

AMERICAN BAR ASSOCIATION
Commission on Law and Aging

#113A REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

1 **RESOLVED**, that the American Bar Association supports continuation of the federal Old Age,
2 Survivors, and Disability Insurance (OASDI) program, commonly known as Social Security and
3 authorized by Title II of the Social Security Act, 42 U.S.C. §§ 401 et seq., as a national system of
4 social insurance.

5
6 **FURTHER RESOLVED**, that the American Bar Association supports preservation of the
7 Social Security Trust Funds and the long-term solvency of the program.

8
9 **FURTHER RESOLVED**, that the American Bar Association urges that any proposals to
10 restructure Social Security be evaluated in terms of how those proposals would achieve the
11 following hallmarks of the existing system:

- 12
- 13 a. Universal.
 - 14
 - 15 b. Inclusive of retirement, disability, and survivor benefits.
 - 16
 - 17 c. Earned, with benefits correlated to lifetime earnings.
 - 18
 - 19 d. Guaranteed, and payable to all eligible contributors and their dependents.
 - 20
 - 21 e. Progressive and equitable, with benefits paid to lower-wage workers replacing a higher
22 proportion of earnings than those paid to higher-wage workers, and the highest benefits
23 going to the highest contributors.
 - 24
 - 25 f. Protective against poverty and inflation, through benefit formulas and annual cost of
26 living adjustments.
 - 27
 - 28 g. Portable and flexible, allowing workers to continue to participate despite job changes and
29 permitting early retirement with actuarially reduced benefits.
 - 30
 - 31 h. Cost-effective, with administrative expenses kept low so as not to significantly reduce
32 benefits, and
 - 33
 - 34 i. Not exclusive of a retirement system that also includes employee pensions, private
35 market savings, and/or investments.
 - 36

REPORT

INTRODUCTION – THE CURRENT DEBATE

President Bush has made it a priority of his current term to revamp the Social Security system. The President posits that the system will go broke sooner rather than later, and that without significant changes it will not be a resource for younger workers or for future generations. He argues for allowing workers to divert a percentage of their payroll taxes into private (individual, or personal) accounts on the grounds that workers should have ownership of their money and the opportunity to accumulate wealth that they can use in retirement and pass along to their heirs. To cover losses to the system from the funds that would be diverted into the private accounts, the President has suggested amending the formula used to calculate initial benefits so that younger people would receive lower benefits upon retirement. He also has suggested that current retirees or people approaching retirement age would not be subject to the new plan. Most recently, he indicated support for “progressive price indexing” that would protect the lowest wage retirees from falling below the poverty level while reducing benefits for middle and upper income workers. While he has not yet offered a specific plan, the President’s actions have fueled debate about future solvency of the Social Security program and will likely lead to several federal legislative proposals on these issues from both sides of the aisle.

The focus of the current debate is whether, as the baby boom generation reaches retirement age, the Social Security trust fund will possess the resources necessary to pay benefits promised under the law. Experts disagree on when or if the trust fund will become insolvent, and if it does, what should be done to prevent it. The conflict stems from differing use of actuarial assumptions. It has resulted in confusion for those who are not actuaries or economists, and has inspired a second debate on the issue of carving out individual accounts that arises at least in part from political and philosophical differences regarding the value of social insurance.

One set of experts is the Social Security Board of Trustees. The Trustees are required by law to report annually to Congress on the financial health of the system. They use economic and demographic assumptions (wage growth, inflation, economic growth, unemployment, fertility, immigration, and mortality, plus health and disability factors) to evaluate the present status of the trust fund, as well as its short (10-year) and long (75-year) range financial outlook. In their March 2005 report, the Social Security Trustees estimated that trust fund revenues will continue to exceed expenditures until 2017, when the fund will need to begin using some of the interest earned on its bonds to pay benefits. According to the 2005 Trustees report, in 2027 Social Security will need to start redeeming bonds to raise funds to help pay full benefits. The Trustees expect that the income from redeeming bonds coupled with tax revenues and interest earnings will allow the trust fund to continue to pay full benefits through 2041. At that time, they estimate that reserves will be fully drawn-down. While the trust fund will continue to receive income from payroll taxes and taxation on benefits, that income cover only 74% of the benefits promised under current law. In 2079, assuming no changes in taxes, benefits or actuarial assumptions, trust fund revenues will cover only 68% of costs.¹

¹ *The 2005 Annual Report of the Board of Trustees, Federal Old Age and Survivors Insurance and Disability Insurance Trust Funds*, <http://www.ssa.gov/OACT/TR/TR05/tr05.pdf>

Another set of experts is the Congressional Budget Office, authorized to provide Congress with independent budgetary and economic information on programs and policies that affect the federal budget and the economy. In a December 2004 letter to Congress, the CBO estimated that trust fund revenues will cover expenditures until 2020, rather than 2017 as estimated by the Trustees. The CBO also projects that the trust fund will be able to pay full benefits until 2052 rather than 2041, and to pay 78% of promised benefits beyond that date, rather than 68%.² The difference between the Trustees' and the CBO's projections is due to variations in the economic assumptions utilized by the two organizations.

The United States Governmental Accountability Office reported to Congress in March 2005 that while Social Security does not face an immediate crisis, it does face a long-range financing problem driven primarily by known demographic trends. The GAO voiced concern that the trust fund's declining cash flow will place an additional burden on the rest of the government because trust fund surpluses now used to support other fiscal needs through the purchase Treasury bonds will be depleted by 2018.³

Other political leaders and advocacy groups have offered a range of proposals to ensure long-term solvency of the Social Security, including:

- raising the cap on taxable wages
- raising the retirement age for full benefits to 70 years of age
- reducing benefits
- increasing payroll taxes
- revising the formula for calculating benefits
- investing a percentage of the Social Security Trust Fund in stocks and/or bonds
- modifying the cost of living formula
- requiring new state and federal workers to join the Social Security program.

Few of these alternatives have been described in great detail. It is likely that they will be modified and that others will be proposed as policy discussions proceed.

The American Bar Association has advocated for more than two decades to promote efficiency and fairness in the Social Security adjudication process, and we have developed a wide body of recommendations on eligibility and procedural issues, particularly on issues involving disability. We are particularly cognizant of the value of Social Security to our nation's most vulnerable citizens - elders, persons with disabilities, and children, for whom the benefits may be the only source of income, and in the case of the elderly and people with disabilities, to access to health care. We have advocated for more equitable eligibility rules and benefit levels. With one exception, we have not been as involved in discussions about funding for the system. In 1990, when the federal government was using Social Security trust fund reserves for current operations

² Letter from Douglas Holtz-Eakin, Congressional Budget Office, to Hon. Larry E. Craig, Chair, Senate Special Committee on Aging, Dec. 22, 2004, www.cbo.gov/showdoc.cfm?index=6044&sequence=0#pt2

³ U.S. Government Accountability Office, *Social Security Reform: Early Action Would be Prudent*, GAO-05-397T, March 9, 2005, www.gao.gov/new.items/d05397t.pdf

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and masking the true federal deficit, then Senator Moynihan (D-NY) introduced legislation to return Social Security financing to a pay-as-you-go-system in which the government would have collected only what was needed to take care for current retirees. In response, the ABA adopted policy opposing “pay-as-you-go” legislation and recommending removal of the trust fund from the Federal Government's operating budget.⁴

We enter the discussion over restructuring of the system at this time out of concern that the current debate takes place in a heated political climate in which issues of equity may be overlooked. With this Recommendation, we recognize the need to take steps to ensure long-term solvency of the system, but we do not take a position on any particular proposal. Rather, we emphasize that certain fundamental principles must be considered so as to ensure that Social Security remains a national system of social insurance that protects older people, widows and widowers, people with disabilities, and children, from falling into poverty due to loss of income from retirement or disability, or due to the retirement, disability, or death of a primary breadwinner.

OVERVIEW OF THE SOCIAL SECURITY SYSTEM

The Social Security program pays benefits to retired and disabled workers and their dependents, and to certain survivors of deceased workers. Benefits and program administrative costs are paid from the Social Security Trust Funds, which receive income from payroll taxes on workers and employers, from income taxes on benefits of higher-income recipients, and from interest on trust fund reserves. Benefit programs are administered by the Social Security Administration; the trust funds are overseen by a Board of Trustees that reports annually to Congress.

Social Security was established in 1935, a time when bank failures and the stock market crash had wiped out the savings of millions of Americans, when unemployment was high, when employer funded pension programs were few and far between, and when economic insecurity among older people was the norm. The goal was to provide the average person and his family with protection against poverty in old age by guaranteeing replacement of at least a portion of income for those who had spent 30 or 40 years in the workforce. What began as a retirement program has been expanded over the years to create new classes of beneficiaries – spouses (including certain divorced spouses), widows and widowers, children, people who can no longer work due to disability, and their dependents. Medicare was added in 1965 to assist retirees and disabled workers in paying for health care. In 1972, Congress authorized a 20% cost of living allowance (COLA) and created an automatic annual COLA for future years. Legislation in 1983 established a tax on benefits and a gradual increase in the retirement age (at which full benefits could be collected). In 2000, the test reducing benefits for retirees earning in excess of a certain amount was eliminated for people at or above full retirement age.

Today, the system is virtually universal, with approximately 96% of all workers contributing and 92% of people age 65 and over receiving benefits.⁵ Approximately 156 million people pay Social Security (FICA.) taxes and almost 48 million (1 in every 6 Americans and 1 out of every

⁴ ABA Resolution No. 300 (February 1990)

⁵ National Academy of Social Insurance, *Uncharted Waters: Paying Benefits from Individual Accounts in Federal Retirement Policy*, Study Panel Final Report Jan. 26, 2005. Fact Sheet #1 Financial Demographics, www.nasi.org

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4 households) collect benefits.⁶ Of those, almost 33 million are retired workers and their dependents, more than 7 million are survivors of deceased workers, and approximately 8 million are disabled workers and their families. The maximum monthly benefit for a worker retiring in 2005 is \$1939. The average monthly benefit in 2005 for all retired workers over age 65 is \$955; it is \$1574 for a married couple and \$920 for a widow or widower. Benefits for a widowed parent with two children average \$1979 a month. A disabled worker receives an average benefit of \$895 per month, and a disabled worker with a spouse and one or more children averages \$1497 a month.⁷

The Social Security system is financed through payroll (Federal Insurance Contributions Act or FICA) taxes, income taxes on benefits of higher-income beneficiaries, and interest earned on Social Security Trust Fund reserves. Workers pay a tax of 6.2% on earnings up to a “taxable maximum” that is adjusted annually; in 2005, it is \$90,000.⁸ Employers match that amount, for a total of 12.4%. Through these contributions, workers earn the right to guaranteed benefits for themselves and their dependents upon retirement, disability, or death. The benefit amount depends upon the size of the worker’s contribution. In general, higher contributions result in higher benefits. However, the system is designed to pay comparatively higher benefits to very low wage workers who might not have the opportunity to save as much over the years as those who earn more.

WHO ARE THE BENEFICIARIES?

Older People and Their Dependents

Social Security pays benefits to 92% of people age 64 and older. It is the major source of income for 65% of this group, and the only source for 20%. The program is also the only source of income for 41% of older Hispanics, 40% of older African-Americans, 28% of older Asian and Pacific Islanders, and 29% of unmarried older women.⁹

In 2005, individuals qualify for full retirement benefits at age 65 and six months if they have paid into the system for the equivalent of ten years. Workers can collect early (reduced) retirement benefits beginning at age 62. The retirement age for full benefits is gradually increasing and will reach age 67 for those born in 1970 or later. At retirement, a married individual receives the amount to which he or she would be entitled based on work history, or 50% of the spouses benefit, whichever is higher.

Social Security also pays benefits to the spouse and to the minor and disabled adult children of disabled or retired workers. Approximately 14 million individuals -- 30% of all beneficiaries, receive benefits based upon a spouse’s work record.¹⁰

⁶ *The 2005 Annual Report of the Board of Trustees, Federal Old Age and Survivors Insurance and Disability Insurance Trust Funds*, www.ssa.gov/OACT/TR/TR05/II_highlights.html#wp76455

⁷ Social Security Administration, www.ssa.gov/policy/docs/chartbooks/fast_facts/2004/ff2004.html#oasdi

⁸ Some federal and state government workers pay into a government retirement system rather than Social Security.

⁹ National Academy of Social Insurance, *Uncharted Waters: Paying Benefits from Individual Accounts in Federal Retirement Policy*, Study Panel Final Report Jan. 26, 2005. Fact Sheet #1 Financial Demographics, www.nasi.org.

¹⁰ *Id.*, Fact Sheet #3 Family Issues: Spouses and Children.

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Surviving Spouses, Former Spouses, and Children

When a worker dies, a surviving spouse and children may be entitled to benefits. Surviving children can collect benefits up to age 18 (or 19 if they are still in high school). Widows and widowers caring for the deceased worker's child who is under age 16 or disabled can collect, as can widows and widowers age 60 and older whether or not they are caring for young children. The benefit amount for the surviving spouse equals the worker's full retirement amount.

