods as well as counseling, screening, and referrals.⁴²⁸ While funded through federal grants, "WIC is administered by 90 State agencies, with services provided at a variety of clinic locations including, but not limited to, county health departments, hospitals, schools, and Indian Health Service facilities."⁴²⁹ The program is available in all 50 states, 34 Indian Tribal Organizations, American Samoa, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.⁴³⁰

419. *Id.*

420. *Id.*

421. *Id.*

422. *Id.*

423. *Poor Kids*, *supra* note 2.

424. *About WIC—How WIC Helps*, U.S.D.A. FOOD & NUTRITION SERV. (Nov. 18, 2013), <http://www.fns.usda.gov/wic/about-wic-how-wic-helps> (finding that WIC saves lives and improves the health of at-risk women, infants, and children).

425. *Id.*

426. Steven Carlson & Zoë Neuberger, *WIC Works: Addressing the Nutrition and Health Needs of Low-Income Families for 40 Years*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (Mar. 29, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/5-4-15fa.pdf>. The provision of infant formula through WIC has caused some concern that the program lowers breastfeeding rates. *Id.* at 13 ("In general, despite WIC's strong policy and operational emphasis on promoting breastfeeding, mothers participating in WIC have been less likely than non-participating mothers to breastfeed their infants. . . . There are indications that the difference between breastfeeding rates among all women and WIC participants has narrowed.").

427. *About WIC—WIC at a Glance*, U.S.D.A. FOOD AND NUTRITION SERV. (Feb. 27, 2015), <http://www.fns.usda.gov/wic/about-wic-wic-glance>.

428. *Id.*

429. *The Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program)*, U.S.D.A. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/sites/default/files/wic/WIC-Fact-Sheet.pdf> (last visited Nov. 25, 2017) [hereinafter *Special Supplemental Nutrition Program*].

430. *Id.*

Approximately 7.7 million people participated in WIC in 2016; of this group, “approximately 3.98 million were children, 1.88 million were infants, and 1.84 million were women.”⁴³¹ WIC provided an average monthly value of \$61.24 in food per participant in 2016.⁴³² “The average monthly cost to the federal government, however, was much lower—\$42.70 per participant—due to the infant formula discounts”⁴³³ The WIC Program is designed to supplement participants’ diets with specific nutrients through infant cereal, baby foods, iron-fortified adult cereal, fruits and vegetables, juice, eggs, milk, cheese, yogurt, soy-based beverages, tofu, peanut butter, whole wheat bread, and other whole-grain options.⁴³⁴ “For infants of women who do not fully breastfeed, WIC provides iron-fortified infant formula.”⁴³⁵

To be eligible for WIC, participants must be a qualifying pregnant mother, infant, or child and have an income between 100% and 185% of the poverty guidelines or be eligible to receive SNAP, Medicaid, TANF, or certain other state-administered programs.⁴³⁶ Participants must also reside in the state in which they apply and be seen by a health professional to determine if the individual has a nutrition risk.⁴³⁷ “Nutrition risk” means that an individual has one or more medical-based or dietary-based conditions including anemia, being underweight, poor prior pregnancy outcomes, or unhealthy diet.⁴³⁸

Most WIC “participants receive paper checks or vouchers to purchase food, while a few [states] distribute food through centralized warehouses or deliver the foods to participants’ homes.”⁴³⁹ All WIC state agencies must implement WIC electronic benefit transfer (EBT) no later than October 1, 2020.⁴⁴⁰ “EBT uses a magnetic strip or smart card, similar to a credit card, that participants use in the check-out lane to redeem their food benefits.”⁴⁴¹

The Census Bureau includes WIC in a household’s resources if the household indicates affirmatively that they received WIC during the previous year.⁴⁴² Barring receipt of conflicting information, the Census Bureau assumes that the household received WIC for the entire year.⁴⁴³ All children less than five years old are assumed to receive WIC if anyone in the household reports receiving the benefit.⁴⁴⁴ If the household has a child one year of age or younger, then the mother is also assumed to receive WIC benefits.⁴⁴⁵ If there is no child in the household, the Census Bureau assumes that the WIC recipient is

431. *Frequently Asked Questions About WIC*, U.S.D.A. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/wic/frequently-asked-questions-about-wic> (last published May 4, 2017); *see also* Steven Carlson et al., *WIC Participation and Costs Are Stable: Have Returned to Pre-Recession Levels*, CTR. ON BUDGET & POL’Y PRIORITIES 2–3 (July 19, 2017), <https://www.cbpp.org/sites/default/files/atoms/files/8-3-15fa.pdf>.

432. *Policy Basics: Special Supplemental Nutrition Program for Women, Infants, and Children*, CTR. ON BUDGET & POL’Y PRIORITIES 5, <https://www.cbpp.org/sites/default/files/atoms/files/2-9-15PolicyBasics-WIC.pdf> (updated Apr. 26, 2017).

433. *Id.*

434. *Special Supplemental Nutrition Program*, *supra* note 429.

435. *Id.*

436. *Women, Infants and Children (WIC): WIC Eligibility Requirements*, U.S.D.A. FOOD AND NUTRITION SERV. (May 4, 2017), <http://www.fns.usda.gov/wic/wic-eligibility-requirements>.

437. *Id.*

438. *Id.*

439. *Special Supplemental Nutrition Program*, *supra* note 429.

440. *Id.*

441. *Id.*

442. SPM 2014, *supra* note 35, at 17.

443. *Id.*

444. *Id.*

445. *Id.*

pregnant.⁴⁴⁶ The Census Bureau acknowledges that this approach may overestimate WIC benefits.⁴⁴⁷ The WIC benefit included as an in-kind resource is valued using program cost information from the Department of Agriculture.⁴⁴⁸

d. Demographics of Food Security Antipoverty Programs.

There's good days and bad days. Sometimes when we have cereal, we don't have milk. We have to eat it dry. Sometimes we don't have cereal and we have milk. It's often, like, switch and swap. Sometimes, like, when I switch the channel and there's a cooking show on, I get a little more hungry and I want to vanish into the screen and start eating the food. [Tyler, age twelve.]⁴⁴⁹

Almost 5.5 million individuals were lifted out of poverty by in-kind access to food in 2014, after accounting for all cash income, but none of the additional expenses, under the SPM.⁴⁵⁰ Children are disproportionately lifted out of poverty by food security programs, although the statistics also show that the data for children is generally also consistent with the relative, post-OPM cash income poverty population percentages.⁴⁵¹ Consistent with program goals of providing resources to food insecure children, more than 2.5 million children were lifted out of poverty in 2014 by access to food.⁴⁵² Thirty percent of children lifted out of poverty by food security were White, 36% were Hispanic, and 24% were Black, while their pre-food security SPM poverty shares were 26.7%, 39%, and 24.7%, respectively.⁴⁵³ Thus, poor White children were

446. *Id.*

447. *Id.*

448. *Id.*; Suzanne Macartney, *Estimating the Value of WIC Benefits for the Supplemental Poverty Measure* (U.S. Census Bureau, SEHSD Working Paper 2013-18), https://cps.ipums.org/cps/resources/spm/WIC_paper_July2013.pdf.

449. *Poor Kids*, *supra* note 2.

450. *See infra* Table 9 (providing SPM demographic data for Food Security). The Census Bureau has estimated that if SNAP, School Lunches, and WIC benefits were each independently eliminated (assuming no change in behavior) then approximately 4,700,000, 1,300,000, and 316,000 individuals, respectively, would fall below the poverty thresholds. SPM 2014, *supra* note 35, at 5, 9 (estimating that there were approximately 316,168,000 in the United States in 2014, and that without SNAP benefits the poverty rate would increase by about 1.5%, without School Lunches the poverty rate would increase by about 0.4%, and without WIC benefits the poverty rate would increase by about 0.1%) (SNAP: 0.3% x 316,168,000 = 4,742,520) (School Lunch: 0.4% x 316,168,000 = 1,264,672) (WIC: x 316,168,000 = 316,168). Not surprisingly, School Lunches and WIC benefits predominately benefit children and the adults in their households, while SNAP benefits all age groups including senior citizens. *Id.* at 9.

451. *See infra* Table 9.

452. *See infra* Table 9.

453. *Poverty Calculator*, *supra* note 194 ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," and "Veteran's Benefits"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"); (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: "Market Income," "Social Security," "Supplemental Security Income," "Unemployment Compensation," "Welfare (TANF)," "Veteran's Benefits," "Food Stamps (SNAP)," "Free/Subsidized School Lunch," "Women, Infants, & Children (WIC)"; Step 2: none; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page). This analysis determines that 2.508 million children (age 0–17) are lifted out of poverty with SNAP, Free/Subsidized School Lunches, and WIC after all other SPM cash benefits in 2014. *Id.* at 9. This includes 761,000 White children (30.3%), 903,000 Hispanic children (36.0%), and 595,000 Black children (23.7%). *Id.* at 6, 7. Moreover, of the 14.6 million children (0–17) living in poverty before the allocation of in-kind food security, 3.9 million were White (26.7%), 5.7 million were Hispanic (39%), and 3.6 million were Black (24.7%). *Id.* at 1–2, 4.

disproportionately lifted out of poverty with food security benefits. Childhood pre-food security poverty numbers, rates, and shares broken into demographics are as follows:

Table 8: Child Poverty Demographics After 2014 Market Income, OASDI, SSI, VBs, UE and TANF Benefits Under the OPM and SPM

OPM-2014 ⁴⁵⁴	Number (in millions)	% of Number in Poverty	Poverty Rate (%)
White	4.7	30.1	12.3
Hispanic	5.7	37.0	31.9
Black	3.8	24.3	37.3

SPM-2014 ⁴⁵⁵	Number (in millions)	% of Number in Poverty	Poverty Rate (%) for Group—Before In-Kind Food	Poverty Rate (%)—After In-Kind Food (Decrease)
White	3.9	26.7	10.3	8.3 (2.0)
Hispanic	5.7	39.0	31.7	26.7 (5.0)
Black	3.6	24.7	35.1	29.3 (5.8)

The dramatic decrease in childhood poverty rates through food security programs is striking. Food security programs decrease childhood poverty rates for children of color by more than 15%. Nevertheless, these benefits disproportionately lift White children out of poverty reducing their poverty rate by almost 20%.⁴⁵⁶

454. *Id.* These numbers are derived from the OPM 2014 (click the “Calculate 2014 Official Poverty Measure” button). The total number of poor children (0–17) in the OPM 2014 is 15.540 million, including 4.679 million White children (30.1%), 5.745 million Hispanic children (37.0), and 3.782 million Black children (24.3%). The *Poverty Calculator* does not break-down the remaining 1.334 million (8.58%) poor children among the remaining classifications as Asian, Multi-Racial, Native American or Pacific Islander.

455. *Id.* ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” and “Veteran’s Benefits”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”); (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC)”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page). *Id.* at 1–2.

456. The decreases in poverty rates of $5\%/31.7\% = 15.8\%$ decrease for Hispanic children and $5.8\%/35.1\% = 16.5\%$ for Black children exceed 15%. However, the decrease in poverty rate of $2\%/10.3\% = 19.4\%$ for White children.

Table 9: Antipoverty Relief of 2014 Market Income, OASDI, SSI, VBs, UE, TANF, and In-Kind Food Security Benefits Under the SPM

SPM-2014	% of Total Pop. ⁴⁵⁷	% of No. in Pov. Post All Cash Income ⁴⁵⁸	Lifted Out of Pov. w/ SNAP, WIC, Lunches ⁴⁵⁹		Pop. in Pov. Post After All Cash & In-kind Food Security ⁴⁶⁰		
			Total (in millions)	% of Total	Total (in millions)	% of Total	Poverty Rate (%)
Overall	100	100%	5.405	100 ⁴⁶¹	39.138	100	12.4
Race							
White	61.8	37.7	1.948	36.0	14.824	37.9	7.6
Hispanic	17.6	31.3	1.749	32.4	12.198	31.2	21.9
Black	12.2	21.7	1.244	23.0	8.422	21.5	21.8
Asian	5.5	5.6	0.133	2.5	2.346	6.0	13.5
Multi-Racial	1.8	2.0	0.201	3.7	0.684	1.7	11.8
Native	0.8	1.3	0.100	1.9	0.457	1.2	18.5
Pac. Islander	0.3	0.5	0.029	0.5	0.207	0.5	21.1
Sex							
Male	49.0	45.3	2.365	43.8	17.830	45.6	11.5
Female	51.0	54.7	3.040	56.2	21.308	54.4	13.2
Age							
0–17	23.4	32.8	2.508	46.4	12.098	30.9	16.4
18–64	62.1	56.7	2.556	47.3	22.698	58.0	11.6
65+	14.5	10.5	0.341	6.3	4.342	11.1	9.4
Disability	9.4	13.5	0.709	13.1	5.295	13.5	17.9

6. Shelter Matters

I'm embarrassed because I'm poor and because I live in a shelter. It makes me feel like I just wish I never lived here. [Jasmine, age nine.]⁴⁶²

457. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

458. *Poverty Calculator*, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” and “Veteran’s Benefits”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

459. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” and “Veteran’s Benefits”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”); (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC)”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

460. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC)”; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

461. The number lifted out of poverty (5.405M) over the total SPM population (316.168M) equals 1.71%.

462. *Poor Kids*, *supra* note 2.

In addition to food security benefits, shelter benefits such as housing and utility subsidies, as described below, are included as resources for comparing household resources to the relevant threshold under the SPM, but not under the OPM.⁴⁶³

a. Housing Subsidies.

When you live in a shelter, you have to obey by the rules and do your chores. And if you don't, you get a write-up. And if you get over eight write-ups or—or you get put out. [Jasmine, age nine.]⁴⁶⁴

While the federal government currently subsidizes home ownership through \$121 billion in annual tax expenditures for home mortgage interest and property tax deductions and capital gain exclusions, federal tax expenditures do not include any tax deduction for renters.⁴⁶⁵ The government does provide about \$41 billion, or less than a third of the homeownership subsidy, in subsidies for affordable rental assistance for low-income households.⁴⁶⁶ Because of limited funding, less than 5.1 million low-income households receive subsidized housing.⁴⁶⁷ However, more than ten million low-income households, or 68% of low-income households, suffer unsubsidized housing costs that are greater than 50% of their income, putting them at risk of homelessness.⁴⁶⁸ As a result, on a single night in January 2015, almost 600,000 people in the United States suffered sustained homelessness, more than 20% of whom were children (128,000) and 16% of whom were adults with disabilities (96,000).⁴⁶⁹ During the 2015–2016 school year, over one million public school children lived on the street, in shelters, doubled up with other families, or in hotels or motels.⁴⁷⁰

463. SPM 2014, *supra* note 35, at 17 (detailing the SPM methodology).

464. *Poor Kids*, *supra* note 2; *see also* Kim Barker & Jessica Silver-Greenberg, *On Tenant Blacklist, Errors and Renters With Little Recourse*, N.Y. TIMES (Aug. 16, 2016), https://www.nytimes.com/2016/08/17/nyregion/new-york-housing-tenant-blacklist.html?mcubz=3&_r=0 (describing the chilling effect that evictions have on the ability of future housing, even if the eviction was due to circumstances often beyond one's control, due to the snowballing effect of poverty, displacement, and homelessness).

465. Will Fischer & Chye-Ching Huang, *Mortgage Interest Deduction Is Ripe for Reform: Conversion to Tax Credit Could Raise Revenue and Make Subsidy More Effective and Fairer*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/sites/default/files/atoms/files/4-4-13hous.pdf> (revised June 25, 2013) (discussing mortgage interest deduction reform possibilities, including introducing a renters' tax credit); Benjamin H. Harris, *Rethinking Homeownership Subsidies*, TAX POL'Y CTR. (Jan. 6, 2014), <http://www.taxpolicycenter.org/taxvox/rethinking-homeownership-subsidies> (stating that tax expenditures for homeownership cost \$121 billion in 2013 alone).

466. *United States Fact Sheet: Federal Rental Assistance*, CTR. ON BUDGET & POL'Y PRIORITIES (March 30, 2017), <http://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-US.pdf>.

467. *Id.*; *see also* *United States Housing Choice Vouchers Fact Sheet*, CTR. ON BUDGET & POL'Y PRIORITIES, http://www.cbpp.org/sites/default/files/atoms/files/3-10-14hous-factsheets_us.pdf (last visited Nov. 26, 2017) (providing information about the Housing Choice Voucher Program, the United States' largest rental assistance program) [hereinafter *Vouchers Fact Sheet*].

468. *United States Fact Sheet: Federal Rental Assistance*, *supra* note 466.

469. U.S. DEP'T OF HOUSING & URB. DEV., THE 2015 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS: PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS 1 (2015), <https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf> (providing information about homelessness on a single night in 2015).

470. *Vouchers Fact Sheet*, *supra* note 467.

Federal rental subsidies make housing affordable and reduce homelessness and daily instability.⁴⁷¹ However, the current demand for housing subsidies far surpasses the supply.⁴⁷² “Children in homeless families that receive housing vouchers change schools less often and are 42% less likely to be separated from their families and placed into foster care. Their families are also 20% less likely to be food insecure and 34% less likely to experience domestic violence.”⁴⁷³ Children in households that use housing subsidies to move to safer neighborhoods are more likely to attend college, earn more as adults, and are less likely to become single parents.⁴⁷⁴ In addition, housing subsidies produce savings in health care, child welfare, corrections, and other areas that reduce government spending.⁴⁷⁵

Federal rental subsidies are targeted to low-income families with children, senior citizens, people with disabilities, and veterans.⁴⁷⁶ Federal rental assistance is generally means-tested and encompasses USDA Rural Rental Assistance and many Department of Housing and Urban Development (HUD) administered programs, including Public Housing, Section 8 Housing Choice Vouchers, Section 8 Project-Based Rental Assistance, Supportive Housing for the Elderly, Supportive Housing for People with Disabilities, Rent Supplement, Rental Assistance Program, McKinney-Vento Permanent Supportive Housing, and Housing Opportunities for Persons with AIDS.⁴⁷⁷ Of the more than five million households assisted in 2016, more than 2.2 million received Housing Choice Vouchers, 1 million received public housing, 1.2 million received Section 8 project-based assistance, 265,000 received USDA subsidies, and 154,000 received elderly and disabled targeted subsidies.⁴⁷⁸

Eligibility for housing subsidies is determined by government public housing authorities based on household size and annual gross income.⁴⁷⁹ The federal government limits housing subsidies to U.S. citizens and specified categories of non-citizens who have eligible immigration status.⁴⁸⁰ Individuals evicted from public housing “for drug-related criminal activity are ineligible for assistance for at least three years from the date of the eviction.”⁴⁸¹ Qualifying household income levels generally may not exceed a certain percent (e.g., 80%) of the median income for area.⁴⁸²

Households are expected to spend about 30% of their monthly adjusted income on housing and utilities.⁴⁸³ The HUD contribution formula is the greater of one-third of “adjusted household income” or ten

471. *Id.*

472. *Housing Choice Vouchers Fact Sheet*, U.S. DEP’T HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8 (last visited Nov. 26, 2017) (“Since the demand for housing assistance often exceeds the limited resources available to HUD and the local housing agencies, [long waiting periods are common.]”).

473. *Vouchers Fact Sheet*, *supra* note 467.

474. *Id.*

475. Will Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children*, CTR. ON BUDGET & POL’Y PRIORITIES 6 (Oct. 7, 2015), <https://www.cbpp.org/sites/default/files/atoms/files/3-10-14hou.pdf>.

476. *United States Fact Sheet: Federal Rental Assistance*, *supra* note 466.

477. *Id.*

478. *Id.*

479. U.S. DEP’T OF HOUSING & URB. DEV., *Chapter 5: Eligibility and Denial of Assistance*, in HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK 5-1 to 5-3 (2001), https://www.hud.gov/program_offices/administration/hudclips/guidebooks/7420.10G; *see HUD’s Public Housing Program*, U.S. DEP’T HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog (last visited Nov. 26, 2017) (providing an overview of HUD’s public housing program).

480. *Chapter 5: Eligibility and Denial of Assistance*, *supra* note 479, at 5-3.

481. *Id.* at 5-1.

482. *United States Fact Sheet: Federal Rental Assistance*, *supra* note 466.

483. *Housing Choice Vouchers Fact Sheet*, *supra* note 472.

percent of “gross income.”⁴⁸⁴ HUD regulations define “adjusted household income” as cash income, excluding income from student financial aid, employment of children, and earnings in excess of \$480 for each full-time adult student minus deductions for dependents, elderly, and disabled household members, child care, and medical expenses.⁴⁸⁵

Households self-identify on surveys as receiving housing assistance.⁴⁸⁶ The Census Bureau includes the value of housing subsidies in household income resources.⁴⁸⁷ The value of the subsidy is estimated as the excess of the “market rent” over any tenant payment.⁴⁸⁸ “Market rent” is estimated using statistical matching with HUD data.⁴⁸⁹ Tenant payments are estimated from household income and HUD program rules.⁴⁹⁰ However, the housing benefits included as income are limited to the proportion of the relevant poverty threshold allocated to housing costs.⁴⁹¹ Therefore, the housing subsidy included in income under the SPM is capped at the relevant threshold household housing costs, less any amount of tenant payments.⁴⁹² For example, assume that the poverty threshold amount for housing for a household unit is \$1,500 per month, the monthly housing subsidy is \$1,000 and corresponding tenant costs are \$700 because the actual housing costs are \$1,700. The in-kind housing benefit included under this approach for the SPM would be the \$1,500 housing threshold costs less the actual \$700 housing costs, or \$800 per month for the number of months received.

b. The Low-Income Home Energy Assistance Program (LIHEAP).

It's tough because my mom and dad are poor. My dad just lost his job. That's kind of hard for us. One day, I started getting in the shower and it was cold. I put—I put the hot on all the way and no cold, and it was freezing. It felt like shoving your face in a bunch of snow. It was freezing! The hot water shut off because we didn't pay the bill in time. It was overdue. [Brittany, age nine.]⁴⁹³

LIHEAP is an energy assistance program that attempts to keep low-income families “safe and healthy” through initiatives that subsidize certain utility costs.⁴⁹⁴ The program is federally funded to assist in managing costs associated with energy bills, weatherization, and energy-related minor home repairs.⁴⁹⁵ The government's goal through LIHEAP is to “reduce the risk of health and safety problems that arise from unsafe heating and cooling practices.”⁴⁹⁶ LIHEAP operates throughout all fifty states, the District of

484. SPM 2014, *supra* note 35, at 18.

485. *Id.* at 18 n.23.

486. *Id.* at 18.

487. *Id.*

488. *Id.*

489. *Id.*

490. *Id.*

491. *Id.*

492. *Id.*

493. *Poor Kids*, *supra* note 2.

494. *Low Income Home Energy Assistance Program (LIHEAP)*, U.S. DEP'T HEALTH & HUM. SERVS., OFF. COMMUNITY SERVS., <https://www.acf.hhs.gov/ocs/programs/liheap> (last visited Nov. 26, 2017).

495. *About LIHEAP*, U.S. DEP'T HEALTH & HUM. SERVS., OFF. COMMUNITY SERVS., <https://www.acf.hhs.gov/ocs/programs/liheap/about> (last reviewed Mar. 29, 2017).

496. *Id.*

Columbia, Native American tribes or tribal organizations, and the U.S. territories.⁴⁹⁷

Income eligibility criteria for LIHEAP may not be set lower than 110% or higher than 150% of the poverty guideline, “except where 60% of state median income is higher.”⁴⁹⁸ “Under the law, LIHEAP grantees have the flexibility of serving households having at least one member who also receives assistance” under TANF, SSI, SNAP or VBS.⁴⁹⁹ LIHEAP grantees may add additional eligibility criteria “such as passing an assets test, residence in non-subsidized housing; or receipt of a utility disconnection notice.”⁵⁰⁰ LIHEAP’s fiscal year 2010 budget was about \$5.3 billion assisting more than eight million households with average assistance amounts of \$391 for heating, \$293 for cooling, \$434 for winter crisis, and \$316 for summer crisis amounts.⁵⁰¹

The Census Bureau includes LIHEAP subsidies as in-kind benefits under the SPM.⁵⁰² The survey asks for information on energy assistance for the entire year, capturing assistance for regular benefits and one or more crisis or emergency benefits.⁵⁰³ LIHEAP benefits are often made directly to utility companies, so households may have difficulty determining the precise amount of LIHEAP benefits received during the year.⁵⁰⁴

c. Demographics of Housing and LIHEAP Antipoverty Subsidies.

My first year here, me and my mom got evicted. I felt shattered. That was the home that I had for my whole life and I grew up there. I didn’t know what was going to happen next. That period of not knowing wasn’t something that I felt comfortable with. I felt this inkling in me that I would never want my children or anyone else to experience this. [Omarina Cabrera, high school sophomore.]⁵⁰⁵

Sometimes, when I watch people who, like, walk into their house when we’re driving, I wish that sometimes, like, I had a house like those people. [Jasmine, age nine.]⁵⁰⁶

More than three million people were lifted out of poverty by approximately \$42 billion in housing and utility subsidies under the SPM in 2014, after accounting for all cash income and in-kind food security benefits.⁵⁰⁷ Low-income families with children, senior citizens, and people with disabilities are specifically

497. *LIHEAP Fact Sheet*, U.S. DEP’T HEALTH & HUM. SERVS., OFF. COMMUNITY SERVS., (Mar. 16, 2017) <https://www.acf.hhs.gov/ocs/resource/liheap-fact-sheet-0>.

498. *LIHEAP Assistance Eligibility*, U.S. DEP’T HEALTH & HUM. SERVS., OFF. COMMUNITY SERVS. (Jan. 11, 2016), <http://www.acf.hhs.gov/ocs/resource/liheap-eligibility-criteria>.

499. *Id.*

500. *Id.*

501 U.S. DEP’T OF HEALTH & HUMAN SERVS., LOW INCOME HOME ENERGY ASSISTANCE PROGRAM: REPORT TO CONGRESS FOR FISCAL YEAR 2010, at 5, 41 (2015), https://www.acf.hhs.gov/sites/default/files/ocs/fy10_liheap_rtc_final.pdf.

502. SPM 2014, *supra* note 35, at 17.

503. *Id.*

504. *Id.*

505. Mary Robertson, *Omarina’s Story*, FRONTLINE (PBS television broadcast July 15, 2014), <http://www.pbs.org/wgbh/frontline/film/omarinas-story/transcript/>.

506. *Poor Kids*, *supra* note 2.

507. See *infra* Table 10 with demographic data regarding before and after statistics for housing and utility benefits. The Census Bureau determined that if housing subsidies were eliminated in 2014 under the SPM about 2.8 million individuals would drop into poverty or about 0.9% of the 316,168,000 people in the SPM population universe. SPM 2014, *supra* note 35, at 9. In addition, if the LIHEAP program were terminated, assuming no behavioral changes, about 316,000 more individuals would suffer poverty. *Id.*

targeted by these benefits, as described above.⁵⁰⁸ Consistent with this targeting, women, children, senior citizens, and people with disabilities were disproportionately lifted out of poverty by 2014 housing and energy subsidies.⁵⁰⁹ All races and ethnic groups, other than Whites and Hispanics, were disproportionately lifted out of poverty by housing and energy benefits, after accounting for all cash-OPM resources plus in-kind food security benefits.⁵¹⁰ After accounting for these resources, the poverty rate for all Whites was only 7.2%, and the lowest of all demographic groups was a 6.1% poverty rate for White senior citizens.⁵¹¹ In sharp contrast, all people of color, other than multi-racial individuals, suffered poverty rates in excess of the overall rate of 11.4%, ranging from a high rate of 25.4% for Hispanic children and 24.1% for Black children to a low rate of 10.1% and 12.3% for multi-racial and Asian individuals, respectively.⁵¹² Whites, men, working-age, multi-racial individuals, and senior citizens all had poverty rates under the overall poverty rate of 11.4%.⁵¹³

Table 10: Antipoverty Relief of 2014 Market Income, OASDI, SSI, VBs, UE, TANF and In-Kind Food Security Benefits Under the SPM

SPM-2014		% of Number in	Lifted Out of Pov. w/Housing & Utils. ⁵¹⁶	Pop. in Pov. Post Cash Income, Food Security, Housing & Utils. ⁵¹⁷
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508. See discussion regarding housing and utility subsidies *supra* Parts II.B.6.a–b.

509. See discussion *supra* Parts II.B.6.a–b; *infra* Table 10 with demographic data regarding before and after statistics for housing and utility benefits.

510. See *infra* Table 10.

511. Poverty Calculator, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC),” “Housing Subsidies (e.g. Section 8),” “Home Energy Subsidies (e.g. LIHEAP);” Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”); see *infra* Table 10.

512. Poverty Calculator, *supra* note 194 (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC),” “Housing Subsidies (e.g. Section 8),” “Home Energy Subsidies (e.g. LIHEAP);” Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

513. See *infra* Table 10 with demographic data regarding before and after statistics for housing and utility benefits.

516. *Id.* ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC),” “Housing Subsidies (e.g. Section 8),” “Home Energy Subsidies (e.g. LIHEAP);” Step 2: No boxes checked; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC);” Step 2: No boxes checked; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

517. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children

	% of Total Pop. ⁵¹⁴	Pov. Post Cash Income & Food Security ⁵¹⁵	Total (millions)	% of Total	Total (millions)	% of Total	Poverty. Rate (%)
Overall	100	100	3.035	100 ⁵¹⁸	36.103	100	11.4
Race							
White	61.8	37.9	0.813	26.8	14.011	38.8	7.2
Hispanic	17.6	31.2	0.642	21.2	11.556	32.0	20.8
Black	12.2	21.5	1.199	39.5	7.223	20.0	18.7
Asian	5.5	6.0	0.208	6.9	2.138	5.9	12.3
Multi-Racial	1.8	1.7	0.096	3.2	0.588	1.6	10.1
Native	0.8	1.2	0.055	1.8	.402	1.1	16.2
Pac. Islander	0.3	0.5	0.022	0.7	.185	0.5	18.9
Sex							
Male	49.0	45.6	1.119	36.9	16.711	46.3	10.8
Female	51.0	54.4	1.916	63.1	19.392	53.7	12.0
Age							
0–17	23.4	30.9	1.069	35.2	11.029	30.5	14.9
18–64	62.1	58.0	1.483	48.9	21.215	58.8	10.8
65+	14.5	11.1	0.482	15.9	3.860	10.7	8.4
Disability	9.4	13.5	0.784	25.8	4.511	12.5	15.2

7. Taxes

If I could change anything, it would be being poor. I really don't want to be poor because then you can't get—because then how can you pay your rent? How can you get food? How can you get a roof over your head if you're going to be poor? [Kaylie, age ten.]⁵¹⁹

Taxes are a nondiscretionary expense included in measuring poverty under the SPM.⁵²⁰ However, under federal and most state income tax systems, low-income working families receive refundable tax credits that offset their income tax liability and, in certain cases, even subsidize their earned income.⁵²¹ While the OPM does not include any tax expenses or tax subsidies in its computations, the SPM includes in its analysis federal, state, and local income taxes; Social Security payroll taxes (FICA); and any federal and state tax credits.⁵²² Under the SPM, certain federal refundable tax credits, including the Earned Income

(WIC),” “Housing Subsidies (e.g. Section 8),” “Home Energy Subsidies (e.g. LIHEAP);” Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

514. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

515. Reproduces data from Table 9, *supra*, at col. 7.

518. The number lifted out of poverty (3.035M) over the total SPM population (316.168M) equals .96%.

519. *Poor Kids*, *supra* note 2.

520. SPM 2014, *supra* note 35, at 18.

521. See Francine J. Lipman, *Access to Tax Justice*, 40 PEPP. L. REV. 1173 (2013) (describing the tax benefits for working families under the refundable Earned Income Tax Credit and Child Tax Credit).

522. See SPM 2014, *supra* note 35, at 18.

Tax Credit (EITC) and the Child Tax Credit (CTC), are separately stated as a source of income.⁵²³ The SPM federal, state, and local tax expenses and subsidies allocated to each household unit are not based upon actual resources received and expenses incurred. In lieu of asking for actual data from the households surveyed, the Census Bureau relies on simulated tax calculators that use microdata from the IRS Statistics of Income tax return files to estimate the tax costs and subsidies for each household.⁵²⁴

a. Federal Income Taxes. In 1967, households with income equal to the poverty threshold suffered a 12% federal income and payroll tax rate, pushing millions of those households into poverty.⁵²⁵ Federal income and payroll taxes effectively increased the poverty rate by 3.2%.⁵²⁶ Households with children were taxed into poverty at an even higher rate of 3.9%.⁵²⁷ As a result of favorable tax credits for working families with children and other family- and work-friendly tax provisions, the federal tax rate for a married couple with two children and income at the poverty threshold “has gone from 10 percent in 1967 to -16 percent in 2012.”⁵²⁸ But the tax system continues to tax low-income childless households at about 11%, pushing those families near poverty thresholds into poverty.⁵²⁹ Thus, these low-income, childless households are taxed into poverty.

Because of progressive income tax rates, including the effect of the EITC and CTC, and record income inequality, recent estimates indicate that about 44% of Americans pay no federal individual income tax.⁵³⁰ However, these individuals who pay no federal income tax do pay many other taxes including, but not limited to, state and local sales, excise (e.g., gas, tire, and utility taxes), payroll, and real and personal property taxes.⁵³¹

Under the 2014 SPM, federal income taxes, excluding the benefits of the EITC and CTC, pushed 1.6 million people into poverty increasing the overall poverty rate by 0.5%.⁵³² These individuals were disproportionately working-age. Thus, the poverty rate for individuals 18–64 years of age was increased by 0.6% or about 1.2 million individuals; for individuals under 18 the increase was 0.3%, or more than 200,000 individuals; and for seniors aged 65 and older, the increase was only 0.1%, or about 50,000 individuals.⁵³³ This is consistent with the noted change in federal income tax laws that are designed not to push working families with children into poverty, but rather are designed to lift them out of poverty.⁵³⁴ Nevertheless,

523. *See id.*

524. *Id.*

525. Jason Furman, *Poverty and the Tax Code*, DEMOCRACY, SPRING 2014, AT 8, 15.

526. *Id.*

527. *Id.*

528. *Id.* at 17.

529. *Id.*

530. Robertson C. Williams, *A Closer Look at Those Who Pay No Income or Payroll Taxes*, TAX POL’Y CTR. (July 11, 2016), <http://www.taxpolicycenter.org/taxvox/closer-look-those-who-pay-no-income-or-payroll-taxes>; *see also* Francine J. Lipman & Dawn Davis, *Heal the Suffering Children: Fifty Years After the Declaration of War on Poverty*, 34 B.C. J.L. & SOC. JUST. 311 (2014).

531. Williams, *supra* note 530.

532. The Census Bureau has indicated that without any federal income taxes, about 1.6 million individuals would no longer suffer poverty, assuming everything else remained the same. SPM 2014, *supra* note 35, at 9 (setting forth that the poverty rate would decrease by about 0.5% (with margin of error of +/- .3%) if federal income taxes were eliminated from the analysis; assuming a population universe of 316,168,000, this is the equivalent of about 1.6 million individuals).

533. *Id.*

534. *See* Furman, *supra* note 525.

consistent with family-focused tax subsidies, households without a child living with them consistently continue to be taxed into poverty.

b. State Income Taxes. State income taxes, net of any state income tax credits, are even less likely to push individuals into poverty than federal income taxes. About 400,000 individuals are pushed into poverty by state income taxes, increasing the poverty rate by about .1%.⁵³⁵ These individuals are disproportionately male, working age, people of color including about 142,000 Hispanics (poverty rate increase of 0.3%); 130,000 Whites (poverty rate increase of 0.1%); 81,000 Blacks (poverty rate increase of 0.2%); 40,000 Asians (poverty rate increase of 0.2%); and 3,000 Pacific Islanders (poverty rate increase of 0.3%).⁵³⁶ This is consistent with the fact that about twenty-nine states plus Washington D.C. have state EITCs that build on the antipoverty benefits of the federal EITC.⁵³⁷ While twenty-four of these state EITCs are refundable, similar to the federal EITC, six states, including Delaware, Hawaii, Ohio, Oklahoma, South Carolina, and Virginia, have non-refundable EITCs.⁵³⁸ Washington has a refundable EITC, but with no state income tax, it has not been funded to date.⁵³⁹ In addition, there are eight states without any state income tax on wages, including Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, and Wyoming.⁵⁴⁰ Thus, almost 70%, or thirty-four states plus the District of Columbia, either don't impose an income tax, offset the income tax, or even subsidize low-income wage earners.⁵⁴¹

c. Federal Payroll Taxes. About 60% of those who pay no federal income tax work and, therefore, pay federal payroll taxes.⁵⁴² The other 40% are generally non-working senior citizens whose income is too low to owe federal income taxes.⁵⁴³ Of those who work, two-thirds have payroll tax liabilities that exceed their refundable income tax credits, like the EITC and CTC.⁵⁴⁴ Therefore, only about 9% of households have their federal payroll tax liabilities offset by these tax credits and about 75% of all Americans pay federal taxes.⁵⁴⁵

535. *Poverty Calculator*, *supra* note 194 ((A) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: all; Step 2: all expenses, except "State Taxes"; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (B) click the "Recalculate" button after selecting the following "Step" boxes: Step 1: all; Step 2: all; Step 3: "Supplemental Poverty Line"; Step 4: "2014"; (C) then press "Compare the current poverty calculation to the calculation immediately prior to this one" at the top of the page). The result labeled "Difference" is the increase in the 2014 SPM due to state income taxes assuming no behavioral changes. While overall poverty share percentages generally remain the same, the poverty share percentages for males, Whites, and working-age individuals increase, and, correspondingly, the poverty share percentages of females, children and seniors decrease.

536. *Id.*

537. *Policy Basics: State Earned Income Tax Credits*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/state-budget-and-tax/policy-basics-state-earned-income-tax-credits> (last updated Aug. 23, 2017).

538. *Id.* The states with refundable EITCs include California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Oregon, Rhode Island, Washington, Wisconsin, Vermont, and the District of Columbia. *Id.*

539. *Id.*

540. Erica Williams, *States Can Adopt or Expand Earned Income Tax Credits to Build a Stronger Future Economy*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/state-budget-and-tax/states-can-adopt-or-expand-earned-income-tax-credits-to-build-a> (last updated Fed. 8, 2017).

541. *Id.*; see also *Policy Basics: State Earned Income Tax Credits*, *supra* note 537.

542. Williams, *supra* note 530.

543. *Id.*

544. *Id.*

545. *Id.*

In 2014, without considering any offset with federal EITC and CTC, federal payroll taxes pushed about 5.1 million individuals into poverty, increasing the SPM by 1.6%.⁵⁴⁶ The impact of these taxes is disproportionately felt by Hispanic working families, increasing the SPM poverty rate for Hispanic children and working-age adults by 4.0% and 3.9%, respectively.⁵⁴⁷ Federal FICA and Medicare payroll taxes impose an effective tax rate of 15.3% on wages and self-employment income.⁵⁴⁸ While employees pay 7.65% and employers match the 7.65% rate (self-employed individuals must pay the entire 15.3% rate), economists find that workers bear the entire tax burden irrespective of who pays it directly.⁵⁴⁹ Notably, Congress designed the EITC, among other reasons, to offset the payroll tax burden for working poor families.⁵⁵⁰ In 2014, the EITC and CTC offset not only the federal income and payroll tax burdens, but also the minimal state tax burden and effectively lifted millions of families out of poverty even after these federal and state tax costs.⁵⁵¹

d. Earned Income Tax and Child Tax Credits. The EITC and CTC have been described as the most successful antipoverty programs for children, not only encouraging work in single-mother households, but also creating jobs in EITC-participating communities.⁵⁵² Recent research suggests these credits benefit virtually every stage of participants' lives, including improved health in infants and mothers, better K–12 school performance, higher college enrollment, and increased work effort, earnings, and tax payments in adulthood.⁵⁵³

The EITC is a federal income tax credit for low- to moderate-income workers, which offsets federal payroll and income taxes.⁵⁵⁴ The CTC is also targeted to low- and moderate-income working families to offset the cost of raising children.⁵⁵⁵ The credit is up to \$1,000 per eligible child (under age seventeen at

546. The Census Bureau has determined that if federal payroll taxes were eliminated, about 5.1 million individuals would not suffer poverty under the SPM in 2014. *See* SPM 2014, *supra* note 35, at 9 (determining that the poverty rate would drop by 1.6% from 15.3% down to 13.7% in 2014).

547. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all expenses, except “Federal Payroll Tax”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page). Poverty share percentages go up for Hispanic children (0.5%) and Hispanic working-age individuals (1.0%) as well as males (0.5%), Asians (0.1%), and Pacific Islanders (0.1%); correspondingly, poverty share percentages go down for Whites (0.6%) and Blacks (0.9%) as well as seniors (1.3%).

548. SSA STATISTICAL SUPPLEMENT, *supra* note 230.

549. *See* Lipman, *supra* note 521 (explaining that economists find that workers bear the burden of payroll taxes).

550. *Id.*

551. *See infra* Table 12.

552. *See* Lipman, *supra* note 521.

553. *Chart Book: The Earned Income Tax Credit and Child Tax Credit*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/sites/default/files/atoms/files/1-7-15tax-chartbook.pdf> (last updated May 24, 2016).

554. I.R.C. § 32; *see also Policy Basics: The Earned Income Tax Credit*, CTR. ON BUDGET & POL’Y PRIORITIES, <http://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit> (last updated Oct. 21, 2016).

555. I.R.C. § 24; *see also Chart Book: The Earned Income Tax Credit and Child Tax Credit*, *supra* note 553.

the end of the year) and is phased out for higher-income families.⁵⁵⁶ Similar to the EITC, the CTC is refundable, but at a rate of 15% for earned income in excess of \$3,000.⁵⁵⁷ Therefore, both the CTC and the EITC require work as well as the filing of an income tax return.⁵⁵⁸ Families that do not work at all during the calendar year will not receive any refundable CTC nor EITC.⁵⁵⁹ In 2018, the EITC amounts and phase-out ranges are as follows:⁵⁶⁰

Table 11: 2018 EITC Amounts and Phase-Out Ranges

	Childless Worker	1 Qualifying (“Q”) Child⁵⁶¹	2 Q Children	3 or > Q Children
Maximum EITC Amount	\$520	\$3,468	\$5,728	\$6,444
Maximum Adjusted Gross Income Range				
Unmarried	\$15,310	\$40,402	\$45,898	\$49,298
Married	21,000	46,102	51,598	54,998

To demonstrate the antipoverty relief of the EITC and CTC, assume that Congress had repealed the EITC and CTC for 2014 and there were no taxpayer behavioral effects in response to these reductions in tax benefits. Poverty measures under the SPM would increase as described below.

Without EITC or CTC antipoverty benefits, the SPM would increase from 15.3% to 18.6%, pushing 10.587 million or 22% more individuals into poverty.⁵⁶² As designed, children are disproportionately lifted out of poverty by EITC and CTC benefits.⁵⁶³ More than one-half of those individuals pushed into poverty without these benefits, or 5.644 million, would be children.⁵⁶⁴ Thirty-three percent of these children would be White, 38% would be Hispanic, and 21% would be Black.⁵⁶⁵ While White children represent 52% of the

556. I.R.C. § 24(a)–(b).

557. I.R.C. § 24(d).

558. See Lipman, *supra* note 521.

559. I.R.C. § 32(a)(1) (setting forth the EITC’s reliance on earned income, among other requirements).

560. 2018 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates, IRS.GOV, www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts-next-year (last updated Nov. 24, 2017).

561. I.R.C. § 32(c)(3) (defining “qualifying child”); see also *Qualifying Child Rules*, IRS.GOV, <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/qualifying-child-rules> (last updated Sept. 20, 2017).

562. See *infra* Table 12. The Census Bureau has determined that without the refundable portion of these credits (only the amount that results in a cash refund, not the amount that offsets federal income tax liabilities), about 9.8 million or 3.1% of the SPM population universe would drop into poverty. See SPM 2014, *supra* note 35, at 9.

563. See *infra* Table 12.

564. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: check all resources, except “Earned Income Tax Credit” and “Child Tax Credit”; Step 2: all Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page). The results labeled “Difference” are the 10.587 million individuals who are lifted out of poverty by the EITC and the CTC, including 5.644 million 0–17 year old children.

565. Out of the total of 5.644 million (M) children dropped into poverty 33% or 1.877 million are White (1.877M/5.644M), 2.151 million or 38% (2.151M/5.644M) are Hispanic, and 1.163 million or 21% (1.163M/5.644M) are Black. See *infra* Table 12.

SPM population universe,⁵⁶⁶ they are only 31% of poor children without the EITC and CTC.⁵⁶⁷ Thus, they are disproportionately lifted out of poverty with EITC and CTC and other antipoverty benefits.⁵⁶⁸ Hispanic and Black children represent 24% and 14% of the SPM population universe of children, but 39% and 21% of poor kids without these benefits.⁵⁶⁹ Nevertheless, EITC and CTC antipoverty benefits significantly decrease the child poverty rate for all children by 7.6% from 24.3% down to 16.7%.⁵⁷⁰ The decrease in poverty rate is even greater at 8.5% for children age zero through five who are lifted out of poverty with the EITC and CTC at even greater numbers and percentages than older children.⁵⁷¹ But the most dramatic effect is for children of color who suffer much higher poverty rates than their White counterparts. Hispanic and Black children enjoy poverty rate decreases from the EITC and CTC of over 11% from 38.8% and 37.3% to 26.9% and 26%, respectively.⁵⁷² Without these tax credits, almost 3.8 million more children of color would live in poverty.⁵⁷³ This represents about 11% of all children of color in the SPM population universe.⁵⁷⁴

Targeted working adults also experience a decrease in their SPM overall rate of 2.4%, with Hispanic and Black working-age adults enjoying poverty rate decreases of 5.4% and 3.6% down to 24% and 22%, respectively.⁵⁷⁵ While Whites represent 43% of the pre-EITC and -CTC poor working-aged individuals, only 37% are lifted out of poverty by these benefits as compared to 38% of Hispanics who represent 29% of this population universe.⁵⁷⁶ Blacks are 18% of the working-age poor population universe

566. *Poverty Calculator*, *supra* note 194 (Step 1: none; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; Click “Recalculate”). There are 73.920 million children in the population universe including 38.201 million White children (52%), 18.105 million Hispanic children (24%) and 10.236 million Black children (14%).

567. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: check all resources, except “Earned Income Tax Credit” and “Child Tax Credit”; Step 2: all Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page). The resulting “Prior Calculation” determines that there are 17.970 children (0–17 years old) living in poverty including 5.542 White children (31%), 7.023 Hispanic children (39%) and 3.820 Black children (21%) excluding all EITC and CTC benefits.

568. About 33% of all children lifted out of poverty with EITC and CTC benefits are White (1.877M/5.644M) although only 31% of all children who are poor without the EITC and CTC benefits are White (5.542M/17.97M). *Id.*

569. *Id.* (finding that without the EITC or CTC there would be 5.542 million White (5.542M/17.97M = 31%), 7.023 million Hispanic (7.023M/17.97M = 39%), and 3.82 million (3.82M/17.97M = 21%) Black children living in poverty out of 17.97 million total children). Thus, White children are disproportionately lifted out of poverty and children of color are disproportionately poor. *See also Poverty Calculator*, *supra* note 194 (Step 1: none; Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; Click “Recalculate”). There are 73.920 million children in the population universe including 38.201 million White children (52%), 18.105 million Hispanic children (24%) and 10.236 million Black children (14%).

570. *See infra* Table 12.

571. *See infra* Table 12.

572. *See infra* Table 12.

573. *See infra* Table 12 (setting forth the drop into poverty without the EITC and CTC for 1.163 Hispanic children and 2.151 Black children plus about 450,000 other children of color).

574. *See infra* Table 12 (setting forth the lifting out of poverty of 3.8 million children of color out of 35.719 million non-White children in the SPM population universe or about 11% $3.8\text{M}/35.719\text{M} = 11\%$).

575. *See infra* Table 12.

576. *See infra* Table 12.

and 18% are lifted out of poverty by these benefits.⁵⁷⁷ The explanation for this distortion is likely that the targeted Hispanic poor population is 39% children, as compared to the White poor population, which is 23% children.⁵⁷⁸ As described above, CTC and EITC antipoverty benefits increase with the number of children in the household.⁵⁷⁹

People with disabilities do not see much antipoverty relief from the EITC and CTC, but this could be due to the reliance of these credits on work and children.⁵⁸⁰ Only 262,000 individuals with disabilities were lifted out of poverty by the EITC and CTC in 2014 under the SPM, decreasing the poverty rate by .8% from 23.5% to 22.7%.⁵⁸¹ Senior citizens who generally do not qualify for the EITC without children experience very little relative antipoverty relief from these tax credits.⁵⁸² One hundred and eight thousand senior citizens were lifted out of poverty with EITC and CTC benefits decreasing the poverty rate by only .3% from 14.7% to 14.4%.⁵⁸³ Thus, the targeting of benefits in the structure and design of the EITC and CTC to lower-income working families with one or more children is realized in the Census Bureau's estimates of these benefits. However, these are estimates of the benefits and not necessarily the actual amount received by the household unit.

Table 12: SPM 2014 Poverty Demographics Without EITC and CTC⁵⁸⁴

	% of Total Pop. ⁵⁸⁵	Increase in Pop (millions) / (% change)	Pov Share (%)	Pov. Rate (%) Before	Pov. Rate (%) After	Increase (%)
Overall	100	10.587 / 22%	100	15.3	18.6	3.3
Race						
White	61.8	3.689 / (1.5%)	41.7	10.7	12.6	1.9
Age: 0–17	12.1	1.877	9.4	9.6	14.5	4.9
Age: 18–64	38.4	1.772	25.2	10.8	12.2	1.4
Age: 65+	11.3	.040	7.1	11.6	11.7	0.1
Hispanic	17.6	4.010 / 1.6%	30.8	25.4	32.6	7.2
Age: 0–17	5.7	2.151	11.9	26.9	38.8	11.9
Age: 18–64	10.7	1.833	17.1	24.4	29.8	5.4
Age: 65+	1.2	0.026	1.7	27.5	28.2	0.7
Black	12.2	2.054 / .2%	18.6	23.1	28.4	5.3
Age: 0–17	3.2	1.163	6.5	26.0	37.3	11.3
Age: 18–64	7.7	0.868	10.5	21.9	25.5	3.6
Age: 65+	1.3	0.022	1.6	23.0	23.6	0.6

577. See *infra* Table 12.

578. See *infra* Table 12.

579. See I.R.C. § 24(a) (dollar amount of the CTC is \$1,000 per qualifying child); I.R.C. § 32(b) (EITC benefits increase based on the number of qualifying children, with benefits maxing out at 3 or more qualifying children).

580. See *infra* Table 12.

581. See *infra* Table 12.

582. See *infra* Table 12.

583. See *infra* Table 12.

584. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: check all resources, except “Earned Income Tax Credit” and “Child Tax Credit”; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

585. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

Asian	5.5	0.446 / (.3%)	5.7	16.8	19.4	2.6
Multi-Racial	1.8	0.262 / .1%	1.8	13.7	18.2	4.5
Native	.8	0.089 / 0%	1.0	19.3	22.9	3.6
Pac. Islander	.3	0.038 / (.1%)	.4	22.8	26.7	3.9
Sex						
Female	51	5.651 / 0%	53.5	16.0	19.5	3.5
White	31.4	1.927	22.4	11.4	13.3	1.9
Hispanic	8.8	2.108	15.9	26.2	33.8	7.6
Black	6.5	1.206	10.4	24.1	30.0	5.9
Male	49	4.937 / 0%	46.5	14.5	17.7	3.2
White	30.4	1.762	19.3	10.0	11.8	1.8
Hispanic	8.8	1.901	14.9	24.6	31.4	6.8
Black	5.7	.848	8.2	21.9	26.6	4.7
Age						
0–17	23.3	5.64 4/ 5%	30.5	16.7/18.5 ⁵⁸⁶	24.3/27	7.6/8.5
18–64	62.1	4.836 / (2.8%)	58.0	15.0	17.4	2.4
65+	14.6	.108 / (2.3%)	11.4	14.4	14.7	0.3
Disability	9.4	.262 / (2.1%)	11.8	22.7	23.5	0.8

e. *Demographics of Net Tax Benefit Under the SPM.* Considering federal and state income and federal payroll taxes, including the EITC and CTC, after all cash and in-kind resources, but before MOOP and worker and child care expenses, 3.232 million individuals were lifted out of poverty by these net benefits under the SPM in 2014.⁵⁸⁷ This net tax benefit decreased overall poverty by 1%.⁵⁸⁸ The individuals lifted out of poverty were disproportionately children, Hispanic, and female.⁵⁸⁹ Notably, as described above with respect to senior citizens and people with disabilities, it appears that these two demographics continue to be taxed into poverty primarily because they do not qualify for meaningful EITC and CTC benefits, without qualifying children.⁵⁹⁰ An enhanced childless EITC could mitigate this issue, although this would continue to make earned income a requirement for any benefits.⁵⁹¹ Notably, 75% of those lifted out of poverty by the

586. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: check all resources, except “Earned Income Tax Credit” and “Child Tax Credit”; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

The first rate of poverty is for children from age 0–17 and the second rate is children from age 0–5.

587. *See infra* Table 13.

588. *See infra* Table 13.

589. *See infra* Table 13.

590. *See* I.R.C. § 24(a) (setting forth that the dollar amount of the CTC is \$1,000 per qualifying child); I.R.C. § 32(b), (c)(1)(A) (setting forth that EITC benefits for “eligible individuals” are based on the number of qualifying children, with benefits maxing out at 3 or more qualifying children and disqualifying individuals over the age of 65 for the childless EITC).

591. EXEC. OFFICE OF THE PRESIDENT AND U.S. TREAS. DEP’T, THE PRESIDENT’S PROPOSAL TO EXPAND THE EARNED INCOME TAX CREDIT 2 (2014) (proposing an expansion to include 300,000 older workers age 65 or 66 and suggesting that even conservative economists believe “a more robust childless worker EITC could replicate successes” in encouraging work among single parents).

net tax benefits are children and more than 26% are working-age adults, indicating that senior citizens are actually pushed into poverty by net taxes.⁵⁹² While the percentage of Blacks lifted out of poverty by the net tax benefit exceeded the percentage of Blacks in the overall population, it did not exceed the percentage of Blacks living in poverty after accounting for all SPM resources.⁵⁹³ Thus, this net tax benefit does not proportionately benefit Black Americans. This might be explained by the demographics of Black families versus Hispanic families with fewer children in each household.

After accounting for all cash and in-kind income in the SPM and the net tax benefit, the overall poverty rate is 10.4% with only 6.8% of Whites, 9.9% of males, and only 8.5% of senior citizens suffering from poverty.⁵⁹⁴ While Hispanics enjoy the net tax benefits disproportionately (predominately due to the EITC and CTC benefits), they suffer the highest overall poverty rate even after this benefit of 18% relative to 17.3% for Blacks and 15.7% for Pacific Islanders.⁵⁹⁵ The overall Hispanic poverty rate is more than 250% of the White poverty rate.⁵⁹⁶ When further deconstructed, the White child poverty rate at this point in the analysis is only 6.1% as compared to 19.4% and 19.8% for Hispanic and Black children, respectively, even after the antipoverty child-focused benefits of the EITC and CTC.⁵⁹⁷ Indeed, without the antipoverty benefits of the EITC and CTC, as described above, these rates would be more than 11% higher for Hispanic and Black children or about 40% as compared to about 15% for White children.⁵⁹⁸ Needless to say, these tax benefits are critical to these children, their families and communities, and our resource allocation system, but they are not sufficient to correct the overall misallocation of benefits.

Table 13: SPM 2014 Poverty Demographics After All Cash Income and In-Kind Resources, Less Net Taxes (Including Federal and State Income and Payroll Taxes and Tax benefits from CTCs and EITCs)

SPM-2014	% of Total Pop. ⁵⁹⁹	% of No. in Pov. Post Cash & All In-Kind ⁶⁰⁰	Lifted Out of Pov. w/Net Taxes ⁶⁰¹		Pop. in Pov. Post Cash, All In-Kind & Net Taxes ⁶⁰²		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	3.232	100 ⁶⁰³	32.871	100	10.4

592. See *infra* Table 13 setting forth the number and demographics of individuals lifted out of poverty after accounting for all cash and in-kind income resources and all tax costs and benefits.

593. See *infra* Table 13.

594. See *infra* Table 13.

595. See *infra* Table 13.

596. See *infra* Table 13.

597. See *infra* Table 13 setting forth the number and demographics of individuals lifted out of poverty after accounting for all cash and in-kind income resources and all tax costs and benefits.

598. See *infra* Table 13.

599. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

600. Reproduces data from Table 10, *supra*, at col. 7.

601. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: “Federal Income Tax,” “Federal Payroll Tax,” “State Taxes”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation, Welfare (TANF),” “Veteran’s Benefits,” “Food Stamps (SNAP),” “Free/Subsidized School Lunch,” “Women, Infants, & Children (WIC),” “Housing Subsidies (e.g. Section 8),” “Home Energy Subsidies (e.g. LIHEAP); Step 2: none; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

602. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: “Federal Income Tax,” “Federal Payroll Tax,” “State Taxes”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

603. The number lifted out of poverty (3.232M) over the total SPM population (316.168M) equals 1.02%.

Race							
White	61.8	38.8	0.787	24.4	13.224	40.2	6.8
Hispanic	17.6	32.0	1.555	48.1	10.001	30.4	18.0
Black	12.2	20.0	0.560	17.3	6.663	20.3	17.3
Asian	5.5	5.9	0.192	5.9	1.946	5.9	11.2
Multi-Racial	1.8	1.6	0.077	2.4	0.511	1.6	8.8
Native	0.8	1.1	0.030	0.9	0.372	1.1	15.0
Pac. Islander	0.3	0.5	0.031	1.0	0.154	0.5	15.7
Sex							
Male	49.0	46.3	1.364	42.2	15.347	46.7	9.9
Female	51.0	53.7	1.868	57.8	17.524	53.3	10.9
Age							
0–17	23.4	30.5	2.420	74.9	8.609	26.2	11.6
18–64	62.1	58.8	0.854	26.4	20.361	61.9	10.4
65+	14.5	10.7	(0.041)	(1.3)	3.901	11.9	8.5
Disability							
	9.4	12.5	(0.018)	(0.56)	4.529	13.8	15.3

8. Medical Out-of-Pocket Expenses (MOOP)

The bills here at the house is just too much for me to handle. And I seen a doctor last week for depression and she put me on some antidepressants and Xanax for my panic attacks. Right now, there doesn't seem to be a way out. So my only options are to give up my house and move my stuff into storage and move into the motel room. [Barbara, mother of Tyler and Kaylie.]⁶⁰⁴

a. Accounting for Actual MOOP Expenses. MOOP expenses are not included in the OPM, despite evidence that they can cause a tremendous burden on low-income families and push countless Americans into poverty.⁶⁰⁵ Under the SPM, 9.1 million individuals, or 2.9% of the population universe, were pushed into poverty by MOOP in 2014 (assuming all other aspects of the SPM, other than child care and worker related expenses).⁶⁰⁶ This is greater than any other nondiscretionary expense included in the SPM.⁶⁰⁷ The Census Bureau has determined that without MOOP about 3.5% of the SPM population universe or almost 11.1 million would not suffer poverty.⁶⁰⁸ Studies indicate that MOOP expenses are the third most significant

604. *Poor Kids*, *supra* note 2.

605. TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000).

606. *See infra* Table 14.

607. Benjamin Bridges & Robert V. Gesumaria, *The Supplemental Poverty Measure (SPM) and Children: How and Why the SPM and Official Poverty Estimates Differ*, 75 SOC. SECURITY BULL., no. 2, 2015, at 57, 71.

608. *See* SPM 2014, *supra* note 35, at 9 (demonstrating that if MOOP were eliminated then the poverty rate would drop by about 3.5% and 11.1 million individuals, disproportionately senior citizens, would be lifted out of poverty).

cause of financial hardship and bankruptcy and the first cause of bankruptcy when indirect effects like a job loss due to poor health are considered.⁶⁰⁹

The Census Bureau collects data on MOOP expenses directly from households, including amounts paid for health insurance premiums, over-the-counter health-related products, and medical care, including prescription medicine, and payments for dental, health, and eye care.⁶¹⁰ Researchers have concluded that the derived estimates from sample surveys for the larger population compare favorably with more detailed Census Bureau surveys.⁶¹¹ While MOOP expenses have been verified as generally accurate, some scholars have criticized the concept as not reflecting the goals of the poverty measurement.⁶¹²

Scholars have argued that expected rather than actual MOOP spending should be incorporated into poverty thresholds.⁶¹³ The argument for incorporating expected MOOP spending in poverty thresholds rather than actual MOOP is that some households under-consume medical services and have unmet medical needs because they simply cannot afford the costs.⁶¹⁴ Discretionary available household resources necessarily become a cap to MOOP. This cap lends itself to including MOOP in poverty thresholds as a basic need, similar to food, clothing, shelter, and utilities.⁶¹⁵ However, to the extent health insurance coverage is incorporated as a cost, it would similarly have to be included as an in-kind resource to the extent that the government is providing coverage, for example, through Medicaid or CHIP.⁶¹⁶ The current SPM does not use this approach, although scholars continue to research, analyze, and discuss the issue and design and test alternative poverty measures using different approaches to incorporating medical expenses and insurance coverage.⁶¹⁷

b. Demographics of the Push of MOOP into Poverty. Actual MOOP in 2014 pushed into poverty more than 9.1 million individuals, who were disproportionately senior citizens, people with disabilities, women, and people of color after accounting for all other SPM resources and expenses, other than child care and work related expenses.⁶¹⁸ Interestingly, MOOP pushed White seniors from a low poverty rate of 6.2% up

609. Bridges & Gesumaria, *supra* note 607; Brett O'Hara & Pat Doyle, *The Impact of Imputation Strategies for Medical Out-of-Pocket Expenditures on Alternative Poverty Measures* 3 (U.S. Census Bureau, 2001) <https://www.census.gov/content/dam/Census/library/working-papers/2001/demo/koop-paper.pdf>.

610. Bridges & Gesumaria, *supra* note 607.

611. *Id.*

612. See Kyle J. Caswell & Brett O'Hara, *Medical Out-of-Pocket Expenses, Poverty, and the Uninsured* (U.S. Census Bureau, Working Paper No. SEHSD-WP2010-17, 2010), <https://www.census.gov/content/dam/Census/library/working-papers/2010/demo/SEHSD-WP2010-17.pdf> (discussing and presenting several different methodologies for determining MOOP expenses for SPM purposes); O'Hara & Doyle, *supra* note 609 (discussing the literature on incorporating medical out of pocket costs in measuring poverty).

613. NAT'L RESEARCH COUNCIL, EXPERIMENTAL POVERTY MEASURES: SUMMARY OF A WORKSHOP 17–20 (2005).

614. *Id.* at 18–20 (2005); Jessica S. Banthin, Where Do We Stand in Measuring Medical Care Needs for Poverty Definitions? A Summary of Issues Raised in Recent Papers (Workshop on Experimental Poverty Measures, Nat'l Academy of Sciences, Wash., D.C., June 2004) (on file with author) (finding some consensus among poverty researchers that medical care needs should be based practically on actual MOOP expenditure data and should be included in poverty measures either based upon actual MOOP as an expense from unit resources or to include some measure of expected medical care needs in poverty thresholds).

