Touching the Third Rail Doesn't Have to Hurt: A Holistic Approach to Social Security's Insolvency Crisis

AUSTIN HORD*

* Staff Member, Volume 52, and Articles Editor, Volume 53, *The University of Memphis Law Review*. Juris Doctor Candidate, University of Memphis Cecil C. Humphreys School of Law, 2023. Thank you to Michelle Chiles, Emma Kent, Scott Cheadle, Paden Hemphill and my faculty advisor, Professor William Kratzke, for their thoughtful insight and suggestions throughout the writing and editing processes. Thank you to Professor Matthew Rutledge at Boston College, who took the time to dig into these issues with me. Thank you to my loving parents, Lisa and Carter, and my sister, Frances, for their constant encouragement. Finally, thank you to Audrey Davis for keeping me sane and supporting me no matter what.

I. INTRODUCTION

Ms. Ida May Fuller, a legal secretary from Vermont, was the first person to receive a monthly Social Security benefit check.[1] She collected her first check for $22.54 on January 31, 1940, and she collected benefits until she died in 1975 at 100 years old.[2] Ms. Fuller collected a total of $22,888.92 in Social Security benefits despite only paying $24.75 in payroll taxes over the course of the final two years of her career.[3] Herein lies the beginning of Social Security's problems. While the total benefits Ms. Fuller received can hardly be said to constitute an outrageously high amount of money, it should not come as a surprise that a government program, with a structure that allowed for scenarios like hers at the outset, is now in financial distress.

Old Age, Survivors, and Disability Insurance (OASDI), more commonly referred to as Social Security, is a federal program created in 1935 primarily as a government-mandated form of saving for retirement.[4] The general premise is that individuals pay taxes on their wages into the system during their working years, and in return they receive monthly payments during retirement based on how much they earned over their careers.[5] These payments are designed to effectively replace pre-retirement income, at least to some extent. The taxes that workers pay into the system are often called "payroll" or "FICA" taxes, as they are paid from employee payrolls pursuant to the Federal Insurance Contributions Act.[6] Employees and their respective employers each

1. Larry DeWitt, *Research Note #3: Details of Ida May Fuller's Payroll Tax Contributions*, SOC. SEC. ADMIN. HISTORIAN'S OFF. (July 1996), https://www.ssa.gov/history/idapayroll.html.

2. *Id.*

3. *Id.* To put these numbers into perspective, $24.75 in 1940 would be equivalent to approximately $493 today. It is difficult to calculate the value of Ms. Fuller's total benefits in today's dollars because they accrued over a thirty-five-year period, but $22,888.92 in 1975 would be equivalent to approximately $118,251 today.

4. *See Historical Background and Development of Social Security*, SOC. SEC. ADMIN. [hereinafter *Historical Background*], https://www.ssa.gov/history/briefhistory3.html.

5. *See id.*

6. 26 U.S.C. § 3101(a).

contribute 6.2% of wages each in FICA taxes, and self-employed taxpayers contribute the full 12.4%.[7]

Social Security is a pay-as-you-go (PAYGO) system, meaning that the payroll taxes being collected provide the funds for the benefits that are contemporaneously paid out to retirees. The excess that has been accumulated over time is held in two trust funds—the Old Age and Survivors Insurance (OASI or Social Security) Trust Fund and the Disability Insurance (DI) Trust Fund—which provide a buffer for when the system's costs (i.e., benefits paid out) exceed its revenues (i.e., payroll tax income) in any given year.[8] For example, in 2020, OASI revenue was approximately $968 billion and OASI costs were approximately $961 billion, so the Social Security Trust Fund netted an increase of around $7 billion, yielding a total Trust Fund balance of around $2.8 trillion.[9] However, in 2021, OASI revenues were $1,088 billion and OASI costs were $1,145 billion, resulting in a loss of approximately $57 billion.[10] The difference between the Trust Fund's estimated future revenues and costs is often called the "actuarial balance" and is a good metric for assessing the future wellbeing of Social Security. Under the status quo, Social Security is projected to net a loss in 2022 and every year thereafter.[11] In other words, the program is expected to have a negative actuarial balance for the foreseeable future.

The PAYGO nature of Social Security has created a crisis in light of unexpected externalities such as generational demographic shifts. Because of this structure, the Social Security Trust Fund "will be able to pay scheduled benefits on a timely basis until 2034 . . . . At that time, the fund's reserves will become depleted and continuing tax income will be sufficient to pay 76 percent of scheduled benefits."[12] In

7. *Id.* §§ 1401, 3101, 3111. See *Social Security and Medicare Tax Rates*, SOC. SEC. ADMIN., https://www.ssa.gov/OACT/ProgData/taxRates.html, for a table showing how the FICA tax rates have changed over time.