Social Security pays benefits to a divorced spouse who was married to the worker for at least ten consecutive years and if younger than 60, is unmarried. A former spouse who is over age 60 is eligible to collect on the worker's account even if remarried. If the worker is retired, the former spouse is eligible for the 50% spousal retirement benefit. If the worker is deceased, the former spouse could receive the survivor's benefit -- 100% of the worker's benefit. A divorced spouse who is disabled is eligible for benefits based on the worker's record at age 50.

People with Disabilities and Their Families

More than one-third of all monthly Social Security checks go to people who are not retired – a total of 17 million. They include more than seven million people with disabilities, their spouses, and their children.¹¹

To be eligible, a worker must have a physical or mental condition that has lasted or is expected to last for at least one year or to result in death, and that prevents the person from performing *substantial, gainful activity* (earn more than a certain amount each month). In addition, the worker must have worked under Social Security for five out of the ten years immediately preceding the onset of the disability. Certain adjustments are made for younger workers who might not have earned sufficient credits. Disability determinations are based on the individual's medical records, work history, functional abilities, age, and education. Two years from the onset of disability, a disabled beneficiary qualifies for Medicare.

Disability insurance is also important to families whose breadwinner becomes disabled, and to adult children with severe disabilities. Children of a disabled worker qualify for benefits up to age 18 (or 19 if they are still in high school), as do unmarried step-children who live with the disabled worker. A disabled worker's spouse younger than 62 who cares for the disabled worker's child under age 16, and a spouse age 62 or older, also qualify for benefits on the disabled worker's account. An unmarried individual with a severe disability that began before age 22 can qualify as a "disabled adult child" based upon parent earnings when the parent retires, dies, or becomes disabled and unable to work. Benefits for an eligible spouse or dependent child equal 50% of the worker's monthly amount.

Women

Social Security is a critical source of economic support for older women, who collect benefits as workers, as spouses, and as survivors of deceased workers. Women tend to spend less time in the workforce, so their employee pensions are likely to be lower than those of men, and so provide less security in retirement. Their wages are frequently less than those of men, so women may benefit more from a formula that pays a higher proportion of earnings to very low wage

¹¹ Consortium for Citizens with Disabilities, *Social Security Facts* #2, March 14, 2005, www.c-c-d.org.

workers. Almost 45% of non-married (divorced, widowed, or never married) women age 65 and older receive 90% or more of their income from Social Security, compared to only 35% of non-married men. The figures are higher for non-married women of color, who receive 90% or more of their income from Social Security. And, because on average they live longer than men, women receive benefits for a longer period of time. Moreover, as women grow older, they rely even more on Social Security. Among women age 65-75, one fourth rely on Social Security for 90% or more of their income; of those 85 and older, more than 40% rely on these benefits for more than 90% of their income.¹²

Spousal and survivor benefits are also critical for women. A married individual who paid into the Social Security system receives what he or she would receive individually, or 50% of the spouse's benefit amount, whichever is larger. While women are in the workforce in greater numbers today than in previous years, their lifetime earnings will continue to be less than those of men. And, since the average woman receiving Social Security benefits is projected to outlive her husband, survivor benefits are essential. The Social Security actuaries have projected that in 2070, 40% of women still will at some point in their lives receive higher benefits based on their husbands' earnings record than they will from their own.¹³

African Americans and Latinos

Social Security's guaranteed insurance benefits are crucial to Hispanic and African American workers, who tend to have fewer alternative economic resources, become disabled at higher rates, and rely disproportionately on Social Security's family benefit features. Many of today's minority workers are concentrated in low-wage jobs that typically lack pension coverage. Also, many experience high poverty and underemployment. Because their incomes were lower throughout their working lives, elderly members of minority groups may not have been able to accumulate savings and as a result may depend almost exclusively on Social Security for their retirement income.

