

June 21, 2019

VIA ELECTRONIC MAIL

Nancy Potok
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Office of Management and Budget
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Re: OMB-2019-0002, Directive No. 14 – Consumer Inflation Measures Produced by
Federal Statistical Agencies

Dear Ms. Potok:

We write on behalf of the Southern Poverty Law Center (the “SPLC”) in response to the Office of Management and Budget’s (“OMB”) Request for Comment on the Consumer Inflation Measures Produced by Federal Statistical Agencies and urge the OMB to not change the current measure – the Consumer Price Index for All Urban Consumers (“CPI-U”) – by which the federal government annually adjusts the Official Poverty Measure for inflation.

Since 1971, the SPLC has provided pro bono civil rights representation to low-income persons, with particular focus on combating discrimination and exploitation of low-income individuals in the Deep South through public advocacy and education, policy reform, and direct and impact litigation. Among other things, the SPLC’s Economic Justice Project works towards ending penalties against, or punishment of, individuals because of their economic status; its Children’s Rights practice works to ensure that all children have the resources they need to live, grow, and thrive; and its Immigrant Justice Project seeks systemic reforms to protect the rights of immigrants and their children and ensure that they are treated with dignity and fairness, frequently taking on cases that few private lawyers will accept.

As a result, every day, we are working with individuals and families who are struggling to care for themselves and their families, who would be adversely affected by any change – such as the ones proposed by the OMB – that would reduce the Official Poverty Measure¹ and derivative

¹ We use “Official Poverty Measure” interchangeably with “poverty threshold.” See <https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty>.

guidelines like the federal poverty level,² which is used to determine financial eligibility for numerous federal, state, and local programs. Our clients do not earn enough money to purchase basic necessities, including health insurance, rent, transportation, groceries, and other necessities for survival. Many face additional burdens of navigating education systems so underfunded that some students are asked to bring their own toilet paper, or an immigration system so broken that families live with the constant worry of separation and deportation. Furthermore, we know that households *just above* the federal poverty level report higher than average rates of food insecurity, difficulty paying rent and utilities, and are more likely to be uninsured – suggesting that the federal poverty level is already too low.

The proposed changes to the measures of annual inflation adjustment are unsupported by the evidence, and would only increase hardships for people, and their families, who earn low wages. Indeed, estimates indicate that making any of the proposed adjustments to the rate of increase of the Official Poverty Measure would cause millions of individuals to lose their eligibility for federal programs that rely on the federal poverty level and seek to ensure that low income individuals in this country can receive life-saving assistance and benefits, despite living in poverty.³

In 2016, an estimated 40.6 million people lived in poverty in the United States,⁴ with individuals and families living in the Deep South disproportionately experiencing poverty – nearly 20 percent of the population lives below the federal poverty threshold.⁵ However, poverty statistics do not fully capture the reality facing many low-income Americans who are just barely hovering above the poverty threshold. Millions of people, in particular people of color, are financially vulnerable and are just one emergency or accident away from a significant financial crisis. In fact, 40 percent of American households do not have enough savings to get them through a financial shock if their income were interrupted.⁶ Across the country, at least 8.8 million children living in mixed-immigration status families live in a household with incomes below 200% of the current federal poverty threshold.⁷ For these reasons alone, the SPLC opposes any attempt to adopt an inflation measure that would lower the Official Poverty Measure and, consequently, shrink enrollment in programs linked to the federal poverty level.

² “Federal poverty level” is the colloquial term for the federal poverty guidelines derived from the Official Poverty Measure and issued annually by the Department of Health and Human Services. See <https://aspe.hhs.gov/frequently-asked-questions-related-poverty-guidelines-and-poverty>.

³ Poverty Line Proposal Would Cut Medicaid, Medicare, and Premium Tax Credits, Causing Millions to Lose or See Reduced Benefits Over Time, Center on Budget and Policy Priorities <https://www.cbpp.org/sites/default/files/atoms/files/5-22-19-pov.pdf> (last visited June 20, 2019).

⁴ How the U.S. Census Bureau Measures Poverty https://www.census.gov/content/dam/Census/library/visualizations/2017/demo/poverty_measure-how.pdf (June 20, 2019).

⁵ U.S. Census Bureau Quick Facts <https://www.census.gov/quickfacts/fact/table/LA,AL,MS/IPE120217>; <https://www.census.gov/quickfacts/geo/chart/GA,FL,MS/IPE120217>

⁶ Vulnerability in the Face of Economic Uncertainty, Prosperity Now Scorecard https://prosperitynow.org/sites/default/files/resources/2019_Scorecard_Key_Findings.pdf (last visited June 20, 2019).

⁷ <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states> (last visited June 20, 2019).

Specifically, certain proposed alternatives to the current CPI-U inflation measure that use a chained index will materially reduce the annual rate of increase of the Official Poverty Measure, artificially pushing thousands of low-income people “over” the federal poverty level (or percentage multiples of the federal poverty level) and therefore disqualifying them from indispensable healthcare and public services, such as Medicaid, SNAP, Head Start, free and reduced lunch assistance, and legal services assistance—services the SPLC fights to protect every day on behalf of the communities we serve.

The Chained Consumer Price Index for All Urban Consumers (“C-CPI-U”) and the Personal Consumption Expenditures Price Index (“PCEPI”) are two such “chained” indices proposed by the OMB. The assumption built into the calculation of chained indices is that as prices rise, consumers save money by switching to less expensive items. This substitution effect produces a lower measure of inflation.

However, low-income individuals are often *already* purchasing lower-priced goods, leaving them without an opportunity to switch to less expensive items as costs rise. Chained indices would therefore inaccurately define many low-income individuals as above the federal poverty threshold, despite their struggles to pay for necessities, causing them to lose services essential to their everyday survival.

Impact on children’s health and education:

Many federal programs that determine eligibility based on the federal poverty level exist to ensure that all children, no matter their background, have the opportunity to thrive. For example, the Children’s Health Insurance Program (CHIP) provides comprehensive insurance coverage for medical benefits for children in low-income families, including dental care; outpatient and inpatient mental health services; some level of outpatient substance abuse treatment services; and, for children with special healthcare needs, physical, occupational, and speech and language therapies.⁸ In 2017, Medicaid and CHIP together provided coverage for 39 percent of American children – approximately 9 million children, including a majority of children with disabilities, children of color, those from working families, and those who live in rural communities.⁹

Additionally, the National School Lunch Program (NSLP) provides free or low-cost lunches to children living at or near the federal poverty level each school day.¹⁰ Access to meals through free and reduced school meal programs is especially important for low-income students, who are more likely to experience food insecurity. Providing these students with at least one school meal per day results in better overall diet quality than for those students who do not eat school meals, improving health and performance in schools.¹¹ Recognizing this, Mississippi, for example, has also established a statewide School Breakfast Program, providing free breakfast to more than

⁸ Julia Paradise, “The Impact of Children’s Health Insurance Program (CHIP): What Does the Research Tell Us,” <https://www.kff.org/report-section/the-impact-of-the-childrens-health-insurance-program-chip-issue-brief> (last visited June 20, 2019).

⁹ Families USA, “The Children’s Health Insurance Program,” <https://familiesusa.org/product/children-health-insurance-program-chip> (last visited June 20, 2019).

¹⁰ *Id.*

¹¹ See, e.g., <https://www.cdc.gov/features/school-lunch-week/index.html> (last visited June 20, 2019).

172,000 low-income students in the state's public schools during the 2016-2017 school year.¹² Low income students qualifying for free or reduced price lunch make up over half of the South's students.¹³

Further, NSLP data is often used to determine allocations of Title I funds, which are intended to provide low income students resources needed to succeed in school. This proposal could reduce Title I funds, having a detrimental impact on access to supports like supplemental instruction, after school programs, and summer programs in schools that serve low income children across the country¹⁴ – a particular concern in the Deep South, where schools are often starved for resources to meet their students' needs.¹⁵

Finally, moving to a chained inflation index would restrict access to early learning programs such as Head Start, as well as some state programs (including Louisiana, for example), collectively proven to enhance students' cognitive, social, and emotional development in learning environments that promote children's growth across various subjects, including literacy.¹⁶ Homeless children, children in foster care, and those from families receiving public assistance are categorically eligible for Head Start, regardless of income.¹⁷

A resident of South Carolina says that nearly all the students who live in her community are eligible for free or reduced lunch. She fears that this type of change would mean that many of those students would not be able to eat lunch. She also has concerns about children in their community having access to pre-school, noting, "this is just wrong, children need food and education."¹⁸

Shrinking the annual inflation adjustment will jeopardize children's health and their opportunities to learn.

Impact on public assistance, court assistance, healthcare, and other social services:

Through SPLC's work ensuring access to health and nutrition for low income communities and fighting the criminalization of poverty in the Deep South, we see the myriad ways that the federal poverty level influences the lives of low-income people. The federal poverty level (or a percentage multiple of the federal poverty level) limits eligibility not only for certain federally funded programs, like Medicaid, SNAP, and WIC, but also for many state and locally funded services. For example, in Alabama, state programs that incorporate federal poverty level-based eligibility criteria include health insurance premium subsidies for teachers¹⁹ and other state

¹² Mississippi Center for Justice, "Mississippi State Breakfast Report," at 3, https://www.msasa.org/cms/lib/MS01925894/Centricity/Domain/4/MS%20Breakfast%20Report_Final.pdf.

¹³ A New Majority Update: Low Income Students in the South and Nation, Southern Education Foundation, 2015 <https://www.southerneducation.org/publications/newmajorityupdate/> (last visited June 20, 2019).

¹⁴ See, e.g., <https://nces.ed.gov/fastfacts/display.asp?id=158>

¹⁵ See, e.g., https://edlawcenter.org/assets/files/pdfs/publications/Is_School_Funding_Fair_7th_Editi.pdf

¹⁶ Benefits.gov, "Head Start and Early Head Start," <https://www.benefits.gov/benefit/616> (last visited June 20, 2019)

¹⁷ *Id.*

¹⁸ SPLC solicited comments on this proposal from individuals in the Deep South and nationally who are concerned about the impact of moving to a chained inflation index. Select comments are included in this letter, and all comments will be submitted to OMB.

¹⁹ Ala. Code § 16-25A-17.1.

employees,²⁰ educational scholarships to state colleges and trade schools,²¹ matching funds for certain savings accounts,²² and energy assistance programs that weatherize homes and subsidize heating and cooling costs.²³ Similar examples abound in other southern states.²⁴ Moreover, many local agencies offer emergency assistance grants (e.g., to help pay for past-due rent or utility bills) for residents earning a certain percentage of the federal poverty level.²⁵

The federal poverty level is also a reference point for fee waivers that permit low-income people to access social services they could otherwise not afford. For instance, Alabama authorizes federal poverty level-based fee waivers for rehabilitative programs assisting people affected by hemophilia,²⁶ children and adolescents with special healthcare needs,²⁷ and adults with disabilities searching for employment.²⁸ In Louisiana, cost participation schedules for various healthcare programs are built around the federal poverty level.²⁹ And in Florida, licensing fee waivers linked to the federal poverty level lower barriers to entry into certain professions.³⁰

Furthermore, the mode of calculating the federal poverty level has repercussions for the ability of state criminal defendants to vindicate their Sixth Amendment right to counsel and Fourteenth Amendment due process and equal protection rights. State courts in Louisiana, Mississippi, Alabama, Georgia, and Florida use the federal poverty level to determine whether a criminal defendant is indigent and therefore eligible for a court-appointed attorney.³¹ Likewise, these courts generally assess a defendant's ability to pay court debt by reference to the federal poverty level³² or the receipt of benefits pegged to that measure, like Medicaid and SNAP.³³ A defendant's physical liberty hangs in the balance of this inquiry: those found unable to pay may

²⁰ *Id.* § 36-29-19.4.

²¹ *Id.* § 16-6D-4.

²² *Id.* § 38-14-1.

²³ Alabama Department of Economic and Community Affairs, Energy Assistance Programs, <http://www.adeca.alabama.gov/Divisions/energy/Pages/EnergyAssistance.aspx> (last visited June 8, 2019).

²⁴ *See, e.g.*, Fla. Stat. § 455.032 (child care for former welfare participants transitioning into the workforce); La. Admin. Code tit. 67, § 5571 (programs to assist low-income fathers with employment, life, parenting, and other skills).

²⁵ *See, e.g.*, Jefferson County Committee for Economic Opportunity, , JCCEO Emergency Assistance Application Requirements, <https://www.jcceo.org/emergency-assistance#2> (last visited June 8, 2019).

²⁶ Ala. Admin. Code r. 795-5-1-.07(2).