8. *See* 42 U.S.C. § 401; *Historical Background*, *supra* note 4.

9. *Old-Age and Survivors Insurance Trust Fund, 1937–2021*, SOC. SEC. ADMIN., https://www.ssa.gov/oact/STATS/table4a1.html.

10. *2022 OASDI Trustees Report*, at 2, SOC. SEC. ADMIN. [hereinafter *2022 OASDI Trustees Report*], https://www.ssa.gov/OACT/TR/2022/tr2022.pdf.

11. *Id.* at 3.

12. *Status of the Social Security and Medicare Programs: A Summary of the 2020 Annual Reports*, SOC. SEC. ADMIN., at 3, https://www.ssa.gov/oact/TRSUM/2020/tr20summary.pdf.

2004, economist Andrew Biggs noted that insolvency would approximately double the poverty rate among most Social Security beneficiaries.[13] The annual OASDI Trustees Reports contain estimates for low-cost and high-cost assumptions based on different economic and demographic conditions, but under intermediate assumptions—which are the most realistic—the 2022 Report projects the Trust Fund's reserves will likely be depleted in 2034.[14]

Over the next eleven years or so, Social Security is projected to run a large deficit, primarily due to the costs expected to be necessary to support the baby boomer generation as it continues into retirement and outpaces the increase in taxpaying workers.[15] A metric that helps to articulate this issue is the number of Social Security beneficiaries per 100 covered workers.[16] The 2021 Trustees Report estimated under intermediate cost assumptions that this number will rise from thirty-seven in 2020 to forty-four by 2038.[17] For comparison, this number consistently hovered around thirty before the oldest baby boomers started reaching retirement age around 2010.[18] When the Trust Fund is depleted, the benefit distributions will be supported solely by the contemporaneous payroll taxes being collected, and that payroll tax

13. Andrew G. Biggs, *The Distributional Consequences of a "No-Action" Scenario*, Policy Brief No. 2004-01, SOC. SEC. OFF. OF POL'Y (Feb. 2004), https://www.ssa.gov/policy/docs/policybriefs/pb2004-01.html.

14. *2022 OASDI Trustees Report*, *supra* note 10, at 3.

15. *2021 OASDI Trustees Report: B. Long-Range Estimates*, SOC. SEC. ADMIN., https://www.ssa.gov/oact/TR/2021/IV_B_LRest.html ("From 2021 to 2038, the OASI cost rate rises rapidly because the retirement of the baby-boom generation will continue to increase the number of beneficiaries much faster than the number of workers increases, as subsequent lower-birth-rate generations replace the baby-boom generation at working ages."). The baby boom generation is the result of increased fertility rates in the years following World War II and is typically defined as those born between 1946 and 1964. The fertility rate, or births per woman, in the United States was 3.654 in 1960 but dropped below 3.0 by 1965. *Fertility Rate, Total (Births Per Woman)—United States*, WORLD BANK, https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=US.

16. "Covered workers" means "those who are paid at some time during the year for employment on which Social Security taxes are due." *Ratio of Covered Workers to Beneficiaries*, at n.3, SOC. SEC. ADMIN., https://www.ssa.gov/history/ratios.html.

17. *2022 OASDI Trustees Report*, *supra* note 10, at tbl.IV.B2.

18. Put differently, there were about 3.33 workers per retiree prior to 2010, but it is expected that there will be only 2.27 workers per retiree by 2038.

income is not expected to meet the program's obligations to beneficiaries.[19] The Millennial generation is likely to suffer the most; it tends to lack wealth compared to prior cohorts when they were in that age bracket, and they will live longer than past generations due to improved healthcare while also likely receiving less in the way of Social Security benefits.[20]

To fix this expected shortfall, many believe Social Security must essentially either increase revenues or decrease costs—or a combination of both. Numerous presidential administrations and sessions of Congress have proposed changes to the structure of Social Security to no avail. After all, Social Security is often called the Third Rail of American Politics, for it is an issue that few lawmakers dare to touch because reform efforts are almost always unpopular among voters.[21] But there are other solutions that have entered the conversation in recent years that warrant serious consideration.

The projected insolvency of the Old-Age and Survivors Insurance Trust Fund is a pressing issue that must be addressed before Social Security beneficiaries' benefits automatically decrease to 76% of promised benefits in 2034. Possible solutions range from changing elements of the tax-benefit structure to privatizing the system to borrowing money from other sources of federal revenue. But those solutions are all one-dimensional, temporary fixes. In order to meet the overall goals of the Social Security program, Congress must implement both a short- and long-term solution: borrowing money from other sources in the short term and enacting legislation that encourages organic social and economic wellbeing[22] in the long term. In the short term, the most

19. *2022 OASDI Trustees Report*, *supra* note 10, at 6.

20. Anqi Chen & Alicia H. Munnell, