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INDIVIDUAL STATEMENT ON THE
SUPPLEMENTAL SECURITY INCOME PROGRAM

The Pressing Need to Update, Expand, and Simplify SSI

Public Law 104-193 gives members of the Social Security Advisory Board, individually or jointly, the opportunity to include their views on the Supplemental Security Income (“SSI”) program in the Social Security Administration’s annual report to the President and the Congress. The following statement was written by and represents the views of Board member Nancy Altman.

Introduction and Background

SSI provides monthly benefits, paid from general revenues, to people with disabilities and those aged 65 or older, who do not exceed the program’s extremely stringent income and resource limitations.¹ SSI is a vital companion program to Social Security, which itself is crucial to the economic security of working families. As important as Social Security is, its benefits are modest by virtually any measure.² Moreover, eligibility for Social Security requires significant attachment to the work force. Consequently, SSI provides minimal incomes to seniors and people with disabilities who receive very low or no Social Security benefits and who are extremely poor.³

Congress explained its intent in enacting SSI as follows:

“Building on the present social security program, [the Social Security Amendments of 1972] would create a new Federal program administered by the Social Security Administration, designed to provide a positive assurance that the Nation’s aged, blind, and disabled people **would no longer have to subsist on below-poverty-level incomes.**”⁴ (Emphasis added.)

¹ Those limitations are discussed at length in this statement.

² See Nancy J. Altman Statement, Hearing on the Social Security 2100 Act, pp. 1-3, Ways and Means Committee, U.S. House of Representatives (July 25, 2019), available at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Nancy%20Altman%20Testimony_0.pdf.

³ In April 2020, 8.053 million people received SSI benefits that averaged \$576.47. See Social Security Administration, Research, Statistics and Policy Analysis, Monthly Statistical Snapshot, April 2020, available at https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/.

⁴ S. Rept. No. 92-1230, Social Security Amendments of 1972, Committee on Finance, U.S. Senate (September 25, 1972), p. 384, available at <https://www.ssa.gov/history/pdf/Downey%20PDFs/Amendments%20to%20the%20Social%20Security%20Act%201969-1972%20Vol.%203.pdf>.

Unfortunately, today's program does not come close to meeting that legislative goal. Although SSI provides essential monthly cash income, the benefits are too low to assure escape from poverty. In 2020, the maximum federal SSI benefit is just \$783 a month (\$9,396 a year). That benefit level is less than three-quarters of the federal poverty line, which, in 2020, is \$1,063.33 a month (\$12,760 a year) for an individual.⁵

Moreover, the federal poverty guidelines likely underestimate what is needed to subsist.⁶ The Gerontology Institute at the University of Massachusetts has developed an annual Elder Economic Security Standard Index, which is a more refined measure, designed to determine the income needed to meet bare necessities, with the amount differing based on where individuals or couples reside, whether they rent or own their homes, and what, in broad terms, is the status of their health.

According to the 2019 index, an older individual in good health who rents in Washington, D.C. would have needed income of \$2,755 a month to be able to afford housing, food, and the other costs associated with the barest of necessities.⁷ Revealingly, the maximum federal SSI benefit in 2019, \$771, equaled just 28 percent of that very basic, minimal income amount.⁸

Importantly, as low as SSI benefits are in relation to what is needed to meet basic needs, recipients must have virtually no resources or other income even to receive those minimal benefits. Congress has explained that it allows SSI recipients to have some resources in recognition of the need to meet unexpected expenses that could not be covered by current

⁵ The Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, *2020 Poverty Guidelines* (January 21, 2020), available at <https://aspe.hhs.gov/2020-poverty-guidelines>. The U.S. Census Bureau calculates annual poverty levels, which are labeled thresholds. The guidelines are a simplified version of the thresholds. Unlike the guidelines, the thresholds differentiate between those younger than age 65 and those age 65 or older. At the time of this writing, the 2020 thresholds have not yet been released. For 2019, when SSI's maximum benefit was \$771 (\$9,252 on an annualized basis), the poverty threshold for those under age 65 was \$13,300 and for those age 65 or older, \$12,261. The poverty thresholds are available at <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

⁶ The federal poverty guidelines and thresholds do not take into account expenditures other than food. They are based on an analysis done in the early 1960s. That analysis was based on the cost of a hypothetical economy food plan developed by the Department of Agriculture, which the analysis then adjusted by age, family size, and other factors. The analysis assumed that those age 65 or older spent less on food than those who are younger. The food cost was multiplied by three because a 1955 survey found that all U.S. households of two or more spent approximately one-third of their after-tax income for food. See Mollie Orshansky, "Counting the Poor: Another Look at the Poverty Profile," *Social Security Bulletin*, Vol. 28, No. 1 (1965), available at <https://www.ssa.gov/policy/docs/ssb/v28n1/v28n1p3.pdf>. Today's federal poverty guidelines and thresholds are based on Orshansky's work. They do not take into account rising standards of living. See Gordon M. Fischer, "Remembering Mollie Orshansky – The Developer of the Poverty Thresholds," *Social Security Bulletin*, Vol. 68, No. 3 (2008), available at <https://www.ssa.gov/policy/docs/ssb/v68n3/v68n3p79.html>.

⁷ At the time of this writing, the 2020 index has not been published. The expenses that are included are housing, food, transportation, health costs, and miscellaneous. See UMass Boston, Elder Index: Measuring the income older adults need to live independently, available at https://elderindex.org/elder-index?state_county%5B%5D=8573&views_fields_combined_on_off_form=0&fields_on_off_hidden_submitted=1&views_fields_on_off_form%5Bfield_housing_renter%5D=field_housing_renter&views_fields_on_off_form_1=field_health_good.

⁸ If the amount specified as needed for health care is deducted for comparison purposes, because SSI recipients qualify for Medicaid, the monthly amount is still \$2,278, around three times what SSI provides.

income.⁹ The allowable resources are much too restricted, however, to satisfy Congress's intent that they cover the cost of emergencies.¹⁰ An individual's countable resources are limited to just \$2,000 and a married couple's to just \$3,000.¹¹

Those modest amounts are a cliff: Even one dollar more than those limits means failure to qualify. Once benefits are being paid, one dollar over the resource limit on the first day of any month causes recipients to lose eligibility until their resources again meet those extremely strict limits.

Congress increased the limits just once, in 1984, and the amount of the increase was minimal; Congress has not adjusted the limits at all in more than three decades.¹² Consequently, the resource limits have eroded substantially in value.¹³

⁹ See SSAB, SSI Statement 2011: Income and Resources, pp. 3-4, available at <https://www.ssab.gov/research/ssi-statements/>. The complete 2011 SSI Annual Report is available at <https://www.ssa.gov/oact/ssir/SSI11/ssi2011.pdf>.

¹⁰ Congress excludes from countable resources a home and a car. See Sec.1613(a)(1) and (2)(B) of the Social Security Act, available at https://www.ssa.gov/OP_Home/ssact/title16b/1613.htm. See, also, fn. 11, *infra*. The cost of replacing that house's roof or furnace likely exceeds those limits, however. See Kristin Wong, "The Average Cost of 57 Home Maintenance Projects," *Lifehacker* (April 15, 2016), available at <https://lifehacker.com/the-average-cost-of-57-common-home-maintenance-projects-1771094630>. According to a 2017 AAA study, the average car repair costs between \$500 and \$600. See Matt Schmitz, "How Much Is the Average Car Repair Bill?" *cars.com* (April 5, 2017), available at <https://www.cars.com/articles/how-much-is-the-average-car-repair-bill-1420694859724/>. Even more seriously, many low income seniors are forced to choose between "food or other necessities, or a dangerously cold living space." See Kevin Prindiville, "Current SSI Levels Leave Seniors Out in the Cold," *Justice in Aging* (2015), available at <https://www.justiceinaging.org/current-ssi-levels-leave-seniors-out-in-the-cold/>. The U.S. Centers for Disease Control and Prevention (CDC) has found, "Of all U.S. hypothermia-related deaths, half occur among persons 65 years of age or older." See CDC, *Morbidity and Mortality Weekly Report*, Synopsis for February 2, 2001, available at <https://www.cdc.gov/media/mmwrnews/2001/n010202.htm>.

¹¹ The resources that are excluded from the limitations include a residence, vehicle, burial plot, household goods and personal effects, life insurance if the face value is not more than \$1,500, a burial fund, again if the value is not more than \$1,500, and property used in connection with work. See Social Security Administration, *Spotlight on Resources – 2019 Edition*, available at <https://www.ssa.gov/ssi/spotlights/spot-resources.htm>. The resources of others are, in some circumstances, deemed to be the recipient's resources. See Social Security Administration, *Program Operations Manual System (POMS)*, SI 01330.001 Deeming of Resources (November 18, 2010), available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501330001>. SSI permits the stringent resource limitations to be avoided in some circumstances, but the methods of doing so are extremely complicated. These include establishing Achieving a Better Life Experience (ABLE) Accounts, a Plan to Achieve Self Support (PASS), and dedicated accounts. See Social Security Administration, *Spotlight on Achieving a Better Life Experience – 2020 Edition*, available at <https://www.ssa.gov/ssi/spotlights/spot-able.html>; Social Security Administration, *Spotlight on Plan to Achieve Self Support – 2020 Edition*, available at <https://www.ssa.gov/ssi/spotlights/spot-plans-self-support.htm>. The complexity of dedicated accounts was the focus of the Social Security Advisory Board's 2019 SSI statement. See SSAB, SSI Statement 2019: Dedicated Accounts, available at <https://www.ssab.gov/research/ssi-statements/>. The complete 2019 SSI Annual Report is available at <https://www.ssa.gov/oact/ssir/SSI19/ssi2019.pdf>.

¹² When the program was signed into law on October 30, 1972, the resource limits were set at \$1,500 for individuals and \$2,250 for couples. In 1984, Congress updated those limits, phasing in the increases from 1985 through 1989, to \$2,000 for individuals and \$3,000 for married couples, where they remain today. However, the equivalent of \$1,500, adjusted for inflation from October 1972 to July 1984, the month the increases were signed into law, was \$3,691.49, and the equivalent of \$2,250 was \$5,537.23. From October 1972 to January 1989, the date the increases were fully phased in, the inflation-adjusted amounts were \$4,294.33 and \$6,441.49, respectively. (Calculations made using Bureau of Labor Statistics, CPI Calculator, available at <https://data.bls.gov/cgi-bin/cpicalc.pl>.)

¹³ In April 2020, the resource limits enacted in October 1972 would have the same purchasing power as \$9,091.81 and \$13,637.71, respectively. (Calculations made using Bureau of Labor Statistics, CPI Calculator, available at <https://data.bls.gov/cgi-bin/cpicalc.pl>.)

Like the resource limits, SSI's income limits are also extremely stringent.¹⁴ The first \$20 of income in a month is disregarded.¹⁵ After that, unearned income, including pensions, Social Security benefits, and cash or items such as groceries provided by family, reduces SSI benefits dollar for every dollar.¹⁶ With respect to earned income, the first \$65 in a month is disregarded, as well as whatever amount of the \$20 disregard remains unused after its application against unearned income. After those small exemptions, every single dollar of earnings reduces SSI benefits by 50 cents.

SSI essentially penalizes savings. The resource limit prohibits savings above the exempt amount. Exceeding the limit results not just in the loss of SSI cash benefits but also can result in the loss of Medicaid eligibility, housing assistance, and other benefits. Consequently, prudent recipients have to avoid getting close to the line. Moreover, the effective 100 percent tax on unearned income above \$20 is a further discouragement of savings. Recipients gain no additional income from the interest on the savings, despite forgoing current consumption. Worse, if recipients are not meticulously careful, the interest could cause them accidentally to exceed the resource limits, inadvertently triggering a loss of Medicaid and other assistance.

While not confiscatory like the marginal tax on unearned income, the marginal tax rate of 50 percent on earned income is high, particularly when compared to the federal income tax rates of those at the top of the income scale.¹⁷ In that regard, it is instructive to note that policymakers have argued that increasing the marginal tax rate of those with incomes of over \$250,000 to just 36 percent would be a serious work disincentive.¹⁸ Because of the very low incomes of SSI

¹⁴ Adding to the complexity and restrictiveness of the income limits, incomes of others are, in some circumstances, deemed to be the recipient's income. See Social Security Administration, Program Operations Manual System (POMS), SI 01320.000 Deeming of Income (March 16, 2020), available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501320000>.

¹⁵ This disregard is first applied against unearned income; any remaining disregard is then applied to earned income.

¹⁶ The rules regarding in-kind support and maintenance ("ISM"), as discussed in the text accompanying fns. 29-30, *infra*, are extremely complicated. The reduction in the benefits may be limited, in some circumstances, by rules including the one-third reduction ("VTR") or the presumed maximum value provisions ("PMV"), or might be disregarded as a result of, for example, the infrequent or irregular income exclusion. See Social Security Administration, Program Operations Manual System (POMS), SI 00830.050 Overview of Unearned Income Exclusions, available at <https://secure.ssa.gov/poms.nsf/lnx/0500830050>.

¹⁷ If one takes into account the reduction or even loss of housing assistance and other benefits, including, most devastating of all, possible Medicaid eligibility, the marginal tax rate is considerably higher.

¹⁸ The so-called Bush tax cuts lowered the top two marginal rates from 39.6 percent to 35 percent, and from 36 percent to 33 percent. The question of whether to extend them for those with adjusted gross incomes of over \$250,000 or allow them to expire in 2010, as the law required, was a fiercely debated question. The compromise, which was reached in 2012, after they had been extended for two years, was to only let the top rate revert and then only be applicable for individuals with incomes of \$400,000 or more. See Scott Greenberg, "Looking Back at the Bush Tax Cuts, Fifteen Years Later," Tax Foundation (June 7, 2016), available at <https://taxfoundation.org/looking-back-bush-tax-cuts-fifteen-years-later/>. The marginal income tax rates and bracket amounts starting in 2000 are available at http://www.moneychimp.com/features/tax_brackets.htm. Those opposing reversion of the rates argued that a rate of even 39.6 percent would cause wealthy taxpayers to reduce their incomes. See, e.g., Guinevere Nell and Karen Campbell, "Obama's Tax Hikes on High-Income Earners Will Hurt the Poor — and Everyone Else," *Heritage Foundation* (November 15, 2010). ("When tax increases reduce economic growth or **create incentives for taxpayers to evade taxes**,...") (Emphasis added). Available at <https://www.heritage.org/taxes/report/obamas-tax-hikes-high-income-earners-will-hurt-the-poor-and-everyone-else>.

recipients, the 50 percent rate is unlikely to discourage work, but it does reduce substantially the gain from any work they are able to engage in.¹⁹

Congress Should Update, Expand, and Simplify SSI

SSI is in acute need of updating and expansion. As just explained, its resource limits have not been adjusted in decades. Moreover, Congress has never adjusted the income disregards of \$20 and \$65, since the program was enacted in 1972. Consequently, all those dollar amounts have eroded substantially over the years. Importantly, the program is most definitely not meeting the goal of assuring “that the Nation's aged, blind, and disabled people...no longer have to subsist on below-poverty-level incomes.”

Despite Congress’s stated goal, SSI is not keeping seniors and people with disabilities out of poverty. The Census Bureau reports that 5.1 million people aged 65 or older in 2018 had incomes below the federal poverty threshold. Under the more refined, supplemental poverty measure, that number of 5.1 million jumps to 7.2 million. The Census Bureau also reports that approximately one in four of those with a disability lives in poverty.²⁰

In addition, SSI is in extreme need of simplification and streamlining. Because of its complicated, burdensome and overly exacting rules, it is expensive to administer. While SSI accounts for just five percent of the benefits administered by the Social Security Administration (“SSA”) and only an eighth as many people receive SSI as Social Security, the agency nevertheless spends almost as much to administer SSI as it does to administer Social Security. In fiscal year 2021, SSA is seeking authority from Congress to spend \$6 billion to administer Social Security and 80 percent of that amount – \$4.8 billion – to administer SSI.²¹

¹⁹ By definition, people may be determined to be disabled by the Social Security Administration only if they are incapable of engaging in “substantial gainful activity,” which in 2020 is defined as earning \$1,260 or more a month. See Social Security Administration, Substantial Gainful Activity, available at <https://www.ssa.gov/oact/cola/sga.html>.

²⁰ See [Table B-1. People in Poverty by Selected Characteristics: 2017 and 2018](#), Income and Poverty in the United States: 2018, available at <https://www.census.gov/library/publications/2019/demo/p60-266.html>, and Figure 1. Supplemental Poverty Measure Rates for Total Population and by Age Group: 2017 and 2018, and Table A-2. Number and Percentage of People in Poverty by Different Poverty Measures: 2018, The Supplemental Poverty Measure: 2018, U.S. Census (October 7, 2019), available at <https://www.census.gov/library/publications/2019/demo/p60-268.html>. Those who qualify as disabled under SSI and under the Census Bureau figures presumably overlap but are not identical. The Census Bureau reports that out of 14.8 million with a disability, 3.8 million or 25.7 percent have incomes below the poverty threshold and 3.6 million, or 24.3 percent, have incomes below the supplemental poverty measure. Those eligible based on age accounted for 1.1 million of SSI’s 8.1 million recipients in April 2020. Those with disabilities accounted for the remaining 6.9 million in April 2020. Of those 6.9 million, 5.8 million were under age 65 and 1.1 million were aged 65 or older. See Social Security Administration, Table 2, SSI Monthly Statistics, April 2020, available at https://www.ssa.gov/policy/docs/statcomps/ssi_monthly/index.html.

²¹ See Social Security Administration, Congressional Justification for Appropriations Committees, FY 2021 Budget Request, pp. 2, 4, available at <https://www.ssa.gov/budget/FY21Files/FY21-JEAC.pdf>. (The \$6 billion is calculated by multiplying the FY 2021 LAE request of \$13.351 billion by the 45 percent of that amount estimated to be spent on OASDI. The \$4.8 billion is calculated by multiplying the FY 2021 LAE request of \$13.351 billion by the 36 percent of that amount estimated to be spent on SSI.) In April 2020, 8.053 million people received SSI benefits totaling \$4.898 billion, compared to 64.625 million people who received OASDI benefits totaling \$89.735 billion. Of those over 8 million receiving SSI and over 64 million receiving Social Security, 2.680 million received both. See Social Security Administration, Research, Statistics and Policy Analysis, Monthly Statistical Snapshot, April

➤ Legislative Improvements to Update and Expand SSI

Congress should increase the maximum federal benefit high enough so that, in the words of Congress, “the Nation's aged, blind, and disabled people would no longer have to subsist on below-poverty-level incomes.” In updating the level, Congress should recognize that this population includes many people with severe disabilities and consequently people whose expenses are substantially higher than those of the general population.²²

At the very least, the maximum federal benefit should equal the level of the federal poverty guidelines. Because, as described above, the guidelines likely undermeasure substantially the amount needed to have incomes above poverty, and even more so for this particular population, the maximum benefits should be considerably higher – 150 percent of those guidelines or more.²³

In addition, the income disregards should be updated, as should the resource limits. Currently pending in Congress is the Supplemental Security Income Restoration Act of 2019 (“SSI Restoration Act”).²⁴ It increases the resource limit from the current \$2,000 (\$3,000 for a couple) to \$10,000 (\$20,000 for a couple). In addition, it increases the general income disregard from the current \$20 to \$123 per month and increases the earned income disregard from the current \$65 to \$399 per month. Given the rate of inflation since 1972, the growth in wages, and the goals of the program, Congress should increase those levels to at least the amounts called for in the SSI Restoration Act, and, indeed, substantially higher.

Moreover, all of those amounts should be adjusted automatically so that they no longer erode in value over time. It should be noted that the maximum federal benefit amount is already indexed under current law, but the wrong index is used.²⁵ The current index, the CPI-W, only measures

2020, available at https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/. In FY 2021, 7.875 million people are estimated to receive federal SSI benefits totaling \$57.551 billion, and 65.767 million people are estimated to receive Social Security benefits totaling \$1,145.501 billion. See Social Security Administration, Congressional Justification for Appropriations Committees, FY 2021 Budget Request, p. 3, available at <https://www.ssa.gov/budget/FY21Files/FY21-JEAC.pdf>.

²² See “The hidden extra costs of living with a disability,” Conversation (July 25, 2017), available at <http://theconversation.com/the-hidden-extra-costs-of-living-with-a-disability-78001>.

²³ To ensure recipients are not inadvertently worse off, Congress should draft expansion legislation to ensure that the recipients continue to receive housing, food, health care and other assistance that they would receive without the increase in benefit levels. Moreover, because workers should not receive more from means-tested benefits than from benefits they have earned through work and mandatory contributions, Social Security’s minimum benefit should be increased in coordination with the SSI expansion.

²⁴ H.R. 4280 was introduced on September 11, 2019 by Representative Raul Grijalva (D-AZ) and Representative Elissa Slotkin (D-MI). At the time of this writing, it has 43 cosponsors. See <https://www.congress.gov/bill/116th-congress/house-bill/4280/all-info>. Its companion, S.2753, was introduced in the Senate on October 30, 2019 by Senator Sherrod Brown (D-OH). At the time of this writing, it has 11 cosponsors. See <https://www.congress.gov/bill/116th-congress/senate-bill/2753/all-info>.