615. KATHLEEN SHORT ET AL., U.S. CENSUS BUREAU, P60-205, EXPERIMENTAL POVERTY MEASURES: 1990–1997 (1999), <https://www.census.gov/content/dam/Census/library/publications/1999/demo/p60-205.pdf> (describing issues related to poverty measures); NAT'L RESEARCH COUNCIL, *supra* note 613.

616. NAT'L RESEARCH COUNCIL, *supra* note 613.

617. *Id.*

618. See *infra* Table 14.

to a significantly higher poverty rate of 11.3%.⁶¹⁹ Although, if actual MOOP expenses are paid from savings rather than current cash-flow resources this could overstate the rate of poverty under certain circumstances.⁶²⁰ Scholars have noted that MOOP expenses are sensitive to wealth—that is, those that have the ability to pay for these services are more likely to incur them.⁶²¹ As a result, extremely high MOOP expenses might be more likely to be incurred by individuals who can afford them through savings; therefore, accounting for MOOP in this manner may overstate poverty rates, especially for White seniors.⁶²²

Table 14: SPM 2014 Poverty Demographics After All Cash and In-Kind Resources, Less Net Taxes and MOOP

SPM-2014	% of Total Pop. ⁶²³	% of No. in Pov. Post All Income & Net Taxes ⁶²⁴	Pushed into Pov. w/MOOP ⁶²⁵		Pop. in Pov. Post All Income, Net Taxes, and MOOP ⁶²⁶		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	(9.103)	100 ⁶²⁷	42.135	100	13.3
Race							
White	61.8	40.2	(5.189)	(57.0)	18.482	43.9	9.5
Hispanic	17.6	30.4	(1.785)	(19.6)	11.826	28.1	21.3
Black	12.2	20.3	(1.308)	(14.4)	8.012	19.0	20.8
Asian	5.5	5.9	(0.559)	(6.1)	2.505	5.9	14.5
Multi-Racial	1.8	1.6	(0.173)	(1.9)	0.689	1.6	11.9
Native	0.8	1.1	(0.054)	(0.6)	0.431	1.0	17.4
Pac. Islander	0.3	0.5	(0.036)	(0.4)	0.190	0.5	19.4
Sex							
Male	49.0	46.7	(3.991)	(43.8)	19.447	46.2	12.6
Female	51.0	53.3	(5.112)	(56.2)	22.688	53.8	14.1

619. See *infra* Table 14.

620. Sanders Korenman & Dahlia Remler, *Rethinking Elder Poverty: Time for a Health Inclusive Poverty Measure?* 17–18 (Nat'l Bureau of Econ. Research, Working Paper No. 18900, 2013), <http://www.nber.org/papers/w18900.pdf> (arguing that health benefits as well as assets should be included in the analysis to better capture poverty among seniors especially given that MOOP almost doubles the poverty rate despite the enormous financial resources that are going to subsidize senior citizens).

621. *Id.*

622. *Id.*

623. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

624. Reproduces data from Table 13, *supra*, at col. 7.

625. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: “Federal Income Tax,” “Federal Payroll Tax,” “State Taxes,” “Child Support Paid,” “Medical Out-of-Pocket Expenses”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: “Federal Income Tax,” “Federal Payroll Tax,” “States Taxes”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

626. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: “Federal Income Tax,” “Federal Payroll Tax,” “State Taxes,” “Child Support Paid,” “Medical Out-of-Pocket Expenses”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

627. The number pushed into poverty (9.103M) over the total SPM population (316.168M) equals 2.88%.

Age							
0–17	23.4	26.2	(1.779)	(19.5)	10.421	24.7	14.1
18–64	62.1	61.9	(4.804)	(52.8)	25.290	60.0	12.9
65+	14.5	11.9	(2.520)	(27.7)	6.424	15.2	14.0
Disability	9.4	13.8	(1.845)	(20.3)	6.401	15.2	21.6

9. Worker and Child Care Related Expenses

My dad works at a factory and we drive him there every day. . . . The journey takes about two hours there and back. We have to go with our mom because the rules say that we couldn't be left in the shelter by ourselves because we weren't old enough. [Kaylie, age ten.]⁶²⁸

a. How Work and Child Care Expenses Are Determined. Work itself generally costs a worker out-of-pocket expenses such as commuting, uniforms, and tools.⁶²⁹ The SPM includes these expenses as a reduction of household resources for work and child care expenses.⁶³⁰ Work-related expenses, other than child care costs, are calculated by subtracting 85% of the median of work-related expenses reported in the Survey of Income and Program Participation (SIPP) for all household workers.⁶³¹ The Census Bureau survey includes a question that asks for the number of weeks worked for every working household member.⁶³² This reported number is multiplied by the 85% median weekly work-related SIPP expenses for each person to derive the annual work-related expenses.⁶³³ Therefore, worker expenses are estimated based upon population median costs and the number of actual of weeks worked.

Actual child care expenses paid while parents are at work are also deducted from household resources before comparing the net household resources to the relevant poverty threshold.⁶³⁴ Aggregate household work-related expenses, including child care costs, are capped so that they do not exceed the earnings of the lower-earning parent in a household before the poverty threshold comparison.⁶³⁵ However, some scholars have suggested that, in cases where the lower-earning parent is in school or looking for work, a cap may not be appropriate.⁶³⁶

b. Demographics of Who Is Pushed into Poverty with Work and Child Care Expenses.

I mean, I don't even know if I can find a job when I get out of school or if it'll ever get any better. I'll have to find day care for Kaylie. I mean, she's ten, but still. Her and Tyler—they're brother and sister—they fight. I'll come home and the one will be hanging from the ceiling fan and the other one will be God knows where! I'm scared. [Barbara, mother of Tyler and Kaylie.]⁶³⁷

628. *Poor Kids*, *supra* note 2.

629. SPM 2014, *supra* note 35, at 18.

630. *Id.*

631. *Id.*

632. *Id.*

633. *Id.*

634. *Id.* at 18–19.

635. *Id.*

636. *Id.*

637. *Poor Kids*, *supra* note 2.

Almost 6.2 million people were pushed into poverty by work and child care expenses in 2014, after accounting for all cash and in-kind income as well as all other expenses under the SPM.⁶³⁸ These individuals were disproportionately Hispanic, Asian, and multi-racial relative to their share of the population universe as a percentage of the poverty share, accounting for all resources and expenses before worker and child care expenses.⁶³⁹ Not surprisingly, these costs seem to be disproportionately pushing men, children and working-age individuals into poverty as compared to senior citizens, who are likely not working or bearing child care costs.⁶⁴⁰ People with disabilities are not suffering these burdens relative to their percentage in the population universe, but this could be because they suffer from high unemployment rates and might not have the same child care cost burden.⁶⁴¹

Table 15: SPM 2014 Poverty Demographics After All Cash and In-Kind Resources, Less Net Taxes, MOOP, and Child Care and Work Related Costs

SPM-2014	% of Total Pop. ⁶⁴²	% of No. in Pov. Post All Income, Net Taxes, & MOOP ⁶⁴³	Pushed into Pov. w/Child Care & Work-Related ⁶⁴⁴		Pop. in Pov. Post All Income, Net Taxes, MOOP, Child Care & Work-Related ⁶⁴⁵		
			Total (millions)	% of Total	Total (millions)	% of Total	Poverty Rate (%)
Overall	100	100	(6.185)	100 ⁶⁴⁶	48.320	100	15.3
Race							
White	61.8	43.9	(2.393)	(38.7)	20.875	43.2	10.7
Hispanic	17.6	28.1	(2.298)	(37.2)	14.124	29.2	25.4
Black	12.2	19.0	(0.902)	(14.6)	8.914	18.4	23.1
Asian	5.5	5.9	(0.403)	(6.5)	2.908	6.0	16.8
Multi-Racial	1.8	1.6	(0.109)	(1.8)	0.798	1.7	13.7
Native	0.8	1.0	(0.046)	(0.7)	0.477	1.0	19.3
Pac. Islander	0.3	0.5	(0.034)	(0.5)	0.224	0.5	22.8
Sex							

638. See *infra* Table 15.

639. See *supra* Table 15.

640. See *supra* Table 15.

641. See *Disability & Socioeconomic Status*, AM. PSYCHOL. ASS'N, <http://www.apa.org/pi/ses/resources/publications/disability.aspx> (last visited Nov. 27, 2017) (noting lower median income than average and high unemployment rates for people with disabilities); see also Lipman, *supra* note 220 (describing the extremely high unemployment and poverty rates among people with disabilities).

642. Reproduces data from Table 3, SPM-2014, *supra*, at col. 3.

643. Reproduces data from Table 14, *supra*, at col. 7.

644. *Poverty Calculator*, *supra* note 194 ((A) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: 2014; (B) click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: “Federal Income Tax,” “Federal Payroll Tax,” “State Taxes,” “Child Support Paid,” “Medical Out-of-Pocket Expenses”; Step 3: “Supplemental Poverty Line”; Step 4: “2014”; (C) then press “Compare the current poverty calculation to the calculation immediately prior to this one” at the top of the page).

645. *Id.* (click the “Recalculate” button after selecting the following “Step” boxes: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

646. The number pushed into poverty (6.185M) over the total SPM population (316.168M) equals 1.96%.

Male	49.0	46.2	(3.015)	(48.7)	22.462	46.5	14.5
Female	51.0	53.8	(3.170)	(51.3)	25.858	53.5	16.0
Age							
0–17	23.4	24.7	(1.905)	(30.8)	12.326	25.5	16.7
18–64	62.1	60.0	(4.067)	(65.8)	29.357	60.8	15.0
65+	14.5	15.2	(0.213)	(3.4)	6.637	13.7	14.4
Disability	9.4	15.2	(0.308)	(5.0)	6.709	13.9	22.7

III. Conclusions

A. *Who Is Poor in America: Demographics of Poverty*

During my freshman year in high school, my parents didn't have money to buy us new clothes. I wore ripped jeans, and my sneakers had holes in them. It was kind of embarrassing, but I still didn't think I was poor. . . . I asked my mom to do the math, and she said right now my family makes thirty-thousand a year—according to the federal government we're fifteen-thousand dollars below the poverty line. I mean . . . that kind of scares me. [Jairo Gomez, high school student.]⁶⁴⁷

This Article has exposed the underlying mechanics of the OPM and SPM and tried to humanize the statistical data representing those who have not been allocated enough resources in the United States today. While the details set forth herein are complicated, dynamic, and at times opaque, trends and patterns have emerged from this review of how antipoverty resources are distributed. In concluding, the Article will present these trends and patterns through the details of the OPM and SPM.

1. *Teasing Out Trends and Patterns*

a. *The Exclusion of Nine Million from the Poverty Measure.* The population universe included in the OPM and SPM notably excludes over nine million Americans who are likely disproportionately poor, male, and people of color.⁶⁴⁸ While perhaps understandable given the genesis of the poverty measure programs were to measure population employment and labor data,⁶⁴⁹ the exclusion of about 3% of the population is a fact that should be better understood by poverty law scholars, researchers, and the public at large as they evaluate annual poverty demographic data. Moreover, as Mollie Orshansky famously pronounced, the goal of gathering poverty data must be to do something about the plight of the individuals.⁶⁵⁰ Accordingly, if the United States is not gathering poverty data for these excluded populations, are we, as a society, not doing something about the potentially adverse circumstances of their plight? While the United States obviously does gather data about some of these excluded populations in various forms (e.g., the annual counting of

647. Jairo Gomez, *Nine People, One Bedroom: A Teen's Take on Life in Poverty*, WNYC (Sept. 22, 2014), <http://www.wnyc.org/story/cost-being-poor-teen-investigates-his-own-family?tab=transcript> (describing the challenges of poverty, high school, and family in New York).

648. See discussion *supra* at Part II.A and accompanying notes (discussing the more than nine million individuals who are excluded from the population universe of poverty measures).

