

# Unwelcome Benefits: Why Welfare Beneficiaries Reject Government Aid

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## Introduction

In September 2004, the Bush administration announced that it would send drug discount cards to 1.8 million low-income Medicare beneficiaries, admitting that, contrary to early predictions and despite the rising costs of prescription drugs, millions of eligible beneficiaries had not enrolled in the Medicare Prescription Drug Discount Card Program.<sup>1</sup> At first glance, nonparticipation in the drug-discount card program is puzzling: the program enables Medicare beneficiaries to save ten to twenty-five percent on prescription drugs and credits low-income enrollees with up to \$1,200 for the purchase of prescription drugs.<sup>2</sup> A closer look at the Program's mechanics, however, uncovers why many senior citizens do not take advantage of the program. To enroll in the program, a beneficiary must learn about the new program, select one discount card among approximately seventy available cards that offer different coverage packages, pay up to thirty dollars for a card, and fill out several forms.<sup>3</sup> A person who has access to the Internet and is comfortable with computers could gather and process the relevant information in a couple of hours.<sup>4</sup> Many senior citizens, however, are uncomfortable with computers and their decision-making capacity may be impaired.<sup>5</sup> Put simply,

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1. Robert Pear, *Low-Income Nonapplicants to Get Medicare Drug Cards*, N.Y. TIMES, Sept. 23, 2004, at A18. The Medicare Prescription Drug Discount Card Program was enacted into law as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066 (2003). It is a transitory program expected to be replaced in 2006 by Medicare prescription drug benefits. *Id.*

2. See Fact Sheet, Ctr. for Medicare & Medicaid Serv., Medicare Prescription Drug Discount Card and Transitional Assistance Program (Mar. 26, 2004), available at <http://www.cms.hhs.gov/media/press/release.asp?Counter=990> (describing the Prescription Drug Discount Card Program).

3. *Id.*

4. Several websites offer valuable information on drug discount cards and advise how to select cards. See, e.g., CTR. FOR MEDICARE & MEDICAID SERV., MEDICARE-APPROVED PRESCRIPTION DRUG DISCOUNT CARD PROGRAM, <http://www.cms.hhs.gov/medicarerreform/drugcard> (last visited Sept. 11, 2005).

5. See *Drug Discount Confusion*, N.Y. TIMES, June 2, 2004, at A18; *Drug Card*

enrolling in the drug-discount card program is unfavorable for many eligible beneficiaries and is particularly difficult to the more-disadvantaged ones.<sup>6</sup> Accordingly, while general nonparticipation in the program should raise concerns, the immediate concern to be addressed is the nonparticipation of the more-disadvantaged beneficiaries. Nonparticipation in welfare programs has attracted relatively little attention from legal scholars, despite the tremendous interest of legal academia in redistribution, and the fact that welfare benefits are among the most direct means of redistribution. This Article studies the causes of nonparticipation in welfare programs, shows that similar participation patterns are common in many welfare programs, and seeks to focus attention on the characteristics of nonparticipants.

Nonparticipation in welfare programs is rather common, even in well-known programs and among young eligible individuals.<sup>7</sup> The low percentages of individuals eligible for welfare benefits who actually receive them ("participation rates") are a well-known fact. Low participation rates among low-income individuals are perplexing because for such individuals the value of a given benefit is relatively high.<sup>8</sup> Nobel laureate Gary Becker suggested

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*Confusion*, WASH. POST, June 22, 2004, at A16; Sarah Lueck, *Changes in Medicare Found Lacking*, WALL ST. J., Aug. 11, 2004, at D3.

6. A comparison to the participation in Medicare Part B (optional supplementary medical insurance) is instructive. Senior citizens automatically enroll in Medicare Parts A (mandatory hospital insurance) and B, and they can opt out Part B only if they fill out a form. In 2003, approximately ninety-six percent of the eligible individuals enrolled in Part B. For national and state statistics, see CTRS. FOR MEDICARE & MEDICAID SERVS., MEDICARE BENEFICIARIES ENROLLED BY STATE AS OF JULY 1, 1999 - 2003, [http://www.cms.hhs.gov/statistics/enrollment/stentrend99\\_03.asp](http://www.cms.hhs.gov/statistics/enrollment/stentrend99_03.asp) (last visited Sept. 11, 2005).

7. For a comprehensive review of the empirical literature on nonparticipation in welfare programs, see Janet Currie, *The Take Up of Social Benefits* (Apr. 2004) (unpublished manuscript, on file with the author), available at <http://urbanpolicy.berkeley.edu/pdf/Ch3Currie0604.pdf>.

8. See, e.g., Robert Moffitt, *An Economic Model of Welfare Stigma*, 73 AM. ECON. REV. 1023, 1023 (1983) ("[The more-is-better-than-less] tenet seems to be violated by the behavior of many individuals in the low-income population, for many turn out to be eligible for a positive welfare benefit but do not in fact join the welfare rolls."); David A. Super, *Offering an Invisible Hand: The Rise of the Personal Choice Model for Rationing Public Benefits*, 113 YALE L.J. 815, 830-31 (2004):

The more desperate families . . . could be expected to endure [administrative and social] burdens because they have nowhere else to turn. The others may drop away as they perceive the transaction costs to approach or equal the value of the benefit. This is possible because the marginal utility [of a benefit] declines as income rises. If the benefit is food assistance, it may mean the difference between a monotonous diet and a more balanced one for the less desperate families but may be crucial to helping their more desperate neighbors have enough food to eat through the month.

that eligible individuals choose not to participate in welfare programs "because they anticipate that receiving [welfare] benefits would actually lower their utility through the development of dependency and other bad habits."<sup>9</sup> As the example of the Medicare drug discount cards illustrates, this view does not capture all the causes of nonparticipation. Indeed, welfare scholars generally view Becker's approach as too narrow and believe that other or additional burdens discourage eligible individuals from enrolling in welfare programs.<sup>10</sup> Becker's underlying logic, however, remains unchallenged: when participation burdens are (or perceived to be) greater than the expected benefit, the benefit becomes unwelcome.<sup>11</sup> Such overly costly benefits are referred to in this Article as *unwelcome benefits*.

Unwelcome benefits resemble familiar situations of everyday life. For example, commercial coupons confer financial benefits upon eligible individuals. Nevertheless, many people do not use available coupons because of embarrassment, hassle, forgetfulness, and other causes.<sup>12</sup> For similar reasons, many Americans do not join the American Association of Retired Persons ("AARP") when they become eligible at age fifty and instead do so close to retirement age.<sup>13</sup> Psychologists identified a related human propensity: individuals often value a benefit loss less than they value an equivalent out-of-pocket expense.<sup>14</sup> In other words, there

9. GARY S. BECKER, ACCOUNTING FOR TASTES 21 (1996). It is noteworthy that several conservative scholars were convinced that eligible individuals would almost always take advantage of welfare benefits. See, e.g., MARTIN ANDERSON, WELFARE: THE POLITICAL ECONOMY OF WELFARE REFORM IN THE UNITED STATES 38 (1978) ("There will be isolated instances where a person is unaware of being eligible, or is unjustly denied aid by a welfare bureaucrat, or simply chooses not to accept the social stigma of being on welfare. But these cases are the exceptions."); James M. Buchanan, *The Samaritan's Dilemma*, in ALTRUISM, MORALITY AND ECONOMIC THEORY 71 (Edmund Phelps ed., 1975) (defining the "Samaritan's dilemma:" governmental altruism could induce the poor to act in socially sub-optimal ways in order to take advantage of anticipated redistributive transfers).

10. See, e.g., Currie, *supra* note 7; Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121 (2000); Super, *supra* note 8.

11. Becker, *supra* note 9, at 21.

12. See generally Joseph Bonnici et al., *Consumer Issues in Coupon Usage: An Exploratory Analysis*, 13 J. APPLIED BUS. RES. 31 (1996/1997); Chakravarthi Narasimhan, *A Price Discrimination Theory of Coupons*, 3 MARKETING SCI. 128 (1984).

13. See Dipak K. Gupta et al., *Group Utility in the Micro Motivation of Collective Action: The Case of Membership in the AARP*, 32 J. ECON. BEHAV. & ORG. 301 (1997).

14. See generally Daniel Kahneman et al., *The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSP. 193, 203-04 (1991); Richard H. Thaler, *Toward a Positive Theory of Consumer Choice*, 1 J. ECON. BEHAV. & ORG.

exist circumstances in which a given dollar amount in the form of costs associated with benefit redemption would deter take up, but the same dollar amount would not suffice to compensate for a loss of an asset equivalent to the waived benefit. This behavioral bias is one facet of the *endowment effect* that captures the difference between opportunity costs and equivalent out-of-pocket expenses.<sup>15</sup> The endowment effect, although unrelated to actual participation burdens, may therefore increase a propensity to refrain from using available benefits.

A review of the existing literature on participation in welfare programs reveals a deep gap between the legal and economic literature. The legal literature primarily explains how discretionary eligibility criteria influence the provision of welfare benefits,<sup>16</sup> while the economic literature utilizes primarily formal, non-discretionary eligibility criteria to estimate participation rates and to identify determinants of participation, such as age, education, marriage prospects, health, need, and race.<sup>17</sup> As a result of this gap, known participation determinants are not fully incorporated in the legal literature and economic estimations of participation rates tend to conclude that participation rates are lower than they actually are.<sup>18</sup> The reason for this estimation bias is that the implementation of discretionary eligibility criteria disqualifies some individuals who meet formal eligibility criteria.<sup>19</sup>

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39, 43-47 (1980).

15. See Kahneman et al., *supra* note 14; Thaler, *supra* note 14.

16. For recent important works, see Diller, *supra* note 10; Super, *supra* note 8; David A. Super, *The Political Economy of Entitlement*, 104 COLUM. L. REV. 633 (2004). For earlier representative studies, see Joel F. Handler, *Discretion in Social Welfare: The Uneasy Position in the Rule of Law*, 92 YALE L.J. 1270 (1983); Jerry L. Mashaw, *Welfare Reform and Local Administration of Aid to Families with Dependent Children in Virginia*, 57 VA. L. REV. 818 (1971).

17. See, e.g., Rebecca Blank & Patricia Ruggles, *When Do Women Use Aid to Families with Dependent Children and Food Stamps? The Dynamics of Eligibility versus Participation*, 31 J. HUMAN RESOURCES 57, 80-81 (1996) (estimating the effects of age, disabilities, education, marital status, race, and other factors on the propensity to participate in the Aid to Families with Dependent Children ("AFDC") and Food Stamp programs); Richard D. Coe, *Nonparticipation in Welfare Programs by Eligible Households: The Case of the Food Stamp Program*, 17 J. ECON. ISSUES 1035, 1041-42 (1983) (estimating the effects of demographics on the propensity to participate in the Food Stamp program). For a recent comprehensive survey of the economic literature, see Currie, *supra* note 7. For detailed reviews of participation in specific welfare programs, see MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES (Robert A. Moffitt ed., University of Chicago Press, 2003) [hereinafter MEANS-TESTED].

18. Eligibility estimations pose a serious challenge for empiricists. The foregoing argument is limited to a neglected factor that results in downward biased estimations.

19. See *infra* Part I.B.

Accordingly, an assessment of the number of eligible individuals that does not take into account informal eligibility criteria is likely to result in overestimation. Since the participation rate in a specific program is the number of participants divided by the number of eligible individuals, overestimated denominators lead to inaccurately low assessments of participation rates.<sup>20</sup> This estimation bias overemphasizes the general problem of nonparticipation and downplays the problems of the more disadvantaged individuals. Contrary to this observation, policymakers, welfare advocates, and scholars regularly cite general participation rates to support or refute various arguments.<sup>21</sup>

This Article explains why present estimations of general participation rates are misleading. The Article inquires into the participation patterns of eligible individuals and shows that present impediments to benefits disproportionately burden the most and least disadvantaged eligible individuals and decrease their propensity to participate in welfare programs. Such polarized participation patterns<sup>22</sup> imply that general participation rates, by themselves, teach very little about the performance of welfare programs.<sup>23</sup> Situations of nearly ineligible individuals who forgo meager benefits<sup>24</sup> and of eligible individuals who forgo relatively large benefits are fundamentally different.<sup>25</sup> Nonparticipation of nearly ineligible individuals results from the offering of impractically small benefits. By contrast, nonparticipation of eligible individuals who forgo relatively large benefits suggests that those who need the benefits the most face significant impediments to benefits.<sup>26</sup> General participation rates pool these groups and others together, thereby distracting the attention away from the more important problems of the neediest individuals.

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20. See *infra* Part I.B.

21. See *infra* Part I.B.

22. The term “polarized participation patterns” is used in this Article to describe the effects of the impediments to benefits faced by the most and the least disadvantaged individuals. The term does *not* imply that the groups at the poles of the spectrum are similar in size or density. See *infra* Part I.D.2.

23. See *infra* Part I.D.

24. For example, the minimum monthly allotment of food stamps for households of one or two persons is ten dollars. 7 U.S.C. § 2017(a) (2000). Parts II and III analyze the participation costs of eligible individuals and explain why working eligible individuals and other eligible individuals whose available benefits are small tend to incur high participation costs.

25. See *infra* Parts II, III.

26. See *infra* Parts II, III.

For simplicity, this Article is focused on means-tested welfare programs<sup>27</sup> and, more specifically, the Temporary Assistance for Needy Families ("TANF") and Food Stamp programs. Other welfare programs are discussed in specific contexts and compared to the TANF and Food Stamp programs.

The TANF program is the major federal welfare program providing cash assistance to low-income households. The program, created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"),<sup>28</sup> replaced the sixty-year-old Aid to Families with Dependent Children ("AFDC") program.<sup>29</sup> Under TANF, states receive fixed lump-sum payments, known as block grants, and have broad discretion regarding how to design and administer benefit levels, benefit forms, and eligibility criteria, including time limits and conditions on eligibility.<sup>30</sup> It is estimated that approximately sixty percent of TANF-eligible households do not use the TANF benefits.<sup>31</sup>

The Food Stamp Program is the major federal welfare program offering food assistance to low-income households. The program began as a small pilot program in 1961 and gradually expanded. In 1971, national eligibility standards were established and all states were required to inform eligible households about the program. The Food Stamp Program is federally funded and most of its eligibility rules are set at the federal level pursuant to the Food Stamp Act of 1977<sup>32</sup> and its regulations.<sup>33</sup> One important feature of the nationwide uniform eligibility rules for food stamps is that they mitigate the variation in state welfare programs. For

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27. Means-tested welfare programs are programs in which eligibility and benefit levels are inversely related to income and sometimes resources. For comprehensive reviews of the major means-tested programs in the United States, see MEANS-TESTED, *supra* note 17.

28. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

29. See R. KENT WEAVER, ENDING WELFARE AS WE KNOW IT (2000) (discussing the politics of cash-assistance programs in the United States).

30. 42 U.S.C. § 602(a)(1)(B) (2005). Under the AFDC program, eligibility criteria were uniform nationwide and benefit levels were set by the states. The states and the federal government shared the funding of AFDC benefits. For a brief description of AFDC and TANF, see Robert A. Moffitt, *The Temporary Assistance for Needy Families Program*, in MEANS-TESTED, *supra* note 17, at 291, 292-307.

31. Moffitt, *supra* note 30, at 308-09 n.17 (showing participation rates of single mothers and noting that married families "have always been a minor fraction of the caseload").