²⁵ A number of other features of SSI are indexed, as well. The dollar amount defining substantial gainful activity is appropriately indexed to the national average wage index. The student earned income exclusion and the limits on fees paid to representative payees and claimants’ representatives are adjusted annually based on the CPI-W. See Social Security Administration, Cost of Living Increase and Other Adjustments for 2020, Federal Register (October 22, 2019), available at <https://www.federalregister.gov/documents/2019/10/22/2019-22921/cost-of-living-increase-and-other-determinations-for-2020>. The fee for federal administration of state supplementary payments is indexed to

the cost of living of urban workers, not seniors and people with disabilities receiving SSI who are virtually never working full-time, if at all.²⁶

The CPI-W was the only measure that was available in 1972, when SSI was enacted, but the shortcomings of the measure for SSI (and other programs for seniors and people with disabilities for which it is used, including military retirement benefits, veterans' compensation, civil service retirement benefits and Social Security) are apparent. People who are working (and, indeed, the general population) have substantially different spending patterns than seniors and people with disabilities. Seniors and people with disabilities on average spend more on health care and long-term care — where prices are rising faster — and less on clothing, recreation, and other items — where prices tend to rise more slowly — than younger, healthier Americans.

Recognizing the shortcomings of the CPI-W for this population, Congress in 1987 instructed the Bureau of Labor Statistics to produce the CPI-E, an index measuring the cost of living of the elderly. Despite the annual calculation and publication of this more targeted, accurate measure since then, Congress has not yet enacted its use. It should be adopted to index the SSI benefit level, general income disregard, and resource limits. With respect to the SSI earned income disregard, the national average wage index, which, as its name suggests, measures the growth in earnings, should be used.²⁷ In addition, the 100 percent and 50 percent reductions in benefits should be significantly lower in order to soften the penalty of SSI's rules on savings and work.²⁸

➤ **Legislative Improvements to Simplify SSI**

Congress should enact other changes that would simplify the program. The improvements would also make SSI more efficient and cost effective, as well as more even-handed and uniform in its coverage and administration. Perhaps most importantly, the reforms would result in a more family-friendly and benevolent SSI for those it serves.

the CPI-U. See Social Security Administration, Fee for Administration of State Supplementary Payments, available at <https://www.ssa.gov/oact/cola/statesuppfec.html>. The CPI-W is based on the CPI-U population, simply with different weighting of spending categories. The two indices tend to produce similar percentage adjustments. See Stephen B. Reed and Kenneth J. Stewart, *Why does BLS provide both the CPI-W and CPI-U?* Beyond the Numbers, Bureau of Labor Statistics, Vol. 3, No. 5 (February 2014), available at <https://www.bls.gov/opub/btn/volume-3/why-does-bls-provide-both-the-cpi-w-and-cpi-u.htm>. Like the dollar definition of substantial gainful activity, the student earned income exclusion, which excludes earned income (\$1,900 a month, up to a yearly maximum of \$7,670 in 2020) of SSI recipients who are under age 22 and regularly attending school, should be adjusted using the national average wage index, since it too pertains to earned income. See Social Security Administration, Spotlight on Student Earned Income Exclusion – 2020 edition, available at <https://www.ssa.gov/ssi/spotlights/spot-student-earned-income.htm>.

²⁶ By definition, people with disabilities can only receive benefits if they are determined to be unable to engage in substantial gainful employment. See fn. 19, supra.

²⁷ The national average wage index is currently, appropriately, used to adjust the definition of substantial gainful activity. See fn. 25, supra.

²⁸ The SSI Restoration Act indexes the resource limits and income disregards, but uses the CPI-E for the income disregards, in addition to the resource limits, and does not change the index used for the benefit itself. It also does not address the effective tax rates, which, at 100 percent is confiscatory on unearned income and extremely high (particularly in comparison to federal income tax rates) on earned income, as explained in fns. 17-18, supra, and accompanying text.

One of the improvements is to repeal the in-kind support and maintenance provisions (“ISM”), as the SSI Restoration Act does. Under current law, groceries and other assistance that recipients receive from their families and friends count as in-kind income. By reducing benefits by a dollar for every dollar of support, once the \$20 disregard is exhausted,²⁹ this provision implicitly discourages this help.

As a matter of morality, implicitly discouraging families and friends from helping those who are less fortunate, as these provisions do, is wrong. As a policy matter, the ISM provisions are extremely complicated, time-consuming to administer, and frequently result in improper payments.

The ISM provisions require SSA to make detailed and intrusive inquiries into the lives of recipients, who may be required to describe in great detail how their households function and to furnish utility and other documentation. Landlords, housemates, and family members may be interrogated, as well.