649. See *History of the Current Population Survey*, *supra* note 50.

650. "There is no particular reason to count the poor unless you are going to do something about them." Orshansky, *supra* note 6, at 37 (describing poverty as a subjective value judgment).

the homeless⁶⁵¹ and reports on poverty regarding residents of Puerto Rico),⁶⁵² a more affirmative disclosure of their exclusion from the OPM and SPM and a transparent explanation as to why these populations are excluded would better inform readers of these measurements. Moreover, integrating these other supplemental reports in poverty analysis, advocacy, and reform is necessary to include, rather than exclude, these individuals who have effectively been erased from the SPM and OPM. These individuals are a part of our American community and story and the discrete erasure of them from the population for poverty measurements when exposed communicates a loud message that they do not matter. Nevertheless, their hardships cannot be erased because they are our neighbors, family members, and fellow Americans. We exclude them to our short-term and long-term peril.⁶⁵³ We must include their burdens and benefits in any U.S. poverty measurement, analysis, discourse, advocacy, and remedies.

b. The Differences Between the OPM and SPM. As the SPM has matured and scholars and data experts become more and more familiar with the meaningful differences between the OPM and SPM, poverty law scholars, sociologists, and legal advocates should make proactive efforts to explain them. While retaining the OPM for comparative data and reflection purposes continues to make some sense, the SPM should be introduced and favorably distinguished whenever and wherever OPM statistics are used. Scholars and advocates should make and take the time to recount, describe, and explain not only the additional resources and expenses that are included, but also describe and distinguish the different household units and thresholds. This Article can serve as a resource for those discussions. Over time, the usefulness of the OPM will dissipate, and writers will no longer have to explain the randomness of how Orshansky's meal plan became a steadfast and long-term poverty measurement. The SPM is a meaningful improvement in our data collection for remedying misallocation of resources.

After working through the additional items included in the SPM presented above, the lack of soundness of the OPM as a poverty measure seems somewhat obvious from a comparison, as illustrated below in Tables 16–20. The OPM stops quite suddenly after accounting for pre-tax cash resources and thereby excludes meaningful in-kind and tax benefits that lift millions of Americans out of poverty each year. While the OPM accounts for the most significant income resources, that is, market income and OASDI benefits, the failure to include in-kind and net tax benefits distorts its results for the broad population that does not understand this shortfall.

The OPM also fails to include meaningful antipoverty resources and safety nets.⁶⁵⁴ For example, not including in-kind food security and EITC and CTC antipoverty benefits targeted to children overstates OPM rates for children across every demographic group.⁶⁵⁵ Similarly, not including MOOP in the OPM

651. NAT'L ALLIANCE TO END HOMELESSNESS, *supra* note 9.

652. *Puerto Rico*, *supra* note 65.

653. Tragically, the disastrous aftermath of the humanitarian crisis from Hurricane Maria is an excellent example of the consequences of not addressing issues of lack of adequate resources in Puerto Rico. See Brian Resnick & Eliza Barclay, *What Every American Needs to Know About Puerto Rico's Hurricane Disaster*, VOX (Oct. 16, 2017, 2:27 PM), <https://www.vox.com/science-and-health/2017/9/26/16365994/hurricane-maria-2017-puerto-rico-san-juan-humanitarian-disaster-electricity-fuel-flights-facts>; Ibbey Caputo, *Hurricane Maria Devastated Puerto Rico. Then It Caused a Ripple Effect in Mainland Hospitals*, PRI (Dec. 6, 2017, 3:45 PM), <https://www.pri.org/stories/2017-12-06/hurricane-maria-devastated-puerto-rico-then-it-caused-ripple-effect-mainland>.

654. See *Developing a Supplemental Poverty Measure*, *supra* note 30 (discussing the development of the SPM in response to the inadequacies in the OPM); see also Nancy K. Cauthen & Sarah Fass, *Measuring Poverty in the United States*, NAT'L CTR. FOR CHILD. POVERTY (June 2008), http://www.nccp.org/publications/pub_825.html (describing the inadequacies of the current OPM).

655. Bridges & Gesumaria, *supra* note 607.

understates the poverty rate for senior citizens across all demographics.⁶⁵⁶ Moreover, not including worker expenses and child care expenses understates poverty rates especially for working single parents and their families. The exclusion of these benefits and expenses distorts the analysis and undermines productive conversations, comparisons, and analysis for better resource allocation.

However, a strict numerical analysis is too benign for understanding the harsh reality of limited financial resources and uncovered expenses. When in-kind benefits are described above, the details demonstrate inherent and palpable challenges in these programs for families, including the paucity of relief and the high hurdles implemented to receive this limited relief. A healthy, free school lunch for hungry children or critical formula for a newborn should be status quo, not a benefit.⁶⁵⁷ Similarly, when MOOP expenses reduce income below the relevant poverty threshold but are paid from a senior citizen's ample savings account, are we exaggerating elder poverty statistics?⁶⁵⁸ The statistics, stories, program details, and SPM and OPM mechanics are all necessary to better understand the problem of resource misallocation so that the United States can mitigate its debilitating societal burdens and costs. Simply put, there is no perfect measurement, definition, or remedy. But a better understanding of all available data, people, programs, problems, and possibilities will help us to better address the status quo and plan for a better tomorrow for all Americans.

2. Race-Based Income and Wealth Inequality

As the statistics below describe, market income, or work plus investment income other than capital gains, and OASDI derived from work provide enormous antipoverty relief for about 85%, or more than 268 million, Americans.⁶⁵⁹ Unemployment benefits and Veterans Benefits, also derived from labor, lift a relatively less significant number of Americans out of poverty each year.⁶⁶⁰ These market-income-derived benefits disproportionately lift White people out of poverty.⁶⁶¹ In the categories of children, working-age, senior citizens, men, and women, White people disproportionately are allocated financial resources as compared to their percentage of the population.⁶⁶² Relative to people of color, White individuals have lower poverty rates and are underrepresented in every category under both the OPM and SPM.⁶⁶³

Under the OPM and SPM, White people represent about 62% of the population universe, but only 42–43% of those living in poverty.⁶⁶⁴ Comparatively, Hispanic and Black individuals represent 18% and 12% of the population universe, respectively, but 28–29% and 18–22% of the population of poor, respectively.⁶⁶⁵ Similarly, OPM and SPM poverty rates for Whites range from 8–12% while poverty rates for people of color range from 13% to over 37%.⁶⁶⁶

A more deconstructed comparative analysis is even more disparate as between White children or

656. Benjamin Bridges & Robert V. Gesumaria, *The Supplemental Poverty Measure (SPM) and the Aged: How and Why the SPM and Official Poverty Estimates Differ*, 73 SOC. SECURITY BULL., no. 4, 2013, at 49.

657. See *supra* Part II.B.5.

658. See *supra* Part II.B.8.

659. See *infra* Tables 16, 17; see also *supra* Tables 3, 5 (setting forth that approximately 244–245 million individuals (78%) are lifted out of poverty with market income and another 24 million (7%) are lifted out of poverty by OASDI/SSI, or approximately 268 million individuals (85%) combined).

660. See *supra* Table 6.

661. See *infra* Tables 16, 18.

662. See *infra* Tables 16, 18.

663. See *infra* Tables 17, 19.

664. See *infra* Tables 17, 19.

665. See *infra* Tables 17, 19.

666. See *infra* Tables 17, 19.

senior citizens and children or seniors of color.⁶⁶⁷ White children and White senior citizens are underrepresented in the poor population, while children of color and senior citizens of color are represented in the poor population several times their representation in the population universe.⁶⁶⁸ White children suffer poverty rates of 10–12%, while children of color suffer poverty rates of 26–37% even though they represent a smaller percentage of the population universe.⁶⁶⁹ Similarly, White senior citizens are underrepresented among the poor and suffer poverty rates from 8–12%.⁶⁷⁰ Senior citizens of color are overrepresented among the poor and suffer poverty rates from 18–28%.⁶⁷¹ These statistics demonstrate that the United States has broad-based, deep income (and likely the accumulation of income, that is wealth) inequality based upon race and ethnic origin.⁶⁷²

Table 16: 2014 OPM Poverty Rates

OPM-2014	With Market Income (%) ⁶⁷³	& w/ OASDI & SSI (%) ⁶⁷⁴	& w/ UE & Veteran's Benefit (%) ⁶⁷⁵	& w/ TANF (%) ⁶⁷⁶
Overall	22.9	15.2	14.9	14.8
Race				
White	19.4	10.4	10.1	10.1
0–17	14.7	12.8	12.5	12.3
18–64	14.1	10.4	10.1	10.0
65+	42.2	8.2	7.9	7.8
Hispanic	28.6	24.3	23.9	23.6
0–17	34.5	32.8	32.3	31.9
18–64	23.1	20.3	20.0	19.8
65+	49.5	18.6	18.1	18.1
Black	34.8	26.9	26.3	26.1
0–17	40.9	37.9	37.5	37.3
18–64	29.1	23.4	22.8	22.6
65+	53.9	20.0	19.1	19.1
Asian	15.5	11.9	11.7	11.7
Multi-racial	21.7	17.0	16.3	16.2
Native	36.5	27.9	27.3	27.2
Pacific Islander	26.0	22.4	21.9	21.9
Sex				
Male	20.7	13.9	13.5	13.4
White	17.3	9.4	9.1	9.0

667. See *infra* Tables 17, 19.

668. See *infra* Tables 17, 19.

669. See *infra* Tables 17, 19.

670. See *infra* Tables 17, 19.

671. See *infra* Tables 17, 19.

672. See *infra* Tables 17, 19.

673. See *supra* note 198 and accompanying text.

674. See *supra* note 260 and accompanying text.

675. See *supra* note 334 and accompanying text.

676. See *supra* note 374 and accompanying text.

Hispanic	26.1	22.2	21.8	21.6
Black	32.7	24.9	24.2	24.0
Female	24.9	16.5	16.2	16.1
White	21.4	11.4	11.1	11.1
Hispanic	31.1	26.4	26.0	25.6
Black	36.7	28.6	28.1	28.0
Age				
0–17	23.7	21.7	21.3	21.1
18–64	17.7	13.9	13.6	13.5
65+	43.6	10.4	10.0	10.0
Disability	51.3	22.9	22.0	21.8

Table 17: 2014 OPM Poverty Rates & Shares as Compared to the Population Universe

OPM-2014	% of Population (out of 315.804 million) ⁶⁷⁷	% Share of Pop. in Poverty ⁶⁷⁸	% Pov Share over % of Pop ⁶⁷⁹	Poverty Rate ⁶⁸⁰
Overall	100	— ⁶⁸¹	—	14.8
Race				
White	61.8	42.1	68.1	10.1
0–17	12.1	10.0	82.6	12.3
18–64	38.4	26.1	68.0	10.0
65+	11.3	6.0	53.1	7.8
Hispanic	17.6	28.1	159.7	23.6
0–17	5.7	12.3	215.8	31.9
18–64	10.7	14.4	134.6	19.8
65+	1.2	1.4	116.7	18.1
Black	12.2	21.6	177.0	26.1
0–17	3.2	8.1	253.1	37.3
18–64	7.7	11.8	153.2	22.6
65+	1.3	1.6	123.1	19.1
Asian	5.5	4.3	78.2	11.7
Multi-racial	1.8	2.0	111.1	16.2
Native	0.8	1.4	175.0	27.2
Pacific Islander	0.3	0.5	166.7	21.9
Sex				
Male	49.0	44.4	90.6	13.4
White	30.4	18.6	61.2	9.0
Hispanic	8.8	12.9	146.6	21.6

677. See *supra* note 196 and accompanying text.

678. *Poverty Calculator*, *supra* note 192 (check the indicated “Step” boxes, then the “Recalculate” button: Step 1: “Market Income,” “Social Security,” “Supplemental Security Income,” “Unemployment Compensation,” “Welfare (TANF),” “Veteran’s Benefits”; Step 2: none; Step 3: “Official Poverty Line”; Step 4: “2014”); see also *supra* note 374 and accompanying text.

679. That is, column 3 (% share of population in poverty) divided by column 2 (% of population).

680. *Supra* note 678.

681. The number in poverty in overall OPM population is 46.657 million. *Id.*

Black	5.7	9.3	163.2	24.0
Female	51.0	55.6	109.0	16.1
White	31.4	23.6	75.2	11.1
Hispanic	8.7	15.2	174.7	25.6
Black	6.5	12.3	189.2	28.0
Age				
0–17	23.3%	33.3	142.9	21.1
18–64	62.1	56.9	91.6	13.5
65+	14.6	9.8	67.1	10.0
Disability	9.4%	13.8	146.8	21.8

3. Work-Based Resources

The OPM and SPM numbers also make obvious that U.S. institutions value a strong work ethic.⁶⁸² The welfare-to-work mandate has transformed social benefits into work-fare, but those who cannot work in the traditional marketplace (e.g., full-time) for one reason or another suffer poverty disproportionately.⁶⁸³ This group includes children and people with disabilities. Also potentially included in this group, but not included in either the OPM or SPM population universe, are people who are incarcerated, homeless, or residents living in institutions (such as nursing homes) or some students living in dormitories.⁶⁸⁴ Moreover, those who suffer lower average wages, including women and people of color, also suffer poverty disproportionately.⁶⁸⁵ Poverty cannot be resolved with standardized solutions of more work because inability to work is the problem, not the answer, although a living wage, together with additional affirmative remedies for wage discrimination, would help mitigate poverty for minimum wage workers and their families.⁶⁸⁶

4. MOOP and Work and Child Care Expenses

Finally, as the SPM statistical analysis below demonstrates, the overall SPM poverty rate is reduced to 9.5% after accounting for all resources including antipoverty relief under the CTC and EITC.⁶⁸⁷ Taxes,

682. See discussion regarding the significant antipoverty benefits that rely on work, most meaningfully market income and derivative benefits such as Social Security, UE, and the EITC, *supra* Parts II.B.1–3, 7.