While Social Security's benefit and contribution provisions are neutral with respect to race, ethnicity, and gender, the existing progressive benefit formula helps low-income earners, many of whom are members of minority groups. As a consequence, minority elders rely on Social Security for a greater portion of their retirement income than do white elders. Indeed, Social Security is the only source of income for 40% of older African Americans and 41% of older Hispanics.¹⁴ Approximately 75% of African American and Hispanic beneficiaries rely on Social Security for at least half their income with approximately 45% counting on these benefits for 90% or more of their income.¹⁵ Furthermore, because the difference in life expectancy between African American and white men who reach the age of 65 has decreased to about two years, and since African Americans are more likely to draw benefits at age 62, the difference in the number

¹² National Women's Law Center, *Privatizing Social Security: What's at Stake for Women*, Jan. 2005, <http://www.nwlc.org/pdf/WhatsAtStakeSocSec1-13-05.pdf>

¹³ Social Security Administration, Office of the Actuary, *Distribution of Female Social Security Beneficiaries Age 65 and Over, by Type of Benefit*, Sept. 17, 1998.

¹⁴ National Academy of Social Insurance, *Uncharted Waters: Paying Benefits from Individual Accounts in Federal Retirement Policy*, Study Panel Final Report Jan. 26, 2005. Fact Sheet #1 Financial Demographics, www.nasi.org.

¹⁵ National Committee to Preserve Social Security and Medicare, *Why Social Security is Important to Hispanic and Latino Americans*, www.ncpssm.org

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of years that black and white men receive benefits is less than two years. For older Latino men and women, who have a longer life expectancy at age 65 non-Hispanic white and non-Hispanic black men and women, Social Security retirement benefits are critical.

Younger African Americans and Hispanics also benefit significantly from the Social Security disability and survivor programs. African Americans comprise approximately 13% of the U.S. population of all ages but 18% of disability beneficiaries. African American children represent approximately 15% of all children in the United States, but 21% of the children receiving benefits because a parent is disabled.¹⁶ In 2002, 23% of the children who received Social Security survivor benefits were African American.

Hispanic workers have a higher disability rate than other Americans, and as a result are more likely to utilize disability benefits. In 2000, the overall work disability rate was 11.9%, but for Latinos it was 16.7%.¹⁷

FINANCIAL SUPPORT AND FUTURE SOLVENCY

The Social Security Trust Fund

Two separate trust funds, backed by the full faith and credit of the United States government, support the Social Security retirement and disability programs. Officially titled the Old Age and Survivors Insurance (OASI) and the Disability Insurance (DI) trust funds, for discussion purposes they are commonly referred to simply as the Social Security Trust Fund.¹⁸

Until the early 1980's the program was essentially pay-as-you-go; employment taxes coming into the trust fund covered benefit costs and built up a small contingency fund equivalent to approximately one year's worth of benefits.¹⁹ At that time, the bipartisan Commission on Social Security voiced concern about the system's long-term solvency when the baby boom generation would begin retiring and benefits would exceed income generated from employment taxes. At the Commission's recommendation, Congress in 1983 raised the retirement age and took steps to increase income to the trust fund, creating a surplus that could be tapped at a later date.

Today, payroll taxes and other revenues bring in more than the program pays out, and the system runs a surplus. Funds that exceed program expenses are invested in interest bearing United States Treasury bonds and so help to finance the rest of the federal budget. Interest earned on the bonds goes back into the trust fund and is in turn used to purchase additional bonds.

¹⁶ National Committee to Preserve Social Security and Medicare, Why Social Security is Important to African Americans, www.ncpssm.org.

¹⁷ Rodriguez E. and Tucker K., *How Social Security Benefits the Latino Community*, Center for American Progress, 2004, www.americanprogress.org.

¹⁸ Two separate trust funds provide financial support to the Medicare program.

¹⁹ Social Security Advisory Board, *Retirement Security: The Unfolding of a Predictable Surprise*, March 2005

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PROPOSALS CURRENTLY UNDER DISCUSSION

Individual Accounts

Current law. Social Security is a social insurance program under which workers who contribute through payment of payroll taxes, and their dependents, are guaranteed to receive a certain level of benefits based upon their work history and personal circumstances.

Proposals to establish a system of universally available individual accounts have taken center stage in recent discussions. Individual accounts change the structure of Social Security from a system of social insurance in which benefits are defined by law, to a system of property ownership that may offer some opportunity for growth but also shifts to the individual account holder, financial risk due to market shifts over the term of the account and the state of the market when the individual retires.