Once the information is collected, the in-kind transfers must be converted to dollar amounts, requiring an extremely complicated set of calculations. Then, benefits are adjusted, another complicated task. Moreover, these complicated, time-consuming and intrusive determinations must be made repeatedly, including at the time of application, when benefits are awarded, and whenever recipients move or living circumstances change.

Many others have pointed out the shortcomings of the ISM provisions. Indeed, both the 2005 and the 2015 Social Security Advisory Boards focused their SSI statements in large part on those provisions. The 2015 report, after detailing the complexity of the required calculations, explained:

“The Social Security Advisory Board noted in its 2005 SSI Statement that the agency POMS contain the equivalent of 250 single-spaced typed pages of instructions on living arrangements and in-kind support. The POMS Table of Contents for SSI is 80 pages, which does not include any of the substantive disability related processes -- just program requirements. The application for disability under SSI is 23 pages; by contrast the disability application under the disability insurance program is seven pages, even though the disability analysis [of] both programs mirror each other.”³⁰

The 2015 report summarized, “Even with and, perhaps because of, all the detail, it is virtually impossible to attain consistency in ISM analyses.” Not surprisingly, given the complexity of the provisions, the 2015 report found that even though the required calculations resulted in actual benefit reductions in only about nine percent of cases, errors in the calculations resulted in thirty

²⁹ See fn. 16, *supra*, discussing limitations on the reduction.

³⁰ See SSAB, SSI Statement 2015: The Complexity of In-Kind Support and Maintenance, p. 5, available at <https://www.ssab.gov/research/ssi-statements/>. The complete 2015 SSI Annual Report is available at <https://www.ssa.gov/oact/ssir/SSI15/ssi2015.pdf>. See, also, SSAB Statement 2005, available at <https://www.ssab.gov/research/ssi-statements/>. The complete 2005 SSI Annual Report is available at <https://www.ssa.gov/oact/ssir/SSI05/ssi2005.pdf>.

percent of the improper payments, about equally divided, in FY 2014, between underpayments and overpayments.

For all these reasons, Congress should repeal the ISM provisions. Congress should change other provisions, as well, for both reasons of morality and efficiency.

Currently, married couples are limited to receiving a maximum of one and a half times what individuals receive. Congress should change the law to allow married couples to each receive the SSI amount received by comparable individuals, as the SSI Restoration Act provides.³¹ In addition to eliminating this penalty on marriage, the change would simplify administration. Under current law, couples that are not legally married under state law nevertheless are subject to the marriage penalty if SSA determines that they are presenting themselves to the community as married.³²

Congress should also follow the lead of the SSI Restoration Act and eliminate the so-called transfer penalty, when property is transferred for less than fair market value. This is another harsh provision that adds to administrative complexity and, as a byproduct, penalizes families. It may be easiest to understand the provision with an example.

Imagine a widow who has her own car, so gives her recently departed husband's car to their son. That is a prohibited transfer, because her inherited car is a countable asset and she is disposing of it for less than its fair market value. Her simple and understandable act of transferring her late husband's car to their child stops her SSI benefits for up to three years.³³ (She is barred for the number of months that equal the value of the car divided by her SSI benefit level.) Again, Congress should repeal this transfer penalty, as the SSI Restoration Act provides.

Another change that would simplify program administration concerns those who are institutionalized. Current rules allow people who are temporarily institutionalized in a hospital, nursing home, or similar facility to maintain their SSI for up to three months, but only if they provide documentation during the institutionalization that they are expected to be released within three months and they need the funds to maintain the living arrangement to which they will return upon release. Congress should simply allow for SSI to continue to be paid during temporary institutionalizations.³⁴

Moreover, Congress should follow the lead of the SSI Restoration Act regarding the treatment of state earned income tax credits and child tax credits. Under current law, monies recipients

³¹ The resource limit, which allows married couples only one and a half times the resources as individuals, is another marriage penalty that should be eliminated. By updating the resource limit so that married couples are allowed twice the resources as individuals, the SSI Restoration Act eliminates that penalty on marriage, as well. See text accompanying fn. 24, *supra*.

³² See Richard Balkus and Susan Wilschke, "Treatment of Married Couples in the SSI Program," Social Security Administration, Office of Policy (2003), available at <https://www.ssa.gov/policy/docs/issuepapers/ip2003-01.html>.

³³ Spotlight on Transfers of Resources – 2020 Edition, available at <https://www.ssa.gov/ssi/spotlights/spot-transfer-resources.htm>.

³⁴ Depending on whether and how Congress were to change the resource limitations, Congress might have to exempt these payments made during temporary institutionalization from countable resources for a period of time to avoid people exceeding the resource limit.

receive from the Federal Earned Income Tax Credit and the Child Tax Credit are disregarded for SSI purposes, but monies received as a result of counterpart state tax credits are not. That makes no sense. The state credits should be disregarded, as the federal credits already are and as the SSI Restoration Act provides.

Another set of improvements Congress should enact involves the program's coverage. SSI benefits are available to those residing in one of the fifty states, the District of Columbia, and the Northern Mariana Islands, but not to Americans residing in Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa.³⁵ Last year, a United States District Court held unconstitutional the exclusion of Puerto Ricans, and just this April 10th, the U.S. Court of Appeals, First Circuit, affirmed the decision.³⁶ Congress should pass the Supplemental Security Income Equality Act of 2019 to extend the Court's decision to those residing in the U.S. Virgin Islands, Guam and American Samoa, without the need for further litigation.³⁷ Importantly, Congress should extend coverage to otherwise qualifying immigrants, refugees, and asylum seekers, as well.

Conclusion

Over the years, Congress has been urged by numerous experts and entities to simplify SSI, but the program remains complicated and expensive to administer. If SSA chose, it could simplify some of the administration without the need for legislation, but that too has not happened. The issue may come down to ideology. Throughout the history of American social welfare policy, there have been those who have seen some or all of those at the bottom of the income scale as "undeserving." Those who hold that view are overly attuned to possibilities of fraud, waste, and misuse.

The irony is that the relationship of SSI's benefit cost to its administrative cost is extremely wasteful. SSI accounts for just five percent of the benefits paid by the Social Security Administration; Social Security accounts for 95 percent. There are approximately eight times more Social Security beneficiaries than there are SSI recipients. Nevertheless, SSA spends almost as much to administer SSI as it does to administer Social Security. In fiscal year 2021, the agency is seeking authority from Congress to spend \$6 billion to administer Social Security and \$4.8 billion to administer SSI.³⁸ In other words, SSA is seeking eighty percent as much to

³⁵ See *United States v. Vaello Madero*, 356 F. Supp. 3d 208 (D. Puerto Rico 2019), available at https://scholar.google.com/scholar_case?case=13949091304371043564&q=United+States+v.+Vaello+Madero&hl=en&as_sdt=20000006&as_vis=1, and *United States v. Vaello Madero*, No. 19-1390. U.S. Court of Appeals, First Circuit (April 10, 2020), available at https://scholar.google.com/scholar_case?case=10803920319842656906&q=United+States+v.+Vaello+Madero&hl=en&as_sdt=20000006&as_vis=1. See, also, SSA, Northern Mariana Islands, Congressional Statistics, 2018, available at https://www.ssa.gov/policy/docs/factsheets/cong_stats/2018/mp.pdf.

³⁶ *Ibid.*

³⁷ H.R. 947 was introduced on February 4, 2019 by Representative Jenniffer Gonzalez-Colon (R-PR). At the time of this writing, it has seven cosponsors. See <https://www.congress.gov/bill/116th-congress/house-bill/947/all-info>. Those born in Puerto Rico, U.S. Virgin Islands and Guam are U.S. citizens. Those born in American Samoa are American nationals.

³⁸ See fn. 21, *supra*. In contrast to Social Security, whose administrative costs are less than one percent of its expenditures, SSI's administrative costs are around eight percent. See 2020 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, Table II.B1, available at https://www.ssa.gov/oact/TR/2020/II_B_cyoper.html#96807, and 2020 Annual Report of the SSI

administer SSI as to administer Social Security, eighty percent as much to disperse five percent of the benefits to an eighth as many people.

That high administrative cost has the much more significant intangible cost of robbing our fellow Americans of dignity, respect, and autonomy to make decisions regarding their own lives. Rather than spend the money on that kind of punitive administration, the same amount of money should be directed towards updating and expanding benefits under a regime of simpler and more compassionate rules.

Program, Tables IV.C1 and IV.E1, available at <https://www.ssa.gov/OACT/ssir/SSI20/ssi2020.pdf>. See, also, Social Security Administration, Congressional Justification for Appropriations Committees, FY 2021 Budget Request, available at <https://www.ssa.gov/budget/FY21Files/FY21-JEAC.pdf>.