683. See discussion regarding the high poverty rates for people with disabilities *supra* Part II.B.1; see also Lipman, *supra* note 220 (describing the extremely high rates of unemployment and poverty for people with disabilities before and after the enactment of the Americans with Disabilities Act and despite certain tax credits to encourage hiring).

684. See discussion regarding the exclusion of these populations from the OPM and SPM population universe data sets, *supra* Part II.A.

685. See discussion *supra* Part II.B.1 and accompanying notes (presenting the dramatic difference in median income based upon race and gender). But note that median incomes have gone up in 2015 by a record-breaking 5.2%, although the median wage race and gender gap continues. SPM 2015, *supra* note 29.

686. David Cooper, *Raising the Federal Minimum Wage to \$10.10 Would Save Safety Net Programs Billions and Help Ensure Businesses Are Doing Their Fair Share*, ECON. POL'Y INST. (Oct. 16, 2014), <http://www.epi.org/publication/safety-net-savings-from-raising-minimum-wage/>.

687. See *infra* Table 18.

MOOP, child care, and related worker expenses increase the overall poverty rate to 15.3%.⁶⁸⁸ This analysis demonstrates that some Americans are being pushed into poverty by taxes and other necessary living expenses.⁶⁸⁹ The expansion of the childless EITC and an enhanced CTC could mitigate this burden.⁶⁹⁰ In addition, continued access to affordable health care as a result of the Affordable Care Act should mitigate some of the MOOP pushing individuals into poverty given that current health insurance coverage is at record highs.⁶⁹¹ Further analysis of MOOP measurements will help health care policy stewards to better understand if the impact on senior citizens' poverty rates is overstated or even understated. This data should also facilitate even better health care, including Medicaid and Medicare policies on a going-forward basis. Lastly, the financial burdens of worker and child care expenses push millions of families into poverty every year. If we value work and families, then this broad and deep hardship should be remedied through universal child care or meaningful tax subsidies. The high cost of child care and related worker expenses is a persistent problem well overdue for relief. Because the issue has trickled up to middle- and higher-income families, tax subsidies have been proposed.⁶⁹² Accordingly, Congress may or may not include some relief in the near term.⁶⁹³ The SPM data highlights the breadth and depth of child care and related worker expenses as a problem and should help shape and inform relief.

688. See *infra* Table 18.

689. See *infra* Table 18.

690. See discussion about proposals for enhanced childless EITC and increased and fully refundable CTC or child allowance, *supra* Part II.B.7.e and accompanying notes; Rachel West, *EITC Expansion for Childless Workers Would Save Billions—and Take a Bite Out of Crime*, CTR. FOR AM. PROGRESS (Aug. 4, 2016, 10:00 AM), <https://www.americanprogress.org/issues/poverty/reports/2016/08/04/137894/eitc-expansion-for-childless-workers-would-save-billions-and-take-a-bite-out-of-crime/>; see also Rachel West, Melissa Boteach & Rebecca Vallas, *A Plan to Enhance the Child Tax Credit*, CTR. FOR AM. PROGRESS (Aug. 15, 2016, 9:03 AM), <https://www.americanprogress.org/issues/poverty/reports/2016/08/15/142374/a-plan-to-enhance-the-child-tax-credit/> (describing the bi-partisan support needed for an expanded child tax credit).

691. Francine J. Lipman & James E. Williamson, *Reconciling the Premium Tax Credit: Painful Complications for Lower and Middle-Income Taxpayers*, 69 SMU L. REV. 351 (2016) (explaining that access to affordable health care provides meaningful antipoverty relief).

692. Trump's proposed tax plan "would also add a new deduction for child and dependent care expenses, and increase the earned income tax credit (EITC) for working parents who would not benefit from the deduction. Further, the plan would provide a new form of tax-favored savings account related to child and dependent care expenses, and expand the credit for employer-provided child care." James R. Nunns et al., *An Analysis of Donald Trump's Revised Tax Plan*, TAX POL'Y CTR. (Oct. 18, 2016), <http://www.taxpolicycenter.org/publications/analysis-donald-trumps-revised-tax-plan/full>; but see H.R. 1, Tax Cuts and Jobs Act, 115th Congress (2017), <https://www.congress.gov/bill/115th-congress/house-bill/1/text> (providing increased child tax credits of \$1,650 in the House Bill and \$2,000 in the Senate Bill in lieu of increased child and dependent care credits, but as of December 11, 2017, the increased child tax credit amounts are not refundable (except to the extent the current law amount is indexed for inflation) so they will not significantly benefit lower-income families).

693. H.R. 1.

Table 18: 2014 SPM Poverty Rates

SPM-2014 ⁶⁹⁴	After Cash Income Items (%) ⁶⁹⁵			After In-Kind Benefits (%) ⁶⁹⁶			After Expenses (%) ⁶⁹⁷			
	Market	OASDI & SSI	UE/VB	TANF	Food	Shelter	CTC/ EITC	Taxes	MOOP	Child Care & Work
Overall	22.4	14.6	14.2	14.1	12.4	11.4	9.5	10.4	13.3	15.3
<i>Race</i>										
White	18.1	8.9	8.6	8.6	7.6	7.2	6.3	6.8	9.5	10.0
Age: 0–17	12.7	10.7	10.4	10.3	8.3	7.8	5.6	6.1	8.1	9.6
Age: 18–64	12.8	8.8	8.5	8.5	7.6	7.3	6.6	7.2	9.3	10.8
Age: 65+	41.8	7.5	7.2	7.1	6.7	6.1	6.1	6.2	11.3	11.6
Hispanic	30.1	25.9	25.4	25.1	21.9	20.8	15.9	18.0	21.3	25.4
Age: 0–17	34.7	32.7	32.1	31.7	26.7	25.4	17.3	19.4	22.4	26.9
Age: 18–64	25.2	22.4	21.9	21.7	19.4	18.5	14.9	17.1	20.1	24.4
Age: 65+	53.0	24.0	23.5	23.5	21.4	18.6	18.1	19.4	26.3	27.5
Black	34.2	25.8	25.3	25.0	21.8	18.7	16.2	17.3	20.8	23.1
Age: 0–17	39.3	35.8	35.4	35.1	29.3	24.1	19.0	19.8	22.8	26.0
Age: 18–64	28.6	22.5	22.0	21.7	19.4	17.0	15.2	16.5	19.6	21.9
Age: 65+	55.3	20.3	19.5	19.5	17.7	15.4	15.2	15.5	22.4	23.0
Asian	18.2	14.5	14.4	14.3	13.5	12.3	10.2	11.2	14.5	16.8
Multi-Rcl	20.8	15.7	15.3	15.2	11.8	10.1	8.2	8.8	11.9	13.7
Native	31.9	23.0	22.7	22.5	18.5	16.2	13.9	15.0	17.4	19.3
Pac Islandr	27.0	24.7	24.1	24.1	21.1	18.9	15.0	15.7	19.4	22.8
<i>Sex</i>										
Male	20.6	13.5	13.2	13.0	11.5	10.8	9.0	9.9	12.6	14.5
White	16.3	8.3	8.0	7.9	7.0	6.8	5.9	6.4	8.7	10.0
Hispanic	28.3	24.3	23.8	23.6	20.7	19.7	15.2	17.2	20.5	24.6
Black	32.0	23.8	23.2	22.9	20.0	17.6	15.4	16.4	19.7	21.9
Female	24.1	15.5	15.2	15.1	13.2	12.0	10.0	10.9	14.1	16.0
White	19.8	9.5	9.3	9.2	8.1	7.6	6.7	7.1	10.2	11.4
Hispanic	32.0	27.5	26.9	26.6	23.2	21.9	16.5	18.7	22.1	26.2
Black	36.2	27.5	27.1	26.9	23.4	19.7	16.9	18.0	21.7	24.1
<i>Age</i>										
0–17	22.5	20.3	20.0	19.8	16.4	14.9	10.7	11.6	14.1	16.7
18–64	17.3	13.3	13.0	12.9	11.6	10.8	9.4	10.4	12.9	15.0

694. *Poverty Calculator*, *supra* note 194 (check the indicated “Step” boxes, then the “Recalculate” button: Step 1: none; Step 2: none; Step 3: Supplemental Poverty Line; Step 4: 2014).

695. For “Market” column, see *supra* note 202 and accompanying text; for “OASDI & SSI” column, see *supra* note 265 and accompanying text; and for “UE/VB” column, see *supra* note 339 and accompanying text.

696. For “TANF” column, see *supra* note 379 and accompanying text; for “Food” column, see *supra* note 460 and accompanying text; and for “Shelter” column, see *supra* note 517 and accompanying text.

697. For the “CTC/ EITC” column, use the Poverty Calculator, *supra* note 194 (check the indicated “Step” boxes, then the “Recalculate” button: Step 1: all checked; Step 2: none checked; Step 3: “Supplemental Poverty Line”; Step 4: “2014”).

For the “Taxes” column, see *supra* note 602 and accompanying text; for the “MOOP” column, see *supra* note 626 and accompanying text; for the “Child Care/Work” column, see *supra* note 645 and accompanying text.

65+	43.9	10.6	10.2	10.2	9.4	8.4	8.3	8.5	14.0	14.4
Disability	50.5	21.4	20.5	20.3	17.9	15.2	14.7	15.3	21.6	22.7

Table 19: 2014 SPM Poverty Rates & Shares as Compared to Population Universe

SPM-2014	% of Population (out of 316.168 million) ⁶⁹⁸	% Share of Pop. in Poverty ⁶⁹⁹	% Pov. Share over % of Pop ⁷⁰⁰	Poverty Rate ⁷⁰¹
Overall	100	- ⁷⁰²	-	15.3
<i>Race</i>				
White	61.8	43.2	69.9	10.7
Age: 0–17	12.1	7.6	62.8	9.6
Age: 18–64	38.4	27.0	70.3	10.8
Age: 65+	11.3	11.6	102.7	11.6
Hispanic	17.6	29.2	165.9	25.4
Age: 0–17	5.7	10.1	177.2	26.9
Age: 18–64	10.7	17.1	159.8	24.4
Age: 65+	1.2	2.1	175.0	27.5
Black	12.2	18.4	150.8	23.1
Age: 0–17	3.2	5.5	171.9	26.0
Age: 18–64	7.7	11.0	142.9	21.9
Age: 65+	1.3	1.9	146.2	23.0
Asian	5.5	6.0	109.1	16.8
Multi-Racial	1.8	1.7	94.4	13.7
Native	0.8	1.0	125.0	19.3
Pacific Islander	0.3	0.5	166.7	22.8
<i>Sex</i>				
Male	49.0	46.5	94.9	14.5
White	30.4	19.8	65.1	10.0
Hispanic	8.8	14.2	161.4	24.6
Black	5.7	8.2	143.9	21.9
Female	51.0	53.5	104.9	16.0
White	31.4	23.4	74.5	11.4
Hispanic	8.8	15.0	170.5	26.2
Black	6.5	10.2	156.9	24.1
<i>Age</i>				
0–17	23.4	25.5	109.0	16.7
18–64	62.1	60.8	97.9	15.0

698. See *supra* note 200 and accompanying text.

699. *Poverty Calculator*, *supra* note 192 check the indicated “Step” boxes, then the “Recalculate” button: Step 1: all; Step 2: all; Step 3: “Supplemental Poverty Line”; Step 4: “2014”); see also *supra* note 645 and accompanying text.

700. Column 3 (% share of population in poverty) over column 2 (% of population).

701. *Supra* note 699.

702. The number in poverty in overall SPM population is 48.32 million. *Supra* note 699.

65+	14.5	13.7	94.5	14.4
Disability	9.4	13.9	147.9	22.7

5. The Beginning

I'm surprised by how things can change so fast. You can go from doing OK, not having to go hungry, to this, going hungry and having to pay all your bills and not being able to, on the verge of being homeless again. [Roger, age fourteen.]⁷⁰³

This Article has exposed the mechanics, details, calculations, analysis, successes, failures, and humanity inherent in resource allocations and antipoverty programs and relief in America today. This exposure and analysis fill a void in existing poverty measurement scholarship and provide a foundation for future poverty research and remedies. Social justice advocates must understand the methods behind the measurements counting the poor to better understand and design solutions to their problems, so that society can better provide for the success of all Americans, including Roger, Tyler, Kaylie, Jasmine, Brittany, Jonny, Barbara, Vanessa, Dee Dee and Tom, and in turn, you and all of precious humanity.

703. *Poor Kids*, *supra* note 2. For an update on what happened to the children featured in the FRONTLINE documentary, please visit <http://www.pbs.org/wgbh/frontline/article/whats-happened-to-brittany-jonny-and-kaylie/>.