32. Food Stamp Act of 1977, Pub. L. No. 95-113, 91 Stat. 958 (1977).

33. For a brief history of the Food Stamp Program, see Janet Currie, *U.S. Food and Nutrition Programs*, in MEANS-TESTED, *supra* note 17, at 199, 201-13.

example, in 2000, in California and Wisconsin the maximum monthly food-stamp benefit for a family of four was below \$200, while in Mississippi and Texas it was above \$300. In comparison, in the same year, the maximum monthly TANF benefit for a family of four was over \$600 in California and Wisconsin and \$200 or less in Mississippi and Texas.<sup>34</sup> It is estimated that approximately forty percent of food-stamp eligible households forgo the food-stamp benefits.<sup>35</sup>

The plan of this Article is as follows. Part I explores the functional structures of common welfare programs and focuses on impediments to benefits in the forms of monetary and opportunity costs of eligible individuals. It shows that reasonable designs of welfare bureaucracies tend to lead to polarized participation patterns among eligible individuals. Part I also explains how PRWORA increased the costs of participation in welfare programs and how it provides states with incentives to raise further participation costs and to sustain certain polarized participation patterns. Part II extends the analysis to non-monetary participation costs and addresses participation patterns created by information and self-esteem related costs. It explains why information about welfare benefits and application procedures is costlier for some eligible individuals than for other eligible individuals, why self-esteem affects participation in welfare programs, and which individuals tend to be more sensitive to self-esteem. Part III addresses several legal and policy implications. First, it emphasizes the importance of understanding the characteristics of nonparticipants rather than addressing the general phenomenon of nonparticipation. Second, it suggests several simple administrative means that could lower participation costs and increase participation rates. Third, Part III outlines general principles that should guide the balance between eligibility and benefit size, the framing of benefits, and choices among benefits. Fourth, it addresses the burdens PRWORA's work requirements impose on the more disadvantaged individuals and those who attempt to conform to social norms of self-sufficiency. Finally, Part III addresses the burdens that PRWORA's time limits impose on the more disadvantaged individuals. Part IV provides concluding remarks.

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34. In California and Wisconsin food stamps amounted to less than twenty-five percent of cash and food assistance, while in Mississippi and Texas food stamps amounted to more than sixty percent of cash and food assistance. *Id.* at 206.

35. KAREN CUNNINGHAM, U.S. DEPT OF AGRIC., TRENDS IN FOOD STAMP PROGRAM PARTICIPATION RATES: 1994 TO 2000 (2002).



## I. Welfare Bureaucracies and Participation Disincentives

This Part examines the functional structures of common welfare programs and explains how the private costs they impose on potentially eligible individuals may discourage such individuals from using available benefits.<sup>36</sup> Part I.A presents the need of welfare administrations for screening mechanisms and explains why such mechanisms tend to deter some eligible individuals. Part I.B examines the private costs generated by discretionary eligibility criteria and discusses their consequences. Part I.C presents the incentives of states to raise private costs of eligible individuals and to decrease participation rates. Part I.D shows why heterogeneity of eligible individuals is likely to create polarized participation patterns. The analysis of heterogeneity of eligible individuals summarizes and applies the findings of Parts I.A-C regarding the characteristics of eligible individuals who are likely to refrain from participating in welfare programs.

### A. Screening Mechanisms and Private Costs

#### 1. The Problem of Asymmetric Information

Welfare benefits are offered by federal and state governments and are administered by welfare bureaucracies that determine applicants' eligibility and eligibility levels. As such, welfare bureaucrats are the gatekeepers who stand between benefits and claimants. Their stated role is to screen claimants, to ensure that only eligible ones receive benefits, and to promote official social goals, such as reducing out-of-wedlock pregnancies<sup>37</sup> and welfare

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36. The social costs of screening mechanisms employed for redistribution are beyond the scope of this Article. In general, economists believe that, subject to conflicting goals, the deadweight loss associated with redistribution may be minimized when redistribution is conducted through the tax and transfer system. See, e.g., Aunund Hylland & Richard Zeckhauser, *Distributional Objectives Should Affect Taxes But Not Program Choice or Design*, 81 SCANDINAVIAN J. ECON. 264 (1979); Louis Kaplow & Steven Shavell, *Should Legal Rules Favor the Poor? Clarifying the Role of Legal Rules and the Income Tax in Redistributing Income*, 29 J. LEGAL STUD. 821 (2000); Louis Kaplow & Steven Shavell, *Why the Legal System is Less Efficient Than the Income Tax in Redistributing Income*, 23 J. LEGAL STUD. 667 (1994).

37. PROWRA condemns out-of-wedlock pregnancies and motivates states to fight against such pregnancies. See 42 U.S.C. §§ 601(a)(3), 603(a)(2), 613(e) (2000); 45 C.F.R. § 270.4(f) (2004) (defining a formula to measure states' performance family formation). See generally Charles Murray, *Family Formation*, in THE NEW WORLD OF WELFARE 137 (Rebecca Blank & Ron Haskins eds., 2001) (discussing the affects of family structure on welfare).

dependence.<sup>38</sup>

Determination of eligibility and eligibility levels are not simple tasks since eligibility criteria are often based on personal properties that are private information.<sup>39</sup> For example, income<sup>40</sup> and disabilities<sup>41</sup> are common eligibility determinants of many welfare programs and tend to be private information of potentially eligible individuals. To overcome this problem of asymmetric information, welfare agencies employ two types of screening mechanisms: direct screening mechanisms that elicit relevant private information from welfare applicants and self-selection screening mechanisms that offer benefits that are designed to attract only targeted individuals.<sup>42</sup> As explained in the following Parts, each form of screening mechanisms may transform available benefits into unwelcome benefits.

## 2. Direct Screening Mechanisms

### a. Functional Structure

Direct screening mechanisms use bureaucracies to elicit private information by requiring the production of documentation that proves eligibility. The provision of the required documentation and the accompanying encounters with welfare bureaucrats constitute costly impediments to benefits for welfare applicants. The private costs of such impediments to benefits vary

38. See, e.g., 42 U.S.C. § 601(a)(2) (2000) (stating that, among other purposes, TANF programs should be designed to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage"); 42 U.S.C. § 602(a)(1)(A)(i) (instructing states to design TANF programs that would enable needy families to become self sufficient); 42 U.S.C. § 608(a)(7) (2000) (limiting, subject to exceptions, TANF cash assistance to sixty months).

39. See generally Milton Harris & Robert M. Townsend, *Resource Allocation Under Asymmetric Information*, 49 *ECONOMETRICA* 33 (1981).

40. See, e.g., 7 U.S.C. § 2014 (2000) (defining eligibility for food stamps); 29 U.S.C. § 1603 (2000) (defining eligibility for job training); 42 U.S.C. § 1396a(a)(10) (2000) (defining eligibility for Medicaid).

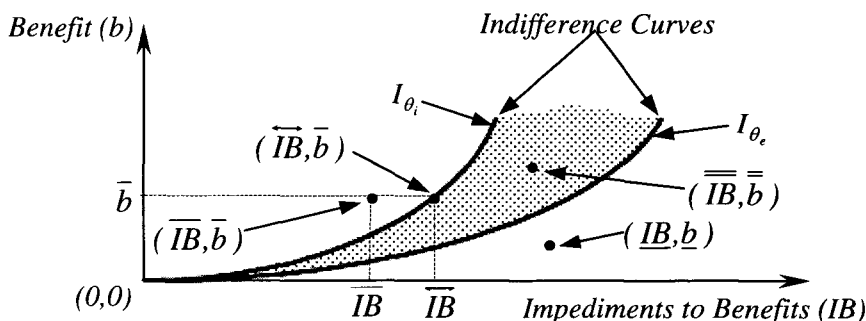
41. Four principal public benefit programs provide benefits for the aged, blind, or disabled: Social Security Disability Insurance, Supplemental Security Income, Medicare, and Medicaid. 42 U.S.C. § 1382(a) (2000) (defining eligibility for Supplemental Security benefits). The Job Training Partnership Act creates training programs for unskilled individuals and allows limited participation of individuals who are not economically disadvantaged, if such individuals have encountered barriers to employment, such as language proficiency, school dropouts, handicaps, alcoholism, or addictions. See 29 U.S.C. § 1603 (a)(2) (2000); 42 U.S.C. § 423 (2000) (defining eligibility for Social Security Disability Insurance).

42. For a general discussion, see Albert L. Nichols & Richard J. Zeckhauser, *Targeting Transfers Through Restrictions On Recipients*, 72 *AM. ECON. REV.* 372 (1982).

across individuals and supposedly impose higher burdens on ineligible applicants and lower the potential gains of fraud.<sup>43</sup> For example, the investment in paperwork tends to be less profitable for ineligible individuals than for eligible individuals, because the former are less likely to be determined eligible for benefits. Similarly, other things being equal, the opportunity costs generated by visits at welfare centers are higher for individuals with alternative income sources than for individuals with no such alternative sources.<sup>44</sup> Since the private costs of ineligible applicants are supposedly higher than those of eligible applicants, theoretically there is a level of private costs that deters only ineligible individuals from applying for benefits.

The functional structure of direct screening mechanisms is illustrated in Figure 1, which depicts the indifference curves of two types of individuals:  $\theta_e$ , representing eligible individuals, and  $\theta_i$ , representing ineligible individuals.

FIGURE 1



43. See *id.*, at 376-77.

44. See, e.g., 42 U.S.C. § 1396a(e)(8) (2000) (detailing that in the case of Medicare, eligibility requires recertification every twelve months, but states may require Medicare beneficiaries to establish eligibility as often as every six months); 7 C.F.R. §§ 273.14(b)(3), 273.2(e) (2005) (stating the Food Stamp regulations require a face-to-face interview at least once every twelve months and authorize state agencies to require more frequent interviews); 7 C.F.R. § 273.2(c) (2005) (stating the Food Stamp regulation also provides that "[e]ach household has the right to file an application form on the same day it contacts the food stamp office during office hours"); MICHAEL PONZA ET AL., U.S. DEPT OF AGRIC., CUSTOMER SERVICE IN THE FOOD STAMP PROGRAM 42-43 (1999), [http://www.fns.usda.gov/oane/MENU/Published/FSP/FILES/ProgramOperations/fs\\_pcust.pdf](http://www.fns.usda.gov/oane/MENU/Published/FSP/FILES/ProgramOperations/fs_pcust.pdf) (stating in practice, more than forty percent of applicants have to make more than one trip to the food stamp office).

The utility of a benefit for each type of individual is identical along her indifference curve, so that she is indifferent among the combinations of benefits and impediments to benefits lying on her indifference curve. Individuals have different indifference curves because while the monetary value of a benefit does not change across individuals, the costs of impediments to benefits are higher for ineligible individuals than for eligible individuals.<sup>45</sup> As a result, for any level of benefits there is a range of impediments to benefits that would deter ineligible individuals from applying for benefits, but would not deter eligible individuals.

The depicted indifference curves cross at point  $(0,0)$ , where no benefits are offered and there are no impediments to benefits. Since  $\theta_e$  and  $\theta_i$  are indifferent among the combinations of benefits and impediments to benefits along their indifference curves, each type would refrain from applying for any combination  $(IB,b)$  that lies on her depicted indifference curve. Each type, however, would be better off applying for a benefit at any point left to her indifference curve, despite the costs generated by the impediments to benefits at that point. For example, an ineligible individual would not gain from applying and receiving a benefit at point  $(\bar{IB},b)$ , because it is on her indifference curve; however, applying for a benefit at point  $(\bar{IB},\bar{b})$  would improve her position because at this point the benefit value outweighs the costs of the impediments to benefits (*i.e.*,  $\bar{IB} < \bar{IB}$ ). In contrast, applying for a benefit at any point  $(IB,b)$  right of her indifference curve would cost the individual more than the expected value of the benefit. Thus, when the offered benefit is at point  $(\underline{IB},\underline{b})$ , both types of individuals refrain from applying for the benefit. The screening goal is attained when the offered benefit is at a point in the area between the indifference curves of eligible and ineligible individuals, say at point  $(IB,b)$ , and then only eligible individuals,  $\theta_e$ , apply for the offered benefit.

Further sorting of welfare claimants is often conducted through the same screening technique used to distinguish between eligible and ineligible individuals. The information elicited by direct screening mechanisms often allows welfare bureaucrats to determine eligibility levels of welfare claimants. For example, under the Food Stamp Program, the impediments to benefits are designed, among other things, to elicit information on claimants'

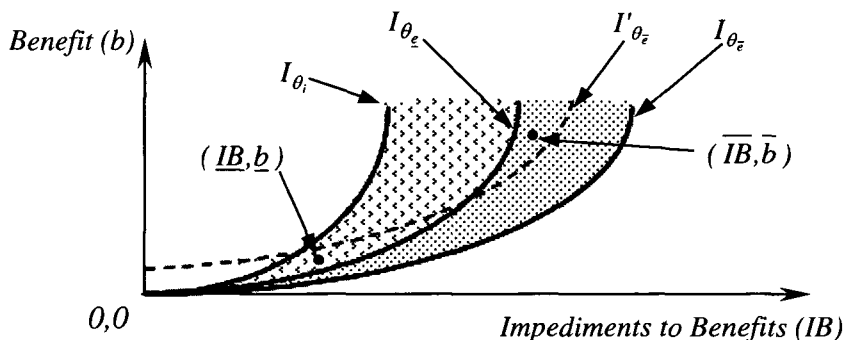
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45. That is, for any  $IB^*$  and  $b^*$ ,  $c_{\theta_j}(IB^*,b^*) < c_{\theta_i}(IB^*,b^*)$ , where  $c_{\theta_j}(IB^*,b^*)$  are the participation costs of type  $\theta_j, j=\{e,i\}$ . For variation in participation costs across individuals, see *supra* note 43 and accompanying text; *infra* Part I.D.

income. The monthly allotment of a household is generally determined by the maximum allotment for a household of that size minus thirty percent of the household's income.<sup>46</sup>

More generally, claimants who apply for large benefits may be required to provide additional documents, such as medical bills and court orders or cancelled checks for child support payments. The production of such additional documents represents greater impediments to benefits that are too costly for individuals who are eligible for low levels of benefits. This type of direct screening mechanism is illustrated in Figure 2, which depicts the indifference curves of two types of eligible individuals,  $\theta_e$  and  $\theta_{\bar{e}}$ , and one type of ineligible individual,  $\theta_i$ .

FIGURE 2



The eligibility level of  $\theta_{\bar{e}}$  is higher than that of  $\theta_e$ , or in other words,  $\theta_{\bar{e}}$  is eligible for a larger benefit than the benefit  $\theta_e$  is eligible for. Consider, first, the benefit at point  $(\underline{IB}, \underline{b})$ . This benefit is right to the indifference curve of ineligible individuals and left to the indifference curves of both  $\theta_e$  and  $\theta_{\bar{e}}$ , so that it is

46. The maximum allotment value is determined and adjusted by the Secretary of Agriculture, according to a "thrifty food plan," which is the diet required to feed a family of four persons. See 7 U.S.C. 2017 (2000) (defining how allotments should be calculated); 7 C.F.R. § 271.2 (2000) (defining the term "thrifty food plan"); *Applicants & Recipients: Fact Sheet on Resources, Incomes, and Benefits*, USDA Food & Nutrition Service, at [http://www.fns.usda.gov/fsp/applicant\\_recipients/fs\\_Res\\_Ben\\_Elig.htm](http://www.fns.usda.gov/fsp/applicant_recipients/fs_Res_Ben_Elig.htm) (Sept. 23, 2005) (providing the values of maximum allotments for households). For this property in welfare programs, see generally Brendan O'Flaherty, *The Form of U.S. In-Kind Assistance*, 15 J.L. ECON. & ORG. 401 (1999).

unattractive for ineligible individuals and attractive for both types of eligible individuals. Thus, the benefit at point  $(\underline{I}B, \underline{b})$  distinguishes between eligible and ineligible individuals, but it is not sensitive to differences between eligible individuals of different eligibility levels. Consider now the benefit at point  $(\overline{I}B, \overline{b})$ . For  $\theta_e$ , and only for this type, this benefit is even better than the benefit at  $(\underline{I}B, \underline{b})$ , despite the greater impediments to benefits.<sup>47</sup> Thus, when benefits are offered at points  $(\underline{I}B, \underline{b})$  and  $(\overline{I}B, \overline{b})$ , ineligible individuals,  $\theta_i$ , do not apply for benefits, eligible individuals of type  $\theta_e$  apply for and receive a small benefit at point  $(\underline{I}B, \underline{b})$ , and eligible individuals of type  $\theta_e$  apply for and receive a large benefit at point  $(\overline{I}B, \overline{b})$ .

### b. *The Private Costs of Direct Screening Mechanisms*

Impediments to benefits, or "ordeals," are probably the most common type of screening mechanisms.<sup>48</sup> The social costs of ordeals represent pure deadweight loss that society is willing to tolerate for the promotion of specific redistributive goals. This social sacrifice, however, often does not accomplish its stated goals due to actual and perceived private costs of participation in welfare programs that discourage large percentages of eligible persons from applying for and participating in these programs. For example, studies of participation in Medicaid consistently indicate that bureaucratic barriers prevent many eligible individuals from completing their applications.<sup>49</sup>

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47. In Figure 2, for  $\theta_e$ , any combination of a benefit and impediments to benefits along the indifference curve  $I_{\theta_e}$  is better than any combination of a benefit and impediments to benefits along  $I_{\theta_i}$ .

48. See, e.g., Michael Lipsky, *Bureaucratic Disentitlement in Social Welfare Programs*, 58 SOC. SERV. REV. 3 (1984) (discussing administrative practices that may prevent eligible individuals from obtaining benefits); see also MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES xi (1980) [hereinafter STREET-LEVEL BUREAUCRACY] (studying the structure of public agencies "whose workers have discretion over the dispensation of benefits or the allocation of public sanctions").

49. See, e.g., Jennifer Stuber & Karl Kronebusch, *Stigma and Other Determinants of Participation in TANF and Medicaid*, 23 J. PUB. POLY & MGMT. 509 (2004); U.S. GEN. ACCOUNTING OFFICE, HEALTH CARE REFORM: POTENTIAL DIFFICULTIES IN DETERMINING ELIGIBILITY FOR LOW-INCOME PEOPLE (1994) (studying the causes of low participation rates in Medicaid and concluding that the vast majority of eligible nonparticipants were barred by bureaucratic barriers and that states know little about these barriers); SHEILA R. ZEDLEWSKI ET AL., URBAN INST., OCCASIONAL PAPER NO. 64, FAMILIES COPING WITHOUT EARNINGS OR GOVERNMENT CASH ASSISTANCE 8-9 (2003), available at [http://www.urban.org/UploadedPDF/410634\\_OP64.pdf](http://www.urban.org/UploadedPDF/410634_OP64.pdf) (interviewing ninety-five extremely poor families living without employment or government cash assistance and finding that for twenty-eight percent of these families the primary reason for

Ordeals discourage eligible individuals, especially those in welfare programs, by diminishing eligibility levels of the kind discussed above. Given the costs of impediments to benefits, such programs tend to result in unattractive small benefits for eligible individuals who are close to the eligibility threshold. For example, households eligible for food stamps with relatively "high" income may be eligible for a minimum monthly allotment of ten dollars.<sup>50</sup> For many of these households, the private costs of participating in the Food Stamp Program and using food stamps outweigh the value of the offered benefit. Nonparticipation of this sort simply reflects a positive relationship between the benefit size and participation propensity. Indeed, situations of nearly-ineligible individuals who refrain from using benefits are prevalent.<sup>51</sup> For example, in one study eligible women with relatively high income or with short expected welfare spells were found the least likely to enter welfare programs, presumably because the expected benefits of enrollment did not outweigh the application and participation costs.<sup>52</sup> Evidence also indicates that eligible individuals whose needs for the offered benefits are relatively low tend to refrain from taking up these benefits more than other eligible individuals do.<sup>53</sup> Such findings are hardly surprising since the marginal value

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not-participating in TANF is the involved hassle).

50. 7 U.S.C. § 2017(a).

51. See, e.g., Nicholas A. Barr & Robert E. Hall, *The Probability of Dependence on Public Assistance*, 48 *ECONOMICA* 109, 117-18 (1981) (finding a positive relationship between the benefit level and probability of dependence on AFDC benefits); Blank & Ruggles, *supra* note 17, at 79-83 (finding that participation in the FSP increased with the size of the benefit); CUNNINGHAM, *supra* note 35, at 12 (finding that participation rates in the Food Stamp Program generally decrease with benefit levels, even among very poor households); Beth Daponte et al., *Why Do Low-Income Households Not Use Food Stamps? Evidence from an Experiment*, 34 *J. HUM. RESOURCES* 612 (1999) (finding that people eligible for larger food stamp benefits are more likely to take them up); Kathleen McGarry, *Factors Determining Participation of the Elderly in Supplemental Security Income*, 31 *J. HUM. RESOURCES* 331 (1996) (finding a positive relationship between benefit size and the likelihood of participation in the Supplemental Security Income program); PONZA ET AL., *supra* note 44, at 34-37 (finding that households dissatisfied with the Food Stamp Program are more likely to reside in urban areas and have low monthly food stamp benefits compared with households that are satisfied).

52. Blank & Ruggles, *supra* note 17, at 80-81; see also Robert Plotnick, *Turnover in the AFDC Population: An Event History Analysis*, 18 *J. HUM. RESOURCES* 65 (1983).

53. See, e.g., Blank & Ruggles, *supra* note 17, at 80-81. (finding that the likelihood of participation in the AFDC and Food Stamp programs among woman is positively related to medical needs); Steven J. Haider et al., *Food Stamps and the Elderly: Why Is Participation So Low?*, 38 *J. HUM. RESOURCES* 1080 (2003) (finding that the elderly who are eligible for food stamps but do not enroll in the Food Stamp program tend to be less needy than other eligible individuals and the elderly who do enroll); McGarry, *supra* note 51 (finding that the likelihood of participation

of income normally declines with need.<sup>54</sup>

Direct screening mechanisms may also discourage some eligible individuals when non-cash benefits are offered. Statistically, welfare recipients value non-cash benefits below their cost,<sup>55</sup> although non-cash benefits are offered to provide for very basic needs, such as nutrition and housing.<sup>56</sup> This preference of cash-equivalents over non-cash benefits is generally explained by myopia of welfare recipients, divergence between private interests and social interests underlying the provision of non-cash benefits,<sup>57</sup> and reliance on the welfare systems to bail out in the event of a crisis.<sup>58</sup> The differences between perceived values of non-cash benefits and their actual monetary values emphasize that eligible individuals are not indifferent among various forms of benefits of the same value, but rather attribute different values to certain forms of benefits.

In actuality, it is sometimes difficult to distinguish between ordeals designed for screening purposes and garden-variety ordeals that plague bureaucracies.<sup>59</sup> Like other bureaucracies,

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in the Supplemental Security Income programs is negatively related to financial sources).

54. See, e.g., Blank & Ruggles, *supra* note 17, at 51 (finding that participation of eligible women in the AFDC and Food Stamp Programs is most likely to occur "among women with lower current and future income"); John Fitzgerald, *Welfare Durations and the Marriage Markets: Evidence from the Survey of Income and Program Participation*, 26 J. HUM. RESOURCES 545, 555-60 (1991) (finding that AFDC spells are inversely related to propensity to end welfare through marriage).

55. One empirical manifestation of this preference of cash equivalents over in-kind benefits is the "cash-out puzzle" that describes the tendency of the marginal propensity to consume food purchased with food stamps to be much larger than that out of cash income. See ROBERT BREUNING ET AL., U.S. DEPT AGRIC., FOOD ASSISTANCE AND RESEARCH REP. NO. 12, EXPLAINING THE FOOD STAMP CASH-OUT PUZZLE (2001) (finding that the cash-out puzzle is present predominantly in multi-adult households); Thomas M. Fraker et al., *The Effect of Food Stamp Cashout on Food Expenditures: An Assessment of the Findings from Four Demonstrations*, 30 J. HUM. RESOURCES 633 (1995) (summarizing existing evidence on the cash-out puzzle); see also William J. Reeder, *The Benefits and Costs of the Section 8 Existing Housing Program*, 26 J. PUB. ECON. 349 (1985) (finding that, on average, beneficiaries of public housing programs value a \$100 subsidy at \$83 and that public-housing recipients are induced to consume 11% more housing and 6% less of other goods than they would with the cash equivalents).

56. See generally Lester C. Thurow, *Cash Versus In-Kind Transfers*, 64 AM. ECON. REV. 190 (1974).

57. A prime example of interest divergence is commodity specific externalities, such as the case of vaccines. See generally *id.*

58. See, e.g., Stephen Coate, *Altruism, the Samaritan's Dilemma, and Government Transfer Policy*, 85 AM. ECON. REV. 46 (1995) (justifying the provision of public insurance benefits instead of cash equivalents); see also Buchanan, *supra* note 9.

59. See, e.g., Coe, *supra* note 17, at 1039 (1983) (finding that approximately



welfare agencies furnish their employees with low-powered incentives and, consequently, many welfare workers have insufficient motivations to carry out their tasks diligently and consistently.<sup>60</sup> Furthermore, even when welfare workers are sufficiently motivated, the lack of resources that characterize welfare systems frequently make encounters with the welfare system unpleasant, time consuming, and uncertain with respect to outcomes.<sup>61</sup> Garden-variety bureaucratic ordeals differentiate among individuals according to their opportunity costs and value of additional income, and disproportionately burden the more and the less disadvantaged individuals. The less disadvantaged eligible individuals are discouraged because of their opportunity costs and small expected benefits.<sup>62</sup> Garden-variety bureaucratic ordeals, however, also disproportionately burden the more disadvantaged individuals whose skills and abilities make it particularly difficult for them to navigate through bureaucracies, thereby also leading to nonparticipation among the more disadvantaged eligible individuals. To summarize, garden-variety bureaucratic ordeals are a characteristic of the welfare system that has no functional purpose, yet their deterring impact on eligible individuals may be significant and lead to polarized participation patterns.

### 3. Self-Selection Screening Mechanisms

#### a. *Functional Structure*

In addition to direct screening mechanisms, governments

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twenty percent of food-stamp eligible nonparticipant households refrained from applying for food stamps because of administrative issues). For empirical studies of state food stamp agencies' practices that affect applicants' and participants' private costs, see SUSAN BARTLETT ET AL., FOOD STAMP PROGRAM ACCESS STUDY: ELIGIBLE NONPARTICIPANTS (2003) [hereinafter ELIGIBLE NONPARTICIPANTS], available at <http://www.ers.usda.gov/publications/efan03013/efan03013-2/>; VIVIAN GABOR ET AL., U.S. DEPT OF AGRIC., E-FAN NO. 03013-1, FOOD STAMP PROGRAM ACCESS STUDY: LOCAL OFFICE POLICIES AND PRACTICES (2003) [hereinafter LOCAL OFFICE POLICIES AND PRACTICES], available at <http://www.ers.usda.gov/publications/efan03013/efan03013-1/>.

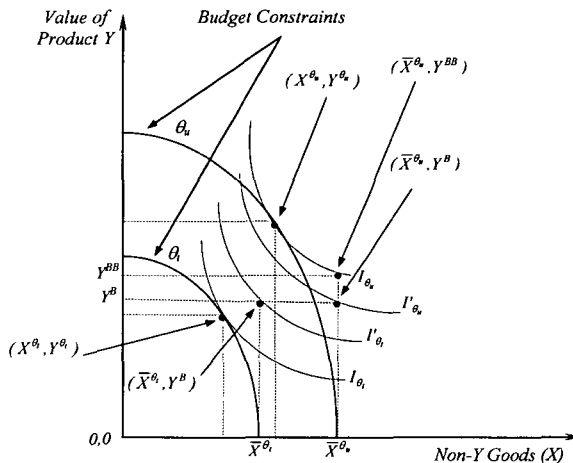
60. For incentives in bureaucracies, see generally Susan Rose-Ackerman, *Reforming Public Bureaucracy Through Economic Incentives?*, 2 J.L. ECON. & ORG. 131 (1986); Jean Tirole, *The Internal Organization of Government*, 46 OXFORD ECON. PAPERS 1 (1994). For bureaucracies as a source of inefficiencies, see generally OLIVER E. WILLIAMSON, *THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING* 148-49 (1985).

61. See STREET-LEVEL BUREAUCRACY, *supra* note 48, at 29-39; Lipsky, *supra* note 48.

62. See *supra* notes 51-54 and accompanying text.

employ two forms of self-selection screening mechanisms: in-kind benefits and subsidies. Both forms of benefits offer goods or services at a reduced price that could be as low as zero for certain in-kind benefits, such as public education. In-kind benefits and subsidies function as screening mechanisms when untargeted individuals buy on the market substitutes to the goods and services that are offered at reduced prices.<sup>63</sup> Put simply, self-selection screening mechanisms offer benefits that are forgone by untargeted individuals in favor of market alternatives.<sup>64</sup> Figure 3 presents the functional structure of self-screening mechanisms designed to distinguish between targeted individuals,  $\theta_t$ , and untargeted individuals,  $\theta_u$ , through their own choices.

FIGURE 3



Product  $Y$  is assumed to be a valuable good or service, such as medical services<sup>65</sup> or education.<sup>66</sup>  $Y$  is available at varying levels of

63. Timothy Besley & Stephen Coate, *Public Provision of Private Goods and the Redistribution of Income*, 81 AM. ECON. REV. 979 (1991). In-kind benefits and subsidies do not necessarily function as self-selection screening mechanisms and may simply represent non-cash benefits intended to assure that public benefits are used for specific goals, such as nutrition.

64. See generally Charles Blackorby & David Donaldson, *Cash Versus Kind, Self-Selection, and Efficient Transfers*, 78 AM. ECON. REV. 691 (1988).

65. See generally David Cutler & Jonathan Gruber, *Does Public Insurance Crowd Out Private Insurance?*, 111 Q.J. ECON. 391 (1996); Stuber & Kornebusch, *supra* note 49, at 519-24 (2004) (finding that individuals eligible for Medicaid believe that Medicaid recipients receive inferior services from health providers). In the case of medical insurance, screening mechanisms that rely on the value of the public coverage mostly utilize employers' choices rather than choices of eligible individuals. See, e.g., Robert Pear, *Drug Law is Seen Leading to Cuts in Retiree*

quality and its consumption cannot be supplemented. That is, an individual who consumes  $y$  at level  $y'$ , cannot purchase additional  $y$  to improve the consumed quality of product  $y$ . The importance of this characteristic is that, if the government offers a benefit  $\tilde{y}$ , a benefit recipient cannot use his private funds to supplement its quality. Rather, he can either consume  $y$  at this quality level or pay the full price of a higher quality level. Thus, if he has preferences for quality and can afford quality he will forgo the benefit. Figure 3 illustrates the choices each individual is facing between quality level of  $y$  and the consumption of all other products, which is presented as the consumption of a composite good  $x$ . The budget constraint of each individual determines the upper boundary of the set of all feasible consumption bundles available to him. The best affordable bundle for each individual is at the point on his budget constraint that lies on the highest attainable indifference curve. As shown, the best available bundle for targeted individuals is  $(x^{\theta_t}, y^{\theta_t})$  and the best available bundle for untargeted individuals is  $(x^{\theta_u}, y^{\theta_u})$ .  $(x^{\theta_u}, y^{\theta_u})$  is better than  $(x^{\theta_t}, y^{\theta_t})$  because it contains  $y$  of a higher quality and more  $x$ . When the government offers a benefit, an individual who takes up the benefit can use all his income to consume  $x$ , so that in addition to the benefit targeted individuals can consume up to  $\bar{x}^{\theta_t}$  and untargeted individuals can consume up to  $\bar{x}^{\theta_u}$ . When the offered benefit is  $y^B$ , only targeted individuals can improve their position by taking up the benefits. They will switch to bundle  $(\bar{x}^{\theta_t}, y^B)$ , increase the quality level of consumed  $y$  and increase the consumption of all other goods. Untargeted individuals will refrain from taking benefit  $y^B$ , because the bundle  $(\bar{x}^{\theta_u}, y^B)$  is not as good as bundle  $(x^{\theta_u}, y^{\theta_u})$ , since it lies on a lower indifference curve than that on which  $(x^{\theta_u}, y^{\theta_u})$  lies.

Note that as long as the quality of the offered benefit is lower than the quality of  $y^{BB}$ , only targeted individuals take up the offered benefit and untargeted individuals purchase the market alternative. When the offered benefit is  $y^{BB}$ , untargeted individuals are indifferent between bundle  $(\bar{x}^{\theta_u}, y^{BB})$  and bundle  $(x^{\theta_u}, y^{\theta_u})$ , and for any benefit of a higher quality than  $y^{BB}$ , untargeted individuals are better off taking up the offered benefit. Therefore, the highest

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*Plans: Effect of Medicare Shift*, N.Y. TIMES, July 14, 2004, at A1 (discussing prospective cuts in drug coverage benefits provided by employers following the expansion of Medicare coverage).

66. For a study of public education benefits, see Sam Peltzman, *The Effect of Government Subsidies-in-Kind on Private Expenditures: The Case of Higher Education*, 81 J. POL. ECON. 1 (1973).

quality of the government may offer is  $r^{BB}$ .

*b. Interpretation of Self-Selection Screening Mechanisms*

The foregoing presentation of self-selection screening mechanisms demonstrates that unwelcome benefits may be ordinary policy tools. Certain welfare benefits are designed to attract targeted individuals and to be forgone by untargeted individuals, thereby promoting underlying redistributive goals. Nevertheless, as in the case of direct screening mechanisms, self-selection screening mechanisms may also screen out eligible individuals. In-kind benefits and subsidized goods and services may be unwelcome by targeted individuals who have strong tastes for quality and social status.<sup>67</sup> For example, targeted families may send their children to private schools to improve their prospects, and similarly, some individuals eligible for Medicaid prefer to pay for private medical insurance.<sup>68</sup> This outcome is another illustration of unwelcome benefits resulting from heterogeneity among eligible individuals. In this respect, heterogeneity in tastes and heterogeneity in costs incurred during encounters with bureaucratic impediments to benefits are similar in their effects.

*B. The Costs of Discretionary Eligibility Criteria*

Until the 1960s, welfare workers had significant discretion over the provision and termination of welfare assistance. This discretion was often misused, especially against African-Americans.<sup>69</sup> The Civil Rights Movement led to formalization of eligibility criteria, promoted transparency of the welfare system, and mitigated occurrences of discrimination by welfare workers. Formal eligibility criteria, however, presented new problems as formal criteria can address only limited number of circumstances that may not fit the specific conditions of many disadvantaged individuals. The 1996 welfare reform re-introduced discretionary eligibility criteria in the welfare system to enable states greater flexibility in the provision of benefits. This feature of the reform has been studied and criticized by many legal scholars.<sup>70</sup> This Part explains why often-discretionary criteria function very similarly to the generic impediments to benefits discussed above and,

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67. For the effects of the pursuit of status, see *infra* Part II.B.2.

68. See, e.g., *supra* note 65.

69. See, e.g., FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 151-58 (2d ed., 1993); Mashaw, *supra* note 16.

70. For a comprehensive and important study, see Diller, *supra* note 10.

therefore, may result in polarized participation patterns.

Discretionary eligibility criteria create disparities between apparent eligibility for benefits and actual availability of benefits because apparent eligibility tends to rely on formal criteria. In most circumstances, discretionary criteria disqualify some individuals who meet the formal criteria. Welfare laws may authorize some discretion to qualify some individuals for benefits who would not be eligible otherwise, but the scope of such discretion is well defined to enforce budget constraints. In contrast, discretion given to raise eligibility thresholds tends to be less defined. For example, PRWORA authorizes states to exempt up to twenty percent of their caseload from the sixty-month federal time limit on TANF cash assistance in cases of extreme hardship<sup>71</sup> and to count studying individuals as working individuals to satisfy TANF work requirements, as long as such individuals constitute up to twenty percent of families determined to be engaged in work.<sup>72</sup> In contrast, under TANF regulations, eligibility levels may be related to compliance with "individual responsibility plans" tailored by eligibility workers.<sup>73</sup> In a similar fashion, the Job Training Partnership Act regulations provide that, while formal eligibility is a prerequisite for application, enrollment eligibility is discretionary and determined by eligibility workers.<sup>74</sup>

Discretionary eligibility criteria entail two types of costs: costs of encounters with bureaucrats and meeting their requirements, and uncertainty costs. The first type of costs is self-explanatory. The second type of costs, uncertainty costs, result from the fact that discretionary criteria are unlikely to be applied consistently by all welfare workers, or even by an individual welfare worker, due to factual complexities and human mistakes. The costs associated with discretionary criteria affect first and

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71. 42 U.S.C. § 608(a)(7)(C). States may exceed the twenty percent limit and pay from their own funds to cover for the excess exempted families.

72. 42 U.S.C. § 607(c)(2). Exempted studying individuals should participate in vocational education activities or be a teen head of household who maintains satisfactory school attendance.

73. 42 U.S.C. §§ 608(b); 45 C.F.R. §§ 261.12-13. The personal obligations of such plans could include "going to school, maintaining certain grades, keeping school-aged children in school, immunizing children, going to classes, or doing other things that will help the individual become or remain employed in the private sector." 45 C.F.R. § 261.12(b).

74. 20 C.F.R. §§ 628.505-515; see also Robert J. LaLonde, *Employment and Training Programs*, in MEANS-TESTED, *supra* note 17, at 517, 520 ("Policy has consistently required that program operators provide employment and training services only to eligible individuals who they believe would benefit from the program.").

foremost the less disadvantaged individuals because, given the small magnitude of their benefits, they are particularly sensitive to changes in participation costs. Discretionary criteria, however, may also affect the more disadvantaged individuals because they induce conditions for "statistical discrimination," which occurs when an agent with imperfect information utilizes a characteristic to apply a decision-making rule that is based on perceived distribution of characteristics in the relevant population. Such decision rules may lead, in practice, to unequal treatment although the agent has no intention to engage in discrimination.<sup>75</sup> For example, applicants with poor communication skills may be disadvantaged in their interactions with welfare bureaucrats if the welfare worker fails to understand their situation.<sup>76</sup> Thus, discretionary eligibility criteria constitute another factor that may lead to polarized participation patterns.

In addition to its deterring effect on participation, uncertainty created by discretionary criteria complicates the estimation of participation rates, since it is hard to measure its aggregate impact on eligibility and on the number of eligible individuals. Standard economic estimations tend to ignore discretionary eligibility criteria, thereby possibly concluding that participation rates are lower than they actually are.

Theoretically, discretionary eligibility criteria could improve the well-being of disadvantaged individuals if welfare workers could match benefits to needs with no additional costs for welfare claimants. In practice, many welfare advocates believe that discretionary criteria are used to manipulate participation, rather than to match benefits to needs.<sup>77</sup> From this perspective, a welfare system that employs only formal eligibility criteria could save the costs of the bureaucracy required for the application of discretionary criteria and increase the size of benefits.

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75. In economics literature, models of statistical discriminations primarily address labor and insurance markets. See, e.g., Kenneth J. Arrow, *The Theory of Discrimination*, in DISCRIMINATION IN LABOR MARKETS 3 (Orley C. Ashenfelter & Albert Rees eds., 1973); B.G. Dahlby, *Adverse Selection and Statistical Discrimination: An Analysis of Canadian Automobile Insurance*, 20 J. PUB. ECON. 121 (1983); Edmund E. Phelps, *The Statistical Theory of Racism and Sexism*, 62 AM. ECON. REV. 659 (1972).

76. See, e.g., Ana I. Balsa & Thomas G. McGuire, *Statistical Discrimination in Health Care*, 20 J. HEALTH ECON. 881 (2001) (discussing statistical discrimination by health care providers).

77. See Diller, *supra* note 10; Super, *supra* note 8.

C. *Deliberate Deterrence of Potentially Eligible Individuals*

Thus far, the deterring effects of bureaucratic impediments and other ordeals have been regarded as costly byproducts of screening mechanisms and welfare bureaucracies. Discouraging potentially eligible individuals from applying for welfare benefits, however, may be one of the system's goals, rather than one of its byproducts. This Part explains why states have incentives to create additional impediments to benefits and which individuals are most likely to be affected by the additional impediments to benefits.

In the past, intentional bureaucratic impediments to benefits might have been in violation of the Due Process Clause.<sup>78</sup> PRWORA, however, abolished the federal entitlements to cash assistance,<sup>79</sup> opened the door to strategic denials of welfare benefits, and strengthened incentives for such denials.<sup>80</sup> Due to these incentives, states and localities often employ bureaucratic means to narrow the scope of benefit programs to pursue particular political agendas,<sup>81</sup> to push potentially eligible individuals to other states,<sup>82</sup> to keep the unused portions of the block grants,<sup>83</sup> to avoid federal penalties for overpayments,<sup>84</sup> and to

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78. *Goldberg v. Kelly*, 397 U.S. 254, 261-62 (1970) (declaring that welfare benefits "are a matter of statutory entitlement for persons qualified to receive them" and their termination involves state action that adjudicates important rights, and procedural due process is applicable to termination of welfare benefits); *King v. Smith*, 392 U.S. 309 (1968) (concluding that a provision of the Social Security Act requiring prompt payment of benefits to all eligible individuals had the effect of making eligibility standards legally enforceable rights).

79. 42 U.S.C. § 601(b). For an analysis and the consequences of this legislation, see Super, *supra* note 16.

80. Incentives for state denials of welfare benefits existed already prior to PRWORA. See REBECCA M. BLANK, *IT TAKES A NATION: A NEW AGENDA FOR FIGHTING POVERTY* 207-19 (rev. ed. 1998).

81. Given the complexity of welfare regulations, it is unclear whether, for the public, bureaucratic means are less observable than formal eligibility criteria. Changes in bureaucratic procedures, however, are likely to be less visible than changes in formal eligibility criteria. Thus, the promotion of unpopular agendas, modifications of past mistakes, and budget cuts can be facilitated through bureaucratic means almost without attracting political opposition.

82. One of the arguments against the devolution of welfare responsibilities to the states is that it would lead to a "race to the bottom:" states would cut benefits to prevent becoming a magnet for welfare-seeking migrants. For analyses of this argument, see F.H. Buckley & Margaret F. Brinig, *Welfare Magnets: The Race for the Top*, 5 SUP. CT. ECON. REV. 141 (1997); Roderick M. Hills, Jr., *Poverty, Residency, and Federalism: States' Duty of Impartiality Toward Newcomers*, 1999 SUP. CT. REV. 277 (1999); Shaubin A. Talesh, *Welfare Migration to Capture Higher Benefits: Fact or Fiction?*, 32 CONN. L. REV. 675 (2000).

83. 42 U.S.C. § 603(a). Block grants paid to the states are unrelated to present caseloads and states can keep all of the unused funds.

gain performance bonuses.<sup>85</sup> For example, states that do not meet TANF's minimum work rate requirements are subject to financial penalties.<sup>86</sup> A state with high unemployment rates that is under risk of not meeting the work rate requirements has incentives to deny TANF assistance to unemployed eligible individuals, almost regardless of local economic conditions. Such incentives exist because states' work rate requirements are independent of local economic conditions.<sup>87</sup> Furthermore, PRWORA treats caseload reductions almost like increases in work participation rates.<sup>88</sup> Therefore, through caseload reductions states have been able to meet work rate requirements, regardless of how many current or former recipients are actually employed.<sup>89</sup> Similarly, under the Food Stamp Act, states may be fined<sup>90</sup> or rewarded<sup>91</sup> for performance determined by "payment error rates" which are defined by overpayments and underpayments, but not by percentages of nonparticipating eligible individuals.<sup>92</sup> Denying claimants could be a safe way to mitigate the risks of penalty.

States and localities discourage eligible individuals from participating in welfare programs through diversion policies and

84. Federal policies that penalize states and localities for payment errors tend to focus on overpayment, so that overpayments are costlier than underpayments. See EVELYN Z. BRODKIN, *THE FALSE PROMISE OF ADMINISTRATIVE REFORM: IMPLEMENTING QUALITY CONTROL IN WELFARE* 9-11, 94-100 (1986) (discussing the asymmetry between penalties for overpayments and lack of penalties for underpayments in the Aid for Families with Dependent Children program that preceded TANF); Timothy J. Casey & Mary R. Mannix, *Quality Control in Public Assistance: Victimizing the Poor Through One-Sided Accountability*, 22 CLEARINGHOUSE REV. 1381, 1381-83 (1989) (analyzing the effects of penalties for overpayment).

85. States that promote self-sufficiency among welfare recipients may be rewarded up to \$200 million a year. 42 U.S.C. § 603(a)(4) (providing a framework for performance bonuses); 45 C.F.R. §§ 270.1-270.5 (defining performance formulas).

86. 42 U.S.C. § 609(a)(3).

87. 42 U.S.C. § 607(b). For the conditions that may mitigate minimum work rates, see 45 C.F.R. §§ 261.52, 262.5.

88. 42 U.S.C. § 607(b)(3); see also 45 C.F.R. §§ 261.21, 261.23 (defining minimum work participation rates); 45 C.F.R. § 261.40 (allowing reduction of work participation requirements for decreases in caseload).

89. 45 C.F.R. § 261.40 (allowing reduction of work participation requirements for decreases in caseload).

90. 7 U.S.C. § 2025(c)(1)(C), as amended by Section 4019 of the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 § 4019, 116 Stat. 321 (providing that the amendment shall not apply before 2004).

91. 7 U.S.C. § 2025(c)(1).

92. 7 U.S.C. § 2025(c)(2). For an analysis of the skewed incentives created by this reward structure, see Ed Bolen, *A Poor Measure of the Wrong Thing: The Food Stamp Program's Quality Control System Discourage Participation by Working Families*, 53 HASTINGS L.J. 213 (2001).



bureaucratic impediments to benefits. Diversion programs seek to dissuade potentially eligible individuals from applying for welfare benefits by offering a lump-sum payment in lieu of a larger ongoing assistance (in net present value terms), imposing job search requirements as a precondition for eligibility, and encouraging applicants to seek alternative income sources.<sup>93</sup> Bureaucratic impediments aimed at discouraging eligible individuals from applying for benefits may take many forms. Examples include conditioning the right to apply for benefits on several visits to the welfare office, not notifying welfare claimants of rights they are not aware of, refraining from providing application materials, providing confusing application forms, denying the existence of available benefits, and institutionalizing efforts to dissuade claimants from applying for benefits. Such practices and others were introduced in New York City by the Giuliani administration.<sup>94</sup> Many states' administrations of Medicaid programs follow similar patterns. According to a study conducted in Georgia, Illinois, and Massachusetts, approximately fifty percent of Medicaid applications are denied because applicants cannot provide the necessary documentation within the required time or fail to attend all of the required interviews.<sup>95</sup>

Efforts to discourage participation in welfare programs are likely to contribute to polarized participation patterns in a fashion similar to that of the previously discussed impediments to benefits. Such efforts have a powerful impact on the less

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93. See generally Diller, *supra* note 10, at 1152-57 (describing common diversion strategies); Rebecca A. London, *Which TANF Applicants Are Diverted, and What Are Their Outcomes?*, 77 SOC. SERV. REV. 373 (2003) (noting that at least 34 states employ diversion policies); KATHLEEN A. MALOY ET AL., *DIVERSION AS A WORK-ORIENTED WELFARE REFORM STRATEGY AND ITS EFFECT ON ACCESS TO MEDICAID: AN EXAMINATION OF THE EXPERIENCES OF FIVE LOCAL COMMUNITIES* (1999) (providing a comprehensive study of diversion policies).

94. Several studies and courts examined the practices employed by the Giuliani administration and concluded that they violated the law. See, e.g., *Reynolds v. Giuliani*, 118 F. Supp. 2d 352 (S.D.N.Y. 2000); *Reynolds v. Giuliani*, 43 F. Supp. 2d 492 (S.D.N.Y. 1999); *Reynolds v. Giuliani*, 35 F. Supp. 2d 331 (S.D.N.Y. 1999); FOOD & NUTRITION SERV., U.S. DEPT OF AGRIC., NEW YORK PROGRAM ACCESS REVIEW NOV.-DEC. 1998 (1999), available at <http://www.welfarelaw.org/contents/webbul/nyprog5.pdf>; Alice Bers, *Reforming Welfare After Welfare Reform*, 36 HARV. C.R.-C.L. L. REV. 571 (2001) (describing the bureaucratic impediments and analyzing the *Reynolds* cases); Comm. on Soc. Welfare Law, *Welfare Reform in New York City: The Measure of Success*, 56 REC. ASS'N B. CITY N.Y. 322 (2001) (questioning the success of the Giuliani programs); Comm. on Soc. Welfare Law, *The Wages of Welfare Reform: A Report on New York City's Job Centers*, 54 REC. ASS'N B. CITY N.Y. 472 (1999) (describing the job center program).

95. U.S. GEN. ACCOUNTING OFFICE, *supra* note 49. See also Stuber & Kornebusch, *supra* note 49 (providing similar findings in other states).

disadvantaged individuals because of their sensitivity to participation costs and on the more disadvantaged individuals because of their difficulties in navigating through bureaucracies and overcoming bureaucratic hurdles.

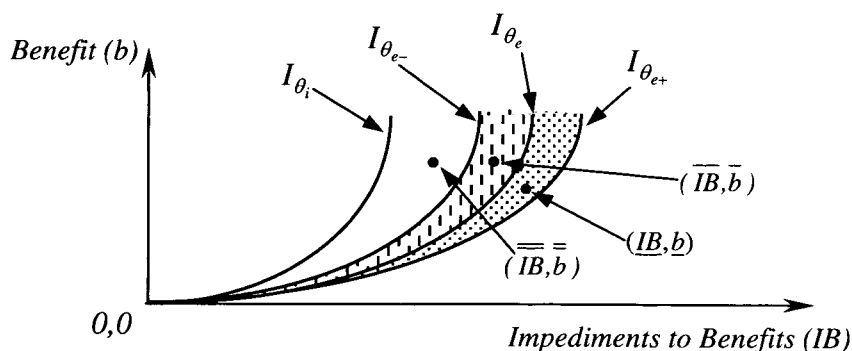
#### *D. Heterogeneity of Eligible Individuals and Participation Patterns*

The previous Parts emphasized that common impediments to benefits do not burden all eligible individuals equally. Rather, the more and the less disadvantaged individuals are often particularly sensitive to certain forms of impediments to benefits, albeit for different reasons. This non-uniform burden of impediments to benefits is a product of the design of welfare mechanisms for typical profiles of targeted individuals. In actuality, eligible individuals are not alike and, therefore, impediments to benefits are costlier for some of them than for others. This Part summarizes and extends the previous conclusions regarding the propensity of eligible individuals to refrain from applying for welfare benefits by focusing on the meaning of heterogeneity in the context of facing impediments to benefits. Part I.D.1 graphically illustrates the meaning of heterogeneity by presenting three subtypes of eligible individuals: burdened, average, and advantaged ones. Part I.D.2 explains which individuals are likely to fall within each subtype of eligible individuals and addresses the nature of the distribution of participation in welfare programs.

##### 1. The Meaning of Heterogeneity

Figure 4 illustrates how heterogeneity of eligible individuals may create situations of unwelcome benefits.

FIGURE 4



In this illustration, the welfare program is designed to distinguish between eligible and ineligible individuals,  $\theta_e$  and  $\theta_i$ , respectively. There are three subtypes of eligible individuals: average eligible individuals,  $\theta_e$ ; burdened eligible individuals,  $\theta_{e-}$ , for whom impediments to benefits are costlier than for average eligible individuals; and advantaged eligible individuals,  $\theta_{e+}$ , for whom impediments to benefits are less costly than for average eligible individuals. The differences among the subtypes are represented by their indifference curves. The indifference curve of burdened eligible individuals is left of the indifference curve of average eligible individuals and the indifference curve of advantaged eligible individuals is right to the indifference curve of average eligible individuals. Only combinations of benefits and impediments to benefits in the area between the indifference curve of the burdened eligible individuals and the indifference curve of the ineligible individuals would be attractive to all eligible individuals and unattractive to ineligible individuals. The problem is that this area, which includes the combination at point  $(\underline{IB}, \underline{b})$ , may be too small for a practical design of welfare programs. Figure 4 also illustrates that there is a set of combinations of benefits and impediments to benefits that is attractive only to average and advantaged eligible individuals and a set that is attractive only to advantaged eligible individuals. The former set is defined by the area between the indifference curves of the burdened and average eligible individuals and includes the combination at point  $(\underline{IB}, \underline{b})$ . The latter set is defined by the area between the indifference curves of the average and advantaged eligible individuals and include the combination at point  $(\underline{IB}, \underline{b})$ .

## 2. Interpretation of Heterogeneity

Heterogeneity of eligible individuals that establishes differences in the value of offered benefits may relate to various characteristics. First, impediments to benefits are likely to burden disproportionately those eligible individuals with short-term expected eligibility spells as well as those eligible for relatively modest benefits and those with relatively modest needs. Empirically, such burdened eligible individuals, *nearly-ineligible individuals*, are the least likely to apply for welfare benefits.<sup>96</sup> In this group of nearly-ineligible individuals one could also include

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96. See *supra* notes 46-53 and accompanying text.

those individuals who forgo in-kind benefits and subsidized goods in favor of high-quality market alternatives.<sup>97</sup> Second, impediments to benefits relating to frequency of encounters with welfare bureaucracies are particularly costly for working eligible individuals. Indeed, evidence shows that such burdened eligible individuals, *working eligible individuals*, are the most likely to drop out of the application process before their eligibility is determined.<sup>98</sup> Third, the costs of impediments to benefits may be particularly high for eligible individuals with specific limitations and disadvantages, such as uneducated persons and immigrants. For example, during the 1970s many Cuban refugees faced high bureaucratic barriers to welfare, because they could not produce appropriately certified copies of birth certificates.<sup>99</sup> More recently, a study of susceptibility to diversion policies shows that such policies are effective especially among applicants at the low end of the educational spectrum and among Hispanic families.<sup>100</sup> Many other studies find that less educated and more disadvantaged eligible individuals face particularly high barriers to compliance with welfare requirements.<sup>101</sup> Evidence also shows that extremely poor individuals face difficulties in reaching welfare centers because of transportation costs.<sup>102</sup> These burdened eligible individuals, the *more disadvantaged eligible individuals*, are likely to need benefits more than other eligible individuals.<sup>103</sup> By

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97. See *supra* Part I.A.3.

98. SUSAN BARTLETT ET AL., THE FOOD STAMP APPLICATION PROCESS: OFFICE OPERATIONS AND CLIENT EXPERIENCES (1992); LOREN BELL ET AL., RE-ENGINEERING THE WELFARE SYSTEM: A STUDY OF ADMINISTRATIVE CHANGES TO THE FOOD STAMP PROGRAM, U.S. DEPT OF AGRIC., 27 (2002), available at <http://www.ers.usda.gov/publications/fanrr17/>.

99. William H. Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 YALE L.J. 1198, 1198 (1983).

100. London, *supra* note 93 (concluding that, in addition to these groups, applicants at the high end of the educational spectrum are also sensitive to diversion policies).

101. See, e.g., LaDonna Pavetti & Dan Bloom, *State Sanctions and Time Limits*, in THE NEW WORLD OF WELFARE, *supra* note 37, at 245, 259-60 (surveying studies of the characteristics of sanctioned TANF recipients and noting that sanctioned recipients are drawn disproportionately from the more disadvantaged portions of the caseload); U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: STATE SANCTION POLICIES AND NUMBER OF FAMILIES AFFECTED 33-34 (2000) (noting that sanctioned TANF recipients are less educated or face more barriers to compliance).

102. See, e.g., HEIDI GOLDBERG, CTR. ON BUDGET & POLICY PRIORITIES, STATE AND COUNTY SUPPORTED CAR OWNERSHIP PROGRAMS CAN HELP LOW-INCOME FAMILIES SECURE AND KEEP JOBS (2001), available at <http://www.cbpp.org/11-8-01wel.pdf>. Total average out-of-pocket costs food-stamp applicants incurred have been estimated at \$10.31 and \$5.84 for recertification. These costs include primarily transportation. PONZA ET AL., *supra* 44, at 45-47.

103. The Food Stamp Act instructs state agencies to establish procedures for the

contrast, advantaged eligible individuals are likely to be relatively sophisticated persons, whose costs of learning about welfare programs and conforming to application procedures are low.<sup>104</sup> Another cause of disparities in participation costs of eligible individuals is the impact of self-esteem that varies across individuals. This factor is addressed below.<sup>105</sup>

The foregoing discussion demonstrates that burdened eligible individuals are likely to be those at the poles of the distribution of eligible individuals. The less disadvantaged eligible individuals tend to be burdened by impediments to benefits because of their relatively small benefits and their opportunity costs. The more disadvantaged eligible individuals tend to be burdened because of personal limitations and transportation costs. The described form of polarized participation patterns, however, does *not* suggest that the groups of burdened eligible individuals at the poles are similar in size or density (the percentage of burdened individuals in a group). Empirical studies consistently indicate that most of the nonparticipants are among the less economically disadvantaged individuals and among the less needy individuals.<sup>106</sup> The important point is the understanding that not all nonparticipants are alike and that, in the many cases of forgone small benefits, nonparticipation is not so troubling. Troubling nonparticipation is that of eligible individuals who forgo large benefits and of eligible individuals, such as working eligible individuals, whose attempts to conform to norms of self-sufficiency raise their participation costs.

## II. Information and Self-Esteem Costs

The discussion thus far has focused on general costs of impediments to benefits. This Part addresses specific non-monetary costs of impediments to benefits. Two groups of non-monetary costs are discussed: information and learning costs and self-esteem related costs. There are other forms of non-monetary costs that are not discussed in this Article. Such examples include

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operation of food stamp offices to provide timely, accurate, and fair service to all applicants, including those with high costs, such as households with elderly or disabled members, households in rural areas, homeless individuals, and households in areas in which a substantial number of low-income speak a language other than English. 7 U.S.C. § 2020(e)(2).

104. Part II.A elaborates further on heterogeneity issues related to mental capacity.

105. See *infra* Part II.B.

106. See, e.g., Blank & Ruggles, *supra* note 17; Daponte et al., *supra* note 51; Haider et al., *supra* note 53.

favors from and indebtedness to third parties, such as a flexible employer, a babysitting neighbor, or a friend who owns a car. These forms of non-monetary costs can be converted to monetary costs of the types discussed above, such as opportunity and transportation costs. The non-monetary costs addressed in this Section are unique in their varying impact across eligible individuals and in their potential positive effect on actual and perceived monetary costs relating to participation in welfare programs. For example, information problems are often related to mental capacity and social functioning and, therefore, may be higher for eligible individuals who are intellectually and socially more disadvantaged than other eligible individuals. Similarly, self-esteem levels vary across individuals and tend to relate to actual and perceived costs involved in applying for and using welfare benefits when individuals try to hide welfare receipt.<sup>107</sup> Such differences among eligible individuals are likely to result in peculiar participation patterns that are presented in this Part.

#### A. *Information and Learning Costs*

A successful application for a welfare program requires information about the program's availability, eligibility criteria, and application procedures.<sup>108</sup> Obtaining and processing these types of information entail costs that vary across eligible individuals according to their mental capacity and environment. Empirical evidence indicates that disparities in mental capacity—one's ability to collect information, understand the obtained information, and realistically discount the future—influence participation in welfare programs. For example, several studies find that considerable numbers of TANF recipients face difficulties in understanding communicated information regarding the program requirements.<sup>109</sup> Many TANF recipients also overly

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107. See, e.g., PONZA ET AL., *supra* note 44, at 47-49 (finding that fifteen percent of surveyed Food Stamp recipients had tried at some time to hide the fact that they were receiving food stamps and that ten percent of surveyed Food Stamp recipients went out of their way to shop at a store where nobody knew them to avoid having someone they knew see them using food stamps).

108. Daponte et al., *supra* note 51 (finding that informing people about their eligibility for food stamps increased the probability of participation, although one might have assumed that all individuals know about the Food Stamp Program).

109. See, e.g., OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF HEALTH & HUM. SERV., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES: EDUCATING CLIENTS ABOUT SANCTIONS (1999) (finding that TANF recipients do not fully understand communicated information regarding TANF requirements and sanctions); Pavetti & Bloom, *supra* note 101, at 256-58 (reviewing existing evidence on communication processing among TANF recipients).

discount the future, as they are not responsive to the cash-assistance time limits<sup>110</sup> and do not take sanctions seriously until they are imposed.<sup>111</sup> The individual's environment is another factor in her information costs because information transmitted through social networks affects the likelihood of knowing about a program<sup>112</sup> and, to a lesser extent, affects the likelihood of understanding eligibility criteria and application procedures as the latter factors are intricate and personalized.<sup>113</sup>

Put simply, intellectual and social disadvantages are likely to be related to information and learning costs, so that the more disadvantaged individuals incur particularly high costs.

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110. PRWORA imposes a five-year time limit on TANF cash assistance. 42 U.S.C. § 608(a)(7). It has been estimated that time limits account for sixteen to eighteen percent of the recent caseload decline and that a significant number of eligible households "bank" rights. Yet, evidence shows that many TANF recipients are myopic with respect to time limits; hence, time limits affect their exit likelihood as they approach the time limit. For the responsiveness of TANF recipients to the time limits, see Robert A. Moffitt & LaDonna A. Pavetti, *Time Limits, in FINDING JOBS: WORK AND WELFARE REFORM* 507, 510-15 (David Card & Rebecca M. Blank eds., 2000); Pavetti & Bloom, *supra* note 101, at 256-58; Jeffrey Grogger, *Time Limits and Welfare Use*, 39 J. HUM. RESOURCES 405 (2004) [hereinafter *Time Limits and Welfare Use*]; Jeffrey Grogger, *The Behavioral Effects of Welfare Time Limits*, 92 AM. ECON. REV. 385 (2002) [hereinafter *Behavioral Effects*]. Similar behavioral patterns have been found among unemployment insurance recipients, whose rate of exit from the unemployment insurance program rises as the spell proceeds. See, e.g., Robert A. Moffitt, *Unemployment Insurance and the Distribution of Unemployment Spells*, 28 J. ECONOMETRICS 85 (1985) (finding that reservation wages fall as the unemployment proceeds).

111. OFFICE OF INSPECTOR GENERAL, *supra* note 109, at 13.

112. See generally Marianne Bertrand et al., *Network Effects and Welfare Cultures*, 115 Q.J. ECON. 1019 (2000) (examining language use within a network formation); George J. Borjas & Lynette Hilton, *Immigration and the Welfare State: Immigrant Participation in Means-Tested Entitlement Programs*, 111 Q.J. ECON. 575 (1996) (finding that the types of benefits received by early immigrants influence the types of benefits received by newly arrived immigrants); Mark R. Rank & Thomas A. Hirschl, *The Link Between Population Density and Welfare Participation*, 30 DEMOGRAPHY 607 (1993) (finding that population density has a strong, positive impact on the likelihood of participating in FSP and that population density is positively correlated to accurate information on FSP and positive attitude toward the use of welfare).

113. Even when eligible individuals are aware of welfare programs, they may believe they are ineligible and, consequently, may not apply. See, e.g., Coe, *supra* note 17, at 1039 (finding that among food-stamp eligible nonparticipants forty percent did not think they were entitled to benefits); PONZA ET AL., *supra* note 44 (finding that among surveyed food-stamp eligible nonparticipants approximately seventy-five percent did not think they were entitled to benefits, even though many of them had prior exposure to the program). Moreover, loss of eligibility for one class of benefits often leads to the belief that eligibility to other classes of benefits is also lost. See, e.g., Everett Peterson & Jeffrey Alwang, *Determinants of Food Stamp Program Exits*, 75 SOC. SERV. REV. 539 (2001) (finding that many TANF leavers did not participate in the Food Stamp Program after leaving TANF, even though they still qualified for food stamps).