Proponents of individual accounts posit that they will earn higher returns for most individuals and will promote an “ownership society” in which individuals have more control over their financial future than they do under the current benefits system. Opponents of diverting payroll taxes into personal accounts argue that these plans will not contribute to the solvency of the Social Security system. Moreover, they argue, individual accounts will require heavy borrowing and additional interest obligations for taxpayers during a transition period, will reduce the revenue available to pay benefits, and will hasten the date at which program costs will exceed non-interest income. Individual accounts could also involve higher administrative costs than the system currently incurs and therefore contribute to long-term insolvency.²⁰

Individual accounts raise a multitude of critical questions: Will they supplement the current system of benefits, or replace it? Will they be voluntary or mandatory? Will they be funded solely through employee contributions, or will an employer or government match be required? Will the employee contribution come from payroll taxes that now go to the Social Security system? How will they be managed and by whom? Will account owners be permitted to access the funds before they retire? At the death of the worker, will the funds go automatically to the widowed spouse, or will the worker have the right to name a different beneficiary? Will a current spouse have rights to the funds of a retiree spouse? In the event of divorce, would the former spouse have rights to the funds in the account? Will these distribution issues be determined by federal policy or left to the states? What provisions will be made for workers who become disabled before retirement? Will a spouse or a minor or disabled adult child of a retired, disabled or deceased worker have rights to the funds? What freedom will people have to draw down the funds in their accounts at retirement? Will they have unrestricted access, or will they be required to purchase an annuity that pays out a guaranteed income for life?²¹ These and other questions must be answered before a specific proposal involving private accounts can be adequately considered.

²⁰ For its size, the Social Security system is very efficient, with administrative costs as low as 1%.

²¹ In a January 2005 report, a study panel appointed by the National Academy of Social Insurance (NASI) raises several of these issues and discusses possible implications. See *Unchartered Waters: Paying Benefits from Individual Accounts in Federal Retirement Policy*, Study Panel Final Report, Washington DC: January 2005. www.nasi.org

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Progressive price indexing

Current law: Benefits are guaranteed based on a person's contributions, are adjusted to reveal increases in real wages and improvements in the overall standard of living, and are progressive in that they are increased proportionately for the lowest wage workers while still paying the highest benefits to the highest wage earners.

“Progressive price indexing” would index benefits of low wage earners to wages as promised under current law, but would use a “price-index” formula to calculate benefits of higher earners. It would also index reductions in the benefits of dependents and survivors to the income and work history of the wage earner.

Proponents posit that by reducing benefits for the most affluent Americans, this system would reduce the solvency gap while protecting the incomes of the lowest wage workers.

Opponents respond that the current system is already progressive and protective of those with low incomes, and that the proposal reduces benefits not only of the highest wage earners (those who make more than \$20,000 annually), but possibly also of those who receive “auxiliary” benefits based on another person's work history. They express particular concern about the proposal's impact on widows and widowers, surviving children, and divorced spouses, whose income may already be reduced due to divorce from or death of the deceased wage earner, and whose benefits will be reduced if the wage earner is in the top 70 percent of earners.

Opponents counter also that over time, the plan would eliminate most differences in benefit levels, removing guarantees and transforming Social Security into a program provides a modest benefit unrelated to earnings – more akin to a need-based benefit than an insurance program. In so doing, it would lose its universality and possibly its support from the range of incomes. Finally, they argue that the sliding scale reductions would have little effect on the solvency of the system.

Raise the Maximum Wage Subject to the Payroll Tax²²

Current law. In 2005, the maximum wage subject to Social Security taxes is \$90,000. Under the current funding structure, that \$90,000 cap includes approximately 85% of all wages nationwide. Twenty years ago, the Social Security system received revenue from approximately 90% of the total wage base. The proportionate payroll tax contribution has declined over the years in large part due to the increase in wages overall, coupled with the growing gap between very high and average salaries. Some proposals suggest raising the cap on taxable wages to \$140,000, phased in over ten years.

Proponents argue that raising the wage ceiling would affect only 6% of workers, but could lower the projected shortfall by 43%. Opponents counter that the new ceiling would constitute a tax increase for those whose wages exceed the cap and would be a financial burden to their employers. They also express concern for the impact on those who are self-employed, who pay both the employer and employee share of the tax.

²² This section and those that follow describing the various proposals and the arguments for and against them are taken from *AARP & Social Security: A Background Briefing, February 9, 2005*.

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Include State and Local Government New Hires in Social Security

Current law. Approximately 95% of all jobs are covered under Social Security. Many state and local governments have joined the Social Security system in recent years, but 30% remain outside the system. New federal employees, including Members of Congress, were brought into the system in 1983.