²⁷ Ala. Admin. Code r. 795-4-1-.08(2).

²⁸ Ala. Admin. Code r. 795-6-1-.08(2).

²⁹ *See, e.g.*, La. Stat. Ann. § 28:469(C) (early intervention program for infants and toddlers with disabilities); La. Stat. Ann. § 40:1221.3(B) (pharmacy assistance for seniors); La. Stat. Ann. § 40:2194.2(4)-(5) (community-based healthcare program).

³⁰ Fla. Stat. 455.219(7)(a).

³¹ La. Stat. Ann. § 15:175(A)(1)(b); Ala. Code § 15-12-1(4); Ga. Code Ann. § 17-12-2(6); Fla. Stat. § 27.52(2)(a); Affidavit of Substantial Financial Hardship, Sample Justice Court Forms for Criminal Proceedings (March 2018), <https://mjc.olemiss.edu/wp-content/uploads/sites/134/2018/03/Sample-justice-court-forms-for-criminal-proceedings-updated-3-27-18.pdf> (last visited June 18, 2019).

³² *See, e.g.*, Miss. Code Ann. § 99-19-20.1 (applying a presumption of indigence when a defendant's income is at or below 125 percent of the federal poverty level).

³³ *See, e.g.*, State of Alabama Unified Judicial System, Form C-10 Affidavit of Substantial Hardship and Order (May 2018), <http://eforms.alacourt.gov/Civil%20Forms/Affidavit%20of%20Substantial%20Hardship%20and%20Order.pdf> (last visited June 8, 2019).

satisfy their debt through alternatives to payment, like community service, while those found able but unwilling to pay face jail time.³⁴ A determination of indigency can also relieve defendants from being charged with violation of probation or parole for failure to pay supervision fees.³⁵

A resident of Alabama, who works full time and currently receives SNAP benefits, is concerned that this proposed change will have a major impact on their community in that many who live there will go without adequate nutrition. According to him, receiving public assistance has allowed him to eat when he would have otherwise starved.

Impact on immigrant families:

The proposed changes to the Official Poverty Measure illustrate the Trump Administration's pattern of antipathy towards communities it seeks to punish or marginalize.³⁶ Given the great difficulties that many immigrant families must navigate after reaching the U.S., the children of immigrants are already more likely to live in low-income families, than children with native parents.³⁷ The proposed change would create a larger gap between the children of U.S. born parents, 38% of whom live in low-income families, and the current 51% of the children of immigrant parents who live in low-income homes.

The proposed changes would reduce access to vital services for immigrant families, who make up the majority of farmworkers in this country. For example, through the federal Migrant Health Program, nearly 800,000 farmworkers and their families every year receive healthcare;³⁸ and, the National Farmworker Jobs Program provides job training, employment assistance, and other supportive services to migrant and seasonal farmworkers and their dependents with the goal of helping farmworkers secure full-time employment.³⁹ This change to the Official Poverty Measure would also kick thousands of immigrants or their children off assistance programs like SNAP and Medicaid.⁴⁰ This proposal lacks any evidence of possible success at reducing poverty, but rather pushes already struggling families, like immigrants navigating a broken immigration system and an increasingly hostile political environment, further into the shadows of our society.

Requested action:

For these reasons, the SPLC urges the OMB to prioritize the economic stability of low-income individuals across the South and the nation, and not make these proposed changes to the way the federal government annually adjusts the Official Poverty Measure.

³⁴ See, e.g., *Bearden v. Georgia*, 461 U.S. 660 (1983).

³⁵ Ala. Code § 12-23-7; Ga. Code Ann. § 42-8-102 (e).

³⁶ See, e.g., <https://cliniclegal.org/public-charge> (last visited June 20, 2019).

³⁷ Basic Facts About Low Income Children, National Center for Children in Poverty, http://www.nccp.org/publications/pub_1194.html (last visited June 20, 2019).

³⁸ Migrant Health Centers, National Center for Farmworker Health, <http://www.ncfh.org/migrant-health-centers.html> (last visited June 20, 2019).

³⁹ National Farmworkers Job Program, <https://www.benefits.gov/benefit/86> (last visited June 20, 2019).

⁴⁰ First Focus on Children, <https://firstfocus.org/blog/millions-of-children-at-risk-if-government-changes-poverty-measure> (last visited June 20, 2019).

Sincerely,

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