### B. Self-Esteem

This Part examines the impact of self-esteem on participation in welfare programs. Part II.B.1 briefly explains the meaning of the term "self-esteem" in the context of participation in welfare programs. Part II.B.2 presents the impact of self-esteem on participation in welfare programs and participation patterns related to self-esteem. Part II.B.3 explains why self-esteem plays a significant role in decisions not to participate in welfare programs.

#### 1. What Is Self-Esteem?

In the United States, public preferences for welfare programs vary across programs.<sup>114</sup> While there is wide support for earned benefits, investments in human capital, and benefits for perceived responsible eligible individuals, there is general public resentment toward benefits for perceived irresponsible individuals. These preferences are implied from public support for spending increases to benefits for the elderly, health care,<sup>115</sup> education, and childcare, while the public simultaneously supports spending cuts to benefits for unemployed people, food stamps, and cash assistance for the poor.<sup>116</sup> Among the unpopular benefits, welfare benefits for the poor are the most disliked, and this strong preference is embedded in PRWORA's language.<sup>117</sup> Negative perceptions of welfare tend to

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114. See generally MARTIN GILENS, WHY AMERICANS HATE WELFARE 27-30 (1999).

115. Public support for spending increases for Medicare that targets the elderly and disabled is significantly higher than public support for spending increases for Medicaid that targets low-income individuals. *Id.* at 28.

116. *Id.* (summarizing public surveys). See also BECKER, *supra* note 9, at 19 ("Welfare discourages the independence and self-reliance of recipients, while social security weakens the ties that bind together older parents and their children . . . and encourages retired people to believe they deserve government support.")

117. See, e.g., 42 U.S.C. § 601; Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193 (5)-(7) (1996):

The number of individuals receiving [AFDC] has more than tripled since 1965. . . . Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present. . . . While the number of children receiving AFDC benefits increased nearly threefold between 1965 and 1992, the total number of children in the United States aged 0 to 18 has declined by 5.5 percent. . . . The total of all out-of-wedlock births between 1970 and 1991 has risen from 10.7 percent to 29.5 percent and if the current trend continues, 50 percent of all births by the year 2015 will be out-of-wedlock. . . . It is estimated that in the late 1980's, the rate for girls age 14 and under giving birth increased 26 percent. . . . Data indicates that at least half of the children born to teenage mothers are fathered by adult men. . . . Surveys of teen mothers have revealed that a majority of such mothers have histories of sexual and physical abuse, primarily with older adult men.



cost welfare applicants and recipients in their self-esteem and discourage some of them from participating in unpopular programs.<sup>118</sup>

Self-esteem, in this Article, refers to *social status*, a person's rank in a hierarchy, and *self-conscious emotions*, such as shame, guilt, and pride. The private costs of the pursuit of status are generally attributed to investments that may improve one's image among other people.<sup>119</sup> As set out below, forgone welfare benefits often constitute investments in status. Unlike the pursuit of status that is all about interactions with others, self-conscious emotions reflect internalization of common social perspectives.<sup>120</sup> Such internalization, in turn, means that even unobservable actions, such as money transfers, may entail some psychological costs.

In practice, it is difficult to distinguish between status-driven motivations and self-consciousness-driven motivations, because they interact with each other. In many cases, because self-consciousness emotions are an internalization of the same forces that shape status pursuits, self-consciousness emotions operate as

118. See, e.g., ZEDLEWSKI ET AL., *supra* note 49 (interviewing ninety-five extremely poor families living without employment or government cash assistance and finding that twenty-three percent of eligible nonparticipants in a sample of extremely poor families are staying away from welfare programs because of pride). See also Super, *supra* note 16, 640-42 (noting one's self-assurance of her rights to welfare benefits may be enhanced or diminished by legislative and administrative choices, as well as public rhetoric).

119. For a comprehensive study of various aspects of the pursuit of status, see ROBERT H. FRANK, CHOOSING THE RIGHT POND: HUMAN BEHAVIOR AND THE QUEST FOR STATUS (1985).

120. See generally SELF-CONSCIOUS EMOTIONS: THE PSYCHOLOGY OF SHAME, GUILT, EMBARRASSMENT, AND PRIDE (June Price Tangney & Kurt W. Fischer eds., 1995); Patrick M. Horan & Patricia Lee Austin, *The Social Bases of Welfare Stigma*, 21 SOC. PROBS. 648 (1974); Harold R. Kerbo, *The Stigma of Welfare and the Passive Poor*, 60 SOC. & SOC. RES. 173 (1976); see also ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 8-9 (1963) ("Those who have dealings with [the stigmatized individual] fail to accord him the respect and regard . . . [and] have led him to anticipate receiving [disrespect and disregard]; he echoes this denial [of respect and regard] by finding that some of his own attributes warrant it"); Walter R. Gove, *Societal Reaction as an Explanation of Mental Illness: An Evaluation*, 35 AM. SOC. REV. 873, 875 (1970):

Once a person is stigmatized by being labeled a deviant, a self-fulfilling prophecy is initiated with others perceiving and responding to the person as a deviant. Furthermore, once persons are publicly processed as deviants, they are typically forced into a deviant group . . . '[M]embership in such a group solidifies a deviant identity' and leads to rationalization of their position.

(quoting HOWARD BECKER, OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE 38 (1963)).

a multiplier of a pursuit of status.<sup>121</sup> For example, pride and a pursuit of status may motivate a person to refrain from participating in welfare programs. In such situations, the multiplier of self-conscious emotions is greater than one, since such emotions increase status-driven motivations. By contrast, the internalization of shame may also operate in the opposite direction, when the shamed person loses belief in her abilities.<sup>122</sup> In such circumstances, the multiplier is smaller than one, since the internalization of welfare perceptions decreases motivations to leave welfare.

## 2. The Impact of Self-Esteem on Welfare Participation

### a. Pursuits of Status

Investments in status are generally explained by the observation that "the usual basis of self-respect is the respect accorded by one's neighbors."<sup>123</sup> Status studies focus on the

121. See, e.g., Bruce G. Link et al., *On Stigma and Its Consequences: Evidence from a Longitudinal Study of Men with Dual Diagnoses of Mental Illness and Substance Abuse*, 38 J. HEALTH & SOC. BEHAV. 177 (1997); Sarah Rosenfield, *Labeling Mental Illness: The Effects of Received Services and Perceived Stigma on Life Satisfaction*, 62 AM. SOC. REV. 660 (1997) (finding that internalization of status through labeling may lead to both positive and negative effects among the mentally ill).

122. See, e.g., Amerigo Farina et al., *Mental Illness and the Impact of Believing Others Know It*, 77 J. ABNORMAL PSYCH. 1 (1971) (finding that internalization of stigma negatively affects social interactions); Monica J. Harris, *Self-Fulfilling Effects of Stigmatizing Information on Children's Social Interactions*, 63 J. PERSONALITY & SOC. PSYCHOL. 41 (1992); Mark Sibicky & John F. Dovidio, *Stigma of Psychological Therapy: Stereotypes, Interpersonal Reactions, and the Self-Fulfilling Prophecy*, 33 J. CONSULTING & CLINICAL PSYCHOL. 148 (1986).

123. THORSTEIN VEBLEN, *THE THEORY OF THE LEISURE CLASS* 30 (1899). For prominent works on the pursuit of status, see JAMES S. DUESENBERY, *INCOME, SAVING AND THE THEORY OF CONSUMER BEHAVIOR* (1949); FRANK, *supra* note 119; GOFFMAN, *supra* note 120; FRED HIRSCH, *SOCIAL LIMITS TO GROWTH* (1976); JERRY M. SULLS & LADD WHEELER EDS., *HANDBOOK OF SOCIAL COMPARISON: THEORY AND PRACTICE* (2000); Leon Festinger, *A Theory of Social Comparison Processes*, 7 HUM. REL. 117 (1954); Richard H. McAdams, *Relative Preferences*, 102 YALE L.J. 1 (1992); Yew-Kwang Ng, *Economic Growth and Social Welfare: The Need for a Complete Study of Happiness*, 31 KYKLOS 575 (1978); Thomas F. Pettigrew, *Social Evaluation Theory: Convergences and Applications*, in *NEBRASKA SYMPOSIUM ON MOTIVATION* 241 (D. Levine ed., 1967); Robert A. Pollak, *Interdependent Preferences*, 66 AM. ECON. REV. 309 (1976); See also ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* 50-51 (D.D. Raphael & A.L. Macfie eds., 1979) (1759):

The rich man glories in his riches, because he feels that they naturally draw upon him the attention of the world. . . . The poor man . . . feels that [his poverty] either places him out of the sight of mankind, or, that if they take any notice of him, they have . . . scarce any fellow feeling with the misery and distress which he suffers.

interdependence of individuals' preferences,<sup>124</sup> assuming that each person seeks as an end a position that is relatively superior to that held by others in her reference group. For that end, individuals regularly engage in interpersonal comparisons, assuming that such comparisons would enhance their self-esteem, assist in identifying their comparative advantage, and facilitate informed decisions regarding investments in human capital.<sup>125</sup> Interpersonal comparisons, however, often lead to distortions in personal investments: individuals tend to over-invest in observable goods—goods that are consumed in public view—at the expense of investments in unobservable goods, although the latter may be more important than the former in the long run.<sup>126</sup> For example, interpersonal comparisons explain overinvestment in luxury goods, which have no intrinsic value, and underinvestment in health and fitness, which have intrinsic value but might not improve one's status in the short run. Observable goods that are sought because they can provide a favorable basis for comparison with others, rather than because of an absolute property they possess, are commonly known in the literature as *positional goods*.<sup>127</sup>

Welfare participation is often observable by third parties. Employers may be asked to provide information about welfare claimants' income and number of work hours,<sup>128</sup> store clerks and

124. A fundamental premise of the neo-classic economics was that individuals' preferences are independent and each individual strives to maximize her own utility regardless of other people's circumstances. See FRANK, *supra* note 119, at 33-34.

125. Stan Morse & Kenneth J. Gergen, *Social Comparison, Self-Consistency, and the Concept of Self*, 16 J. PERSONALITY & SOC. PSYCHOL. 148 (1970); Thomas A. Wills, *Downward Comparison Principles in Social Psychology*, 90 PSYCHOL. BULL. 245 (1981).

126. See Robert H. Frank, *The Demand for Unobservable and Other Nonpositional Goods*, 75 AM. ECON. REV. 101, 102-06 (1985); Robert H. Frank, *Frames of Reference and the Quality of Life*, 79 AM. ECON. REV. 80 (1989); GOFFMAN, *supra* note 120, at 41-104; Elias L. Khalil, *Symbolic Products: Prestige, Pride, and Identity Goods*, 49 THEORY & DECISION 53 (2000); see also SMITH, *supra* note 123, at 50 ("[B]ecause mankind are disposed to sympathize more entirely with our joy than with our sorrow . . . we make parade of our riches and conceal our poverty.").

127. The term was coined by Fred Hirsch in SOCIAL LIMITS TO GROWTH (1976).

128. See, e.g., 7 U.S.C. § 2015(o)(2) (limiting the eligibility of childless adults for food stamps to three months in each 36-month period, unless they are working at least 20 hours per week); 7 U.S.C. § 2015(o)(5) (providing that an individual whose eligibility for food stamps was denied because she did not meet the basic work requirements, may regain eligibility if during a thirty-day period she works eighty hours or more); 42 U.S.C. § 607(c) (defining engagement in work, for the purpose of TANF work requirements, as participation in work activities for at least twenty hours per week).

shoppers observe the use of food stamps,<sup>129</sup> health care providers know whether patients use private insurance or Medicaid, and so forth. Accordingly, observable benefits may constitute *negative positional goods*, goods that convey social information that stigmatizes the benefit recipient and lowers her social rank.<sup>130</sup> The stigma that arises from negative positional goods may also create negative social attitudes<sup>131</sup> toward, and statistical discrimination<sup>132</sup> against, welfare recipients. For example, sellers often treat food-stamp recipients disrespectfully,<sup>133</sup> landlords frequently engage in statistical discrimination against welfare recipients because of the financial risk they pose,<sup>134</sup> and health care providers are believed

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129. PRWORA required all states to replace the traditional food stamps with Electronic Benefit Transfer (EBT) cards no later than October 1, 2002. 7 U.S.C. § 2016. EBT are similar to debit cards but are still recognizable. For visual examples of various state EBT cards, see <http://images.ark.org/dhs/ebt/images/wpeC8.jpg> (Arkansas EBT card); [http://www.dcf.state.fl.us/ebt/docs/Appendix\\_F\\_FL\\_EBT\\_Card\\_Design.pdf](http://www.dcf.state.fl.us/ebt/docs/Appendix_F_FL_EBT_Card_Design.pdf) (the Florida EBT Card); <http://www.gettingfoodstamps.org/ebtcards.htm> (the Massachusetts EBT card); <http://www.state.sc.us/dss/news/20040602.html> (the South Carolina EBT card); <http://www.state.sd.us/social/EBT/STOFR.htm> (the South Dakota EBT card).

130. See GOFFMAN, *supra* note 120, at 2-3 (explaining that *stigma* is the social information that an individual directly conveys about himself: it is "an attribute that makes [the individual] different from others in the category of persons available for him to be . . . especially when its discrediting effect is very extensive").

131. See generally Timothy Besley & Stephen Coate, *Understanding Welfare Stigma: Taxpayer Resentment and Statistical Discrimination*, 48 J. PUB. ECON. 165 (1992); PIVEN & CLOWARD, *supra* note 69, at 165:

Market values and market incentives are weakest at the bottom of the social order. To buttress weak market controls and to ensure the availability of marginal labor, an outcast class—the dependent poor—is created by the relief system. This class, whose members are of no productive use, is not treated with indifference, but with contempt. Its degradation at the hands of relief officials serves to celebrate the virtue of all work, and deters actual or potential workers from seeking aid.

132. See, e.g., GOFFMAN, *supra* note 120, at 5 (discussing societal reactions to a stigmatized person as "varieties of discrimination" that effectively "reduce his life chances"); Bernard Weiner et al., *An Attributional Analysis of Reactions to Stigmas*, 55 J. PERSONALITY & SOC. PSYCHOL. 738 (1988).

133. See, e.g., PONZA ET AL., *supra* note 44, at 48 (reporting that 22.8% of food stamp program participants have been treated disrespectfully when using food stamps in a store, primarily by store clerks).

134. See Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155 (1996); Kim Johnson-Spratt, *Housing Discrimination and Source of Income: A Tenant's Losing Battle*, 32 IND. L. REV. 457 (1999); James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1105-06 (1989) (discussing the prevalence of the practice and noting that many states and localities have specifically prohibited rental practices that consider the source of applicants' income and have particularly proscribed discrimination against welfare recipients). Several courts held that landlords who refuse applications from all tenants who receive welfare benefits violate the Fair Housing Act; see, e.g., *Gilligan v. Jamco*

to provide low-quality services to Medicaid patients.<sup>135</sup>

The potential negative positional consequences of welfare participation are similar to the generic impediments to benefits discussed earlier and are, in effect, another form of private participation costs. Status-related costs vary across individuals and may crowd out some eligible individuals. Eligible individuals who feel stigmatized may swallow their pride, try to hide the fact that they receive welfare benefits,<sup>136</sup> or avoid applying for benefits.<sup>137</sup> Thus, pride swallowing and attempts to conceal welfare receipt are merely additional private costs of enrolling in welfare programs.

*b. Self-Consciousness*

Self-conscious emotions may operate in a manner similar to status pursuits. Some emotions, like pride and expected shame, impose psychic costs that reduce the value of welfare benefits, thereby discouraging some eligible individuals from participating in welfare programs. Yet, internalized shame may operate in the opposite direction. Shamed welfare participants may lose hope of earning economic independence<sup>138</sup> and, therefore, perceive welfare benefits as a necessity. The major cost of the welfare stigma for such individuals is the loss of hope.

*c. Self-Esteem and Heterogeneity of Eligible Individuals*

As noted, the effects of status pursuits and self-consciousness vary across eligible individuals. Such non-uniform effects stem

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Development Corp., 108 F.3d 246 (9th Cir. 1997).

135. Janet Currie et al., *Physician Payments and Infant Mortality: Evidence from Medicaid Fee Policy*, 85 AM. ECON. REV. 106 (1995); Frank Sloan et al., *Physician Participation in State Medicaid Programs*, 13 J. HUM. RESOURCES 211 (1978); Stuber & Kronebusch, *supra* note 49.

136. See, e.g., PONZA ET AL., *supra* note 44, at 47-49 (reporting that ten percent of surveyed food-stamp recipients said that they went out of their way to shop at a store where nobody knew them, fifteen percent said that they had tried at some time to hide the fact they were receiving food stamps and twenty-two percent indicated that they had avoided telling other people about their receipt of food stamps).

137. See, e.g., Moffitt, *supra* note 8 (finding a negative correlation between welfare stigma and participation in the AFDC program); ZEDLEWSKI ET AL., *supra* note 49 (finding that twenty-three percent of eligible nonparticipants in a sample of extremely poor families are staying away from welfare programs because of pride); see also PONZA ET AL., *supra* note 44, at 48, 58, 66-70 (reporting that stigma plays a role in decisions not to apply to food stamp programs, but only 0.2 percent of food stamp recipients do not use them because of stigma concerns).

138. See, e.g., Farina et al., *supra* note 122; Sibicky & John F. Dovidio, *supra* note 122.

from differences in ego, status preferences, and experiences with the welfare system. For example, welfare stigma perceptions relating to specific welfare benefits were found significantly stronger among eligible and nearly-eligible individuals who never used these benefits than among those who used the benefits.<sup>139</sup> Empirical evidence also suggests that welfare stigma may be endogenous, since those who least need benefits and are eligible for small benefits are more likely to feel there is stigma associated with welfare.<sup>140</sup>

Differences in self-esteem of eligible individuals may establish peculiar participation patterns among eligible individuals. Private costs of self-esteem tend to be high for *proud eligible individuals*, those individuals who strive to conform to social norms of self-sufficiency and are affected by pride and potential shame. As a result, such individuals are more likely to forgo welfare benefits. In contrast, *shameless eligible individuals*, those who are less sensitive to status and less self-conscious, are more likely to depend on welfare.<sup>141</sup> Similarly, *shamed eligible individuals*, those who have lost hope to get ahead on their own, are also prone to depend on welfare.

The social implications of these participation patterns are ambiguous. On the one hand, status pursuits and self-consciousness motivate some eligible individuals to get ahead on their own. On the other hand, these motivations may be too strong and unrelated to personal skills and general economic conditions. Public assistance to disadvantaged individuals, especially in the forms of nutrition and medical services, may

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139. See, e.g., PONZA ET AL., *supra* note 44, at 66-70 tbl. IV.6:

|  | Participants | Nonparticipants<br>Who Received<br>Food Stamps | Nonparticipants<br>Who Never Received<br>Food Stamps |
|--|--------------|--|--|
| Have been or perceive they would be perceived disrespectfully if found to be receiving food stamps | 10.5%        | 12.0%  | 24.7%  |
| Have shopped or would shop at a store where no one knows them                                      | 10.3%        | 12.7%  | 26.0%  |
| Have avoided or would avoid telling people they receive food stamps                                | 22.4%        | 18.4%  | 33.4%  |

See also Stuber & Kronebusch, *supra* note 49, at 519-24 (2004) (finding similar biases among individuals eligible for TANF and Medicaid).

140. PONZA ET AL., *supra* note 44, at 35.

141. For a theoretical treatment, see B. Douglas Bernheim, *A Theory of Conformity*, 102 J. POL. ECON. 841 (1994).

improve their potential growth and be socially desirable. In addition, self-esteem may operate in opposition to the foregoing motivations and suffocate hopes to leave welfare and entail some deadweight loss since proud and shamed benefit recipients discount the monetary value of received benefits.<sup>142</sup> The distribution of these forces in the relevant population is unknown and probably can only be speculated.<sup>143</sup>

### 3. The Significance of Self-Esteem

Relatively small percentages of eligible individuals cite welfare stigma as a major cause of nonparticipation.<sup>144</sup> However, such replies to direct questions are not necessarily indicative of their accuracy, since one cannot assume that eligible individuals know the reasons for their actions and actually cite them. For example, an expressed desire for personal independence is probably closely related to concerns of welfare stigma.<sup>145</sup> A careful examination of surveys among eligible individuals, however, suggests that the weight of self-esteem in participation decisions is much greater than appears in replies of eligible individuals to direct questions.<sup>146</sup>

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142. See *supra* note 55 and accompanying text.

143. See Robert Solow, *Guess Who Likes Welfare*, in ROBERT SOLOW, *WORK AND WELFARE* 3, 18-19 (Amy Gutmann ed., 1998):

In the presence of a social norm of self-reliance, people will sort themselves out between those who work and pay taxes, and those who do not work and receive benefits. The number of welfare recipients will depend on the size of the benefit, the frequency distribution of earning power, and the strength of the drive to earn one's own living. . . . It is no doubt more likely that some people feel [the norm of self-reliance] more intensely than others. . . . Since no one actually knows anything about [the frequency distribution of the norm], the complication [of the analysis] does not seem worthwhile.

144. See, e.g., Coe, *supra* note 17 (reporting that sixteen percent of food-stamp nonparticipating households cited welfare stigma as a major cause of nonparticipation); PONZA ET AL., *supra* note 44 (reporting that seven percent of food-stamp nonparticipating households cited welfare stigma as a major cause of nonparticipation). Robert Moffitt was the first to provide an econometric estimation of "stigma" in participation decisions. His estimation, however, did not distinguish between self-esteem and other impediments to benefits, monetary and non-monetary. Moffitt, *supra* note 8; see also, Currie, *supra* note 7, at 27 (surveying the literature on participation in welfare programs and concluding that although stigma may affect participation, "other, more concrete types of transactions costs are probably a good deal more important").

145. ELIGIBLE NONPARTICIPANTS, *supra* note 59, at 26 (reporting that ninety-one percent of surveyed households not inclined to apply for food stamps cite the desire for personal independence as a nonparticipation reason and that forty-four percent of the same surveyed group cite stigma as a reason).

146. For the difficulties in assessing the significance of Medicaid stigma, see Arik Levinson & Sjamsu Rhardja, *Medicaid Stigma* (July 2004) (unpublished

For example, very high percentages of nonparticipating eligible individuals cite unawareness of eligibility as a prime cause of nonparticipation,<sup>147</sup> but at the same time many of these individuals argue that they would not apply for benefits even if they found out that they were eligible because of the desire for personal independence.<sup>148</sup> Moreover, welfare recipients with characteristics similar to those of surveyed nonparticipants said that they applied for benefits primarily because of changes in economic needs and only an insignificant portion of them applied for benefits because they became aware of eligibility or their participation costs went down.<sup>149</sup> Since the surveyed participants and nonparticipants had similar characteristics, it is reasonable to assume that the actual disparities between these groups in participation information costs are not great enough to explain differences in participation decisions.<sup>150</sup> The latter interpretation is supported by empirical studies that show that "knowledge about programs is somewhat endogenous, as households generally avail themselves of information about [programs] when the anticipated benefits of doing so are large."<sup>151</sup> This interpretation is also consistent with replies of surveyed eligible individuals to questions regarding welfare stigma: nonparticipants, and especially those who have never received welfare benefits, are more sensitive to

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manuscript, on file with the author).

147. PONZA ET AL., *supra* note 44, at 56-58 (reporting that 71.7% of the food-stamp eligible nonparticipants said that they were not aware that they might be eligible); ELIGIBLE NONPARTICIPANTS, *supra* note 59, at 24 (reporting that fifty-three percent of surveyed nonparticipants thought they were ineligible or were not sure about their eligibility).

148. ELIGIBLE NONPARTICIPANTS, *supra* note 59 (reporting that approximately thirty percent of surveyed nonparticipants said they would not apply for food stamps even if they knew they were eligible and that ninety-one percent of these nonparticipants are motivated primarily by the desire for self-sufficiency).

149. PONZA ET AL., *supra* note 44, at 41 (reporting that 2.5% of food stamp recipients reported that the most important reason that led them to apply for food stamp was awareness of eligibility, while 86.5% of food stamp recipients reported that the major reason for applying for food stamps was a change in economic needs such as a change in size of household or a household member losing employment); *see also* Blank & Ruggles, *supra* note 17 (finding that among women eligible for participation in the AFDC and Food Stamp programs, those with the greatest long-term need, and whose alternative earning opportunities are limited, are more likely to participate than other eligible women, and that most women who join the AFDC and Food Stamp programs do so within a few months of becoming eligible).

150. *See also* Blank & Ruggles, *supra* note 17, at 58 (finding that seventy-one percent of AFDC participation spells start at the beginning of the eligibility spell and that women who become AFDC eligible and do not start receiving it almost immediately are much more likely to leave eligibility than to enter the program).

151. *See, e.g.*, Daponte et al., *supra* note 51, at 612 (abstract).



stigma than participants are.<sup>152</sup>

### III. Legal and Policy Implications

This Part applies the conclusions of the foregoing analysis to address several legal and policy implications. Part III.A reemphasizes the misleading nature of general participation rates and the need to focus on the more disadvantaged individuals. Part III.B suggests several simple administrative means that could lower participation costs and increase participation rates. Part III.C outlines general principles that should guide the design of eligibility criteria and corresponding benefit levels and benefit forms. Part III.D addresses PRWORA's work requirements and their effects on the more disadvantaged individuals, and suggests how to mitigate these distortions. Part III.E argues that the time limits imposed by PRWORA are unfavorable especially for the more disadvantaged individuals and questions their reasonableness.

#### *A. Focusing Attention on the More Disadvantaged Individuals*

The foregoing Parts illustrated that although nonparticipation in welfare programs poses a real problem, the term "nonparticipation" in itself means very little. Nonparticipation of the less disadvantaged individuals is generally explained by the offering of practically too small benefits, while nonparticipation of the more disadvantaged individuals is explained by significant impediments to benefits. In the economic literature and the public discourse, often there are voices that refer to nonparticipation as a "choice" of eligible individuals.<sup>153</sup> There is something misleading in this approach: those who are unfamiliar with the facts assume that real benefits are offered, but costly benefits offer no additional choices to eligible persons.<sup>154</sup> Moreover, since the welfare budget is limited, the question is why practically too small benefits are offered in the first place, rather

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152. See *supra* note 139 and accompanying text.

153. For a comprehensive analysis of this approach, see Super, *supra* note 8.

154. See *id.*, at 818:

[Following PRWORA,] [p]ersonal choice—and its manipulation have replaced formal rules as the dominant theme in public benefits law.

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Under this model, states have sought to restructure both their formal and informal rationing systems so that a claimant's failure to receive benefits can be attributed to the claimant's own choices rather than to those of the state.

than using this portion of the budget to increase the benefits of the more disadvantaged individuals.<sup>155</sup>

As noted above,<sup>156</sup> because of the income-need effect, most nonparticipants tend to belong to the group of the less disadvantaged individuals. Yet, several impediments to benefits also disproportionately burden the more disadvantaged individuals. Nonparticipation of such individuals raises serious concerns and attention should be focused on this group. General participation rates do not differentiate between these groups, thereby distracting attention away from the troubling problem of the more disadvantaged individuals.

### *B. Eliminating Non-Screening Impediments to Benefits*

Impediments to benefits that are unrelated to the screening function of welfare bureaucracies, such as garden-variety ordeals, constitute a pure deadweight loss. Eliminating such impediments is socially desirable and is likely to increase participation among eligible individuals. This Part proposes three general directions of efficiency improvements to illustrate that considerable improvements may be attained without substantial bureaucratic reforms.<sup>157</sup>

To start with, in light of TANF's work requirements,<sup>158</sup> the operation hours of welfare centers during regular business hours erect barriers to benefits for many working individuals who attempt to conform to self-sufficiency norms.<sup>159</sup> Such barriers run counter to the goal of motivating work activities among welfare recipients: some eligible individuals, who would otherwise supplement their work income with welfare, may be forced to choose between welfare and work. Thus, extending the operation hours of welfare centers by adding or expanding weekend and evening hours will decrease impediments to benefits that burden working eligible individuals.<sup>160</sup>

Information costs may be reduced with relatively simple

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155. See *supra* Part I.C.

156. See *supra* Part I.D.2.

157. It is noteworthy that states invest considerable efforts to eliminate non-screening impediments to benefits. See, e.g., BELL ET AL., *supra* note 98; DOROTHY ROSENBAUM, CTR. ON BUDGET & POLICY PRIORITIES, IMPROVING ACCESS TO FOOD STAMPS: NEW REPORTING OPTIONS CAN REDUCE ADMINISTRATIVE BURDENS AND ERROR RATES (2000), available at <http://www.cbpp.org/9-1-00fs.pdf>.

158. See *infra* Part III.C.

159. See *supra* note 98 and accompanying text.

160. Several states have already extended the operation hours of their welfare centers. See, e.g., BELL, *supra* note 98, at 27-29, 94-95.

means, such as toll-free lines, brochures, and campaigns. Presently, there are no legal requirements to employ such means and the Food Stamp Act even emphasizes that it is each state's option to inform low-income households about the availability, eligibility requirements, application procedures, and benefit levels.<sup>161</sup> The Food and Nutrition Service encourages states and interest groups to employ outreach programs,<sup>162</sup> but states' choices whether to invest in such programs are always subject to their incentives to lower participation in welfare programs.<sup>163</sup>

Participation costs may also be reduced through aligning procedural eligibility rules of different programs that target the same populations. For example, presently PRWORA allows states to adopt a Simplified Food Stamp Program that aligns eligibility rules for TANF and food stamps, so that TANF eligible households may be automatically eligible for food stamps.<sup>164</sup> Aligning eligibility rules and unifying application procedures could cut the fixed costs of learning about and applying for benefits, since one learning and application process could serve a few programs.

### *C. Benefit Size, Benefit Framing, and Benefit Choice*

As discussed throughout this Article, for most forms and levels of private costs associated with welfare participation, presumably there are corresponding benefit levels that could compensate for the incurred costs and encourage participation.<sup>165</sup> This suggests that, for a given budget dedicated to welfare transfers, distributive improvements could be attained by diverting the budget presently dedicated to practically too small benefits for the less disadvantaged individuals to the more disadvantaged individuals. Since there are more nearly ineligible individuals who forgo small benefits than eligible individuals who

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161. 7 U.S.C. § 2020(e)(1) (2000). State agencies, however, are required to advise food stamp applicants of certain rights. For example, they are expected to advise applicants that they do not have to be interviewed before filing the application and may file an incomplete application and advise applicants who withdraw their applications of their right to reapply at any time subsequent to a withdrawal. 7 C.F.R. §§ 273.2(c)(1), 273.2(c)(6) (2005).

162. See FOOD & NUTRITION SERV., U.S. DEPT OF AGRIC., FOOD STAMP OUTREACH (providing information on USDA outreach programs), <http://www.fns.usda.gov/fsp/outreach/default.htm> (last visited Oct. 2, 2005).

163. See *supra* Part I.C.

164. 7 U.S.C. § 2035 (2000).

165. See *supra* note 52 and accompanying text; *supra* Part I.D. As noted above, empirical evidence shows that stigma and information costs are endogenous to a certain degree and tend to be negatively related to benefit size. See *supra* notes 140, 151 and accompanying text.

forgo large benefits, the benefit increase for the more disadvantaged individuals is likely to be meaningful.

Furthermore, the propensity to take up welfare benefits is generally related to need.<sup>166</sup> Nevertheless, backed by the Supreme Court<sup>167</sup> and popular public views,<sup>168</sup> certain welfare programs offer “categorically needy” people, such as the elderly, blind, and disabled, more generous benefits than those offered to actually needy. Such allocation rules may be constitutional and politically rewarding, but socially they are less desirable than the opposite allocation rules that link benefits to actual needs.

The monetary value of a benefit, however, is not the only factor determining its value for the recipient. A benefit’s observability and form may lower its value for some recipients.<sup>169</sup> This, in turn, suggests that benefit framing<sup>170</sup> and benefit choices may raise benefit value for self-esteem sensitive individuals. Applying this intuition, in 1992, the Food and Nutrition Service promulgated regulations allowing issuance of food stamps through electronic-benefits-transfer (“EBT”) cards as an alternative for the traditional paper food stamps.<sup>171</sup> PRWORA went further and mandated that all states switch to EBT cards no later than October, 2002.<sup>172</sup> EBT cards function like debit cards and presumably<sup>173</sup> created hopes that this new framing of food stamps would lower self-esteem related costs. In practice, EBT cards have

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166. See *supra* notes 53-54 and accompanying text.

167. *Schweiker v. Gray Panthers*, 453 U.S. 34, 37 (1981) (finding that more generous Medicaid income criteria for the “categorically needy” than those applied to “medically needy”); see also *Atkins v. Rivera*, 477 U.S. 154, 158 (1986); *Schweiker v. Hogan*, 457 U.S. 569 (1982).

168. See *supra* notes 114-16 and accompanying text.

169. See *supra* Part II.B.2.

170. For inconsistent preferences over equivalent choices that are framed differently, see Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCI. 453 (1981); Amos Tversky & Daniel Kahneman, *Rational Choice and the Framing of Decisions*, 59 J. BUS. S251 (1986).

171. Food Stamp Program: Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems, 57 Fed. Reg. 11,218 (Apr. 1, 1992) (codified at 7 C.F.R. §§ 272, 274, 276, 277, 278 (1993)); see also FED. ELEC. BENEFITS TRANSFER TASK FORCE, FROM PAPER TO ELECTRONICS: CREATING A BENEFIT DELIVERY SYSTEM THAT WORKS BETTER AND COSTS LESS (1994).

172. 7 U.S.C. § 2016(i) (2000). California was the last state to complete the transition to EBT cards in June 2004. See Robert Pear, *Electronic Cards Replace Coupons for Food Stamps*, N.Y. TIMES, June 23, 2004, at A1.

173. Empirical studies of the transition to EBT cards, submitted to the Food and Nutrition Service two years before the PRWORA enactment, indicated the transition in Maryland had entailed efficiency improvements but had not reduced welfare stigma. See, e.g., NANCY COLE, U.S. DEPT OF AGRIC., EVALUATION OF THE EXPANDED EBT DEMONSTRATION IN MARYLAND: FOOD STORE ACCESS AND ITS IMPACT ON SHOPPING BEHAVIOR OF FOOD STAMP HOUSEHOLDS (1997).

not had a significant impact on stigma associated with food assistance,<sup>174</sup> probably because the cards are very recognizable.<sup>175</sup> A more successful framing of food assistance benefits is the state campaigns that aim at changing the image of food stamps from "welfare" to "nutrition assistance."<sup>176</sup>

Choices among forms of benefits may mitigate self-esteem related costs, since some benefits are perceived to be more legitimate than others and may even be culturally encouraged. For example, tax benefits that are less observable than other benefits, are rather welcome by individuals, and tend to minimize the costs of redistribution.<sup>177</sup> Indeed, participation rates in tax programs that directly benefit targeted individuals (such as the Earned Income Tax Credit Program) are very high.<sup>178</sup> The drawback of substituting benefit forms is that, unlike in substituting frames of a benefit, substituting and substituted forms are not necessarily functionally equivalent. For example,

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174. See, e.g., COLE, *id.*; Janet Currie & Jeffrey Grogger, *Explaining Recent Declines in Food Stamp Program Participation* (Feb. 2001) (UCLA Working Paper).

175. See *supra* note 129 (giving examples of EBT cards).

176. See, e.g., FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., FOOD STAMP OUTREACH (providing information on USDA outreach programs) <http://www.fns.usda.gov/fsp/outreach/default.htm> (last visited Oct. 2, 2005) (providing information on state and private outreach programs and federal support for such programs); The Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, 118 Stat. 729 (amending the National School Lunch Act and the Child Nutrition Act of 1966 to promote nutrition in food service for children); see also Sheila R. Zedlewski & Kelly Rader, *Recent Trends in Food Stamp Participation: Have New Policies Made a Difference?*, in ASSESSING NEW FEDERALISM: NATIONAL SURVEY OF AMERICA'S FAMILIES (Urb. Inst., Prog. to Assess Changing Soc. Policies, Series B, No. B-58, 2004) (finding that the campaigns account for some of the recent increase in the participation in the Food Stamp Program), available at [http://www.urban.org/UploadedPDF/310995\\_B-58.pdf](http://www.urban.org/UploadedPDF/310995_B-58.pdf).

177. See *supra* note 36 (providing literature on redistribution).

178. David Neumark & William Wascher, *Using the EITC to Help Poor Families: New Evidence and a Comparison with the Minimum Wage*, 54 NAT'L TAX J. 281 (2001); John K. Scholz, *The Earned Income Tax Credit: Participation, Compliance, and Anti Poverty Effectiveness*, 47 NAT'L TAX J. 63 (1994) (estimating participation rates in the EITC at eighty to eighty-six percent). It is noteworthy that participation rates in employment-subsidy programs that benefit employers of targeted individuals are very low, arguably because such programs increase welfare stigma as employees required to expose detailed information to employers. See, e.g., Gary Burtless, *Are Targeted Wage Subsidies Harmful? Evidence from a Wage Voucher Experiment*, 39 INDUS. & LAB. REL. REV. 105 (1985); Stacy Dickert-Conlin & Douglas Holtz-Eakin, *Employee-Based Versus Employer-Based Subsidies to Low-Wage Workers: A Public Finance Perspective*, in FINDING JOBS: WORK AND WELFARE REFORM, *supra* note 110, at 262; Kevin Hollenbeck & Richard Willke, *The Employment and Earnings Impacts of the Targeted Jobs Tax Credit* (Upjohn Inst. for Emp. Res., Working Paper No. 91-07, 1991); Dave M. O'Neill, *Employment Tax Credit Programs: The Effects of Socioeconomic Targeting Provisions*, 17 J. HUM. RESOURCES 449 (1982).

replacing in-kind benefits with tax benefits or cash transfers would allow recipients to use the benefits for purposes other than the intended ones.

#### D. Work Requirements

Given the government's imperfect information about individuals' income-generating capacity, a central problem in designing welfare programs is how to minimize work disincentives.<sup>179</sup> Relying on overwhelming public support,<sup>180</sup> PRWORA imposed work requirements on TANF recipients and particularly stiff ones on childless adult food-stamp recipients.<sup>181</sup> States are allowed, at their option, to exempt from TANF work requirements single parents caring for children younger than one year old.<sup>182</sup> No exceptions are made for people who are unable to work due to lack of marketable skills, although barriers to work are very prevalent among the poor.<sup>183</sup> Similarly, no exceptions are made for people who are unable to work due to general economic conditions and, consequently, dependence on job availability makes the poor particularly vulnerable to business cycles.<sup>184</sup> Furthermore, the minimum work rate requirements set by PRWORA<sup>185</sup> distort states' incentives to invest in human capital of TANF recipients: due to the minimum work rate requirements, in implementing TANF plans, many states employ "work first" policies that focus on immediate job placement, rather than on education and job training.<sup>186</sup> Empirical evidence indicates that

179. See, e.g., Timothy Besley & Stephen Coate, *The Design of Income Maintenance Programmes*, 62 REV. ECON. STUD. 187 (1995) (offering a theoretical screening model that relies on workfare).

180. GILENS, *supra* note 114, at 184-87 (summarizing surveys on public views on work requirements).

181. See *supra* Part II.B; *supra* note 128 (citing statistics that limit food stamp eligibility to childless adults).

182. 42 U.S.C. § 607(b)(5) (2000).

183. See, e.g., Krista K. Olson & LaDonna Pavetti, URB. INST., PERSONAL AND FAMILY CHALLENGES TO THE SUCCESSFUL TRANSITION FROM WELFARE TO WORK, (1996) (reviewing fifteen major disparities in barriers to employment among AFDC families); Sheila R. Zedlewski & Pamela Loprest, *Will TANF Work for the Most Disadvantaged Families?*, in THE NEW WORLD OF WELFARE, *supra* note 37, at 311, 314-16 (finding that approximately seventy-five percent of adults on welfare have at least one potential barrier to employment and concluding that a sizable group of adults on TANF have significant barriers to employment).

184. For empirical evidence, see Geoffrey Wallace & Rebecca M. Blank, *What Goes Up Must Come Down?*, in ECONOMIC CONDITIONS AND WELFARE REFORM 49 (Sheldon Danziger ed., 1999) (finding that unemployment effects on caseloads are smaller post-PROWRA than pre-PROWRA).

185. See *supra* notes 86-89 and accompanying text.

186. Studies of training programs indicate that they have never been effective.

work first policies have a limited success in the long run, as welfare leavers frequently lose their jobs and rarely have upward mobility.<sup>187</sup>

The foregoing analysis suggests that applying uniform work requirements for all individuals, regardless of their personal characteristics and local economic conditions is likely to result in nonparticipation of the more disadvantaged individuals. Presently, the major exceptions to TANF work requirements relate to less disadvantaged individuals who enroll in vocational educational training or participate in education programs directly related to employment.<sup>188</sup> Possible improvements for these distortions could be obtained through adjustments of work requirements to local economic conditions and increasing the meager investments in human capital of welfare recipients.<sup>189</sup> Consistent with the discussion above,<sup>190</sup> customization of work requirements to personal characteristics is not a viable option because it is likely to entail high private and social costs, due to the discretionary nature of such a process. An exception to this general rule could be the case of those eligible individuals whose identifiable characteristics, such as physical and mental disabilities, prevent them from finding and sustaining jobs.

### *E. Time Limits*

Time limits on benefit receipt are probably the most dramatic change introduced by the 1996 welfare reform. PRWORA imposes a maximum lifetime limit of sixty months on the receipt of TANF-funded aid<sup>191</sup> and allows states to exempt up to twenty percent of

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See, e.g., LaLonde, *supra* note 74, at 517-18:

Relatively few participants enroll in publicly subsidized vocational courses long enough to acquire some kind of credential. Participants who enroll in programs that place them in a subsidized job with a private employer often receive little or no training other than employment experience. Many participants receive services whose stated objective is simply to facilitate their search for a job. These features of government training programs underscore their dual purpose: skill development and job placement.

187. Julie Strawn et al., *Improving Employment Outcomes Under TANF*, in *THE NEW WORLD OF WELFARE*, *supra* note 37, at 223, 223-26.

188. 45 C.F.R. § 261.30 (2004) (defining the term "work activities"); *supra* note 72 and accompanying text.

189. Expenditures on training programs in the United States amount to 0.1 to 0.2% of the gross domestic product, depending on which programs are counted. As a share of gross domestic product, nearly all other Organisation for Economic Co-operation and Development countries spend much more than the United States on training programs. LaLonde, *supra* note 74, at 518.

190. *Supra* Part I.B.

191. 42 U.S.C. §§ 608(a)(1)(B), 608(a)(7) (2000). It is noteworthy that for TANF

their caseload from this limit in cases of extreme hardship.<sup>192</sup> States are allowed to set shorter time limits if they choose to, or could continue funding assistance to families entirely out of state funds after sixty months. Presently, seventeen states have imposed time limits of less than sixty months for some families,<sup>193</sup> twenty-five states and the District of Columbia use the sixty-month federal time limit,<sup>194</sup> and eight states have not imposed mandatory time limits.<sup>195</sup> As noted, PRWORA also limits the eligibility of childless adults for food stamps to three months in each thirty-six-month period, unless they are working at least twenty hours per week.<sup>196</sup> Time limits should encourage eligible individuals to save welfare eligibility rights for rainy days, rather than taking up available benefits and exhausting their eligibility rights.

Empirical evidence on the effects of time limits is scarce. Empirical studies suggest that, absent any time limits, twenty-three percent of TANF recipients would have hit a five-year period of cash assistance in exactly five years, thirty-one percent in six years, and forty-one percent in eight years.<sup>197</sup> In practice, less than twenty percent of TANF eligible households understand the consequences of time limits, have alternatives for welfare, and act accordingly.<sup>198</sup> These findings suggest that the present time limits are effective primarily among the less disadvantaged individuals,

purposes, the term "assistance" excludes benefits that are designed to deal with a specific crisis or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months. 45 C.F.R. § 260.31 (2004).

192. 42 U.S.C. § 608(a)(7)(C) (2000). States may exceed the twenty percent limit and pay from their own funds to cover for the excess exempted families.

193. Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Louisiana, Massachusetts, Nebraska, Nevada, North Carolina, Ohio, Oregon, South Carolina, Tennessee, Utah, and Virginia. Pavetti & Bloom, *supra* note 101, at 249.

194. Alabama, Alaska, Colorado, Hawaii, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Washington, West Virginia, Wisconsin, and Wyoming. *Id.*

195. Arizona, California, Indiana, Maine, Maryland, Michigan, New York, Rhode Island, and Vermont. *Id.*

196. 7 U.S.C. § 2015(o)(2) (2000).

197. GREG J. DUNCAN, KATHLEEN MULLAN HARRIS & JOHANNE BOISJOLY, *TIME LIMITS AND WELFARE REFORM: HOW MANY FAMILIES WILL BE AFFECTED?* (1998), available at

<http://www.northwestern.edu/ipr/publications/nupr/nuprv03nl/duncan.html>; *Welfare Reform, Subcomm. on Hum. Resources of the H.R. Comm. on Ways and Means*, 104th Cong. 70 (1996) (statement of LaDonna A. Pavetti, Ph.D. Research Associate, Urban Institute).

198. *Behavioral Effects*, *supra* note 110; *Time Limits and Welfare Use*, *supra* note 110; Jeffrey Grogger & Charles Michalopoulos, *Welfare Dynamics under Time Limits*, 111 J. POL. ECON. 530 (2003).



who postpone participation to preserve eligibility rights. By contrast, uninformed individuals and other more disadvantaged individuals use available benefits at the expense of future welfare assistance. In other words, at present, PROWRA's time limits discourage participation primarily among the less disadvantaged individuals, but, in the near future, many of the more disadvantaged individuals will lose eligibility rights when they exhaust PRWORA's time limits. It is unclear what goal the present time limits serve other than narrowing the scope of welfare programs, while maintaining the appearance of welfare generosity among those who are unfamiliar with the mechanisms of welfare programs.

#### **IV. Concluding Remarks**

Poverty laws establish redistributive mechanisms intending to improve the well-being of low-income individuals. Many such individuals, however, forgo available benefits. This Article emphasizes that, in evaluating the performance of welfare programs, general participation rates are misleading and the focus should be on the characteristics of nonparticipants and the magnitude of the forgone benefits. The analysis and evidence show that impediments to benefits disproportionately burden the more and the less disadvantaged eligible individuals, although for different reasons. Nonparticipation of the less disadvantaged eligible individuals is not so troubling when the forgone benefits are very small. By contrast, nonparticipation of the more disadvantaged eligible individuals and large forgone benefits of eligible individuals who attempt to conform to norms of self-sufficiency should raise concerns among welfare scholars and policymakers. These problems cannot be spotted and addressed by a general reference to the phenomenon of nonparticipation in welfare programs. As discussed, PRWORA utilizes general participation rates for various goals that, as shown in the Article, distort states' incentives to improve allocation of welfare benefits.

Redistribution and redistributive distortions are a favorite study topic among legal scholars. It is time for lawyers to take an interest in the effectiveness of poverty laws to promote the well-being of the disadvantaged members of society and to accomplish desirable redistributive goals. Present poverty laws, as this Article presents, often create the impression that benefits are available for the neediest members of society, while in practice existing impediments to benefits transform offered redistributive transfers into unwelcome benefits.