Proponents of requiring new state and local government hires join the Social Security system point to a 9% reduction in the projected shortfall. They argue that workers would obtain more seamless coverage as they move into and out of government service and would maximize their retirement benefits. They also contend that disability and dependent coverage is better under Social Security than under many state and local government plans, and that Social Security cost-of-living adjustments are more substantial.

Opponents argue that that positive impact of including revenues from taxes paid by state and local government workers diminishes over time as these new hires retire and begin to draw benefits.

Raise the Social Security Tax by a Total One-Half a Percentage Point

Current law. Social Security payroll tax is 12.4% of wages (up to the ceiling discussed above). The employer pays 6.2% and the employee pays 6.2%. Those who are self-employed pay the full 12.4%.

Proponents of this proposal assert that it would lower the projected shortfall by 24%. They point out that it is consistent with past policy; in the past, payroll taxes were adjusted to address solvency. It would only affect current workers, not retirees, and the contribution rate for employer and employee would increase only a small amount – from 6.2% to 6.45%.

Opponents express concern that such an increase would have a negative impact on the creation of new jobs and that paying more in FICA taxes might leave less for workers to put into personal savings.

Increase the Number of Work Years Used to Calculate Benefits From 35 to 38

Current law: Social Security retirement benefits are based on a person's highest 35 contributing years. For each year less than 35, a zero is added into the calculation.

Proponents argue that this option would reduce the shortfall by 16% and would be preferable to further raising the Normal Retirement Age.

Opponents counter that this would reduce benefits for new retirees by 3%, would have the greatest impact on those with shorter work histories and lower wages – women and lower wage workers.

Index the starting benefit level to account for improved “average longevity” at age 65.

Current law: As average longevity for those people age 65 increases, Social Security can be expected to pay benefits for more years.

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To counter the trend towards longer payouts, some argue that reducing benefit amounts beginning in 2018 would protect the system from changes in the average lifespan and would lower the shortfall by 25%. Proponents contend that statistically, the actuarial amount for total lifetime benefits would not change. Waiting until 2018 to implement the plan would provide ample time for workers to adjust to the new system.

Opponents of such a measure argue that such a plan would lower monthly benefits and in so doing, lower the wage replacement rates that are a core principle of the current system.

Index cost of living adjustments (COLA) in benefits to a “price” index.

Current law. Benefits are adjusted to reflect increases in real wages and improvements in the country’s overall standard of living.

Proponents argue that adjusting benefits to reflect the Consumer Price Index would lower the shortfall by 14% while allowing benefits to keep pace with changes in prices.

Opponents point out that the current system assures that once an individual retires and begins to draw benefits, the purchasing power of the benefit will remain constant as the person grows older. Indexing to prices rather than wages will not only reduce benefits significantly, but will exclude beneficiaries from the general increase in standard of living from one generation to the next.

RECOMMENDATION FOR CONSIDERATION BY HOUSE OF DELEGATES

When President Roosevelt signed the Social Security Act into law in 1935, he stated, “We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.”

If adopted by the House of Delegates, the attached Recommendation would allow the American Bar Association to advocate for President Roosevelt’s vision of a law that provides economic security to our nation’s workers. It does not take a position on any particular proposal at this time, nor would it stand in the way of measures to keep the system in fiscal balance. Rather, by placing the Association firmly on record in support of continuing Social Security as a national system of social insurance that protects against poverty, is universal, intergenerational, earned, guaranteed, progressive and fair, portable, and cost-effective, this Recommendation offers a set of criteria by which to measure and respond to the range of proposals that are likely to be introduced in the near future.

CURRENT LEGISLATIVE PROPOSALS

At this time, no major legislative proposals have been introduced in Congress. The President has proposed a private account carve out, and has indicated his support for a plan that utilizes “progressive price indexing” or a form of sliding scale. Senate Finance Committee Chairman Charles Grassley (R-IA) convened a hearing on the topic on April 26, 2005, and on April 28,

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House Ways and Means Committee Chairman Bill Thomas (R-CA) and Social Security Subcommittee Chairman Jim McCrery (R-LA), announced a series of hearings to occur weekly until legislation is produced. The Commission on Law and Aging will monitor legislative developments and provide appropriate updates to the House of Delegates and to interested entities.

Respectfully submitted,

Kristin Booth Glen
Chair, Commission on Law and Aging
August, 2005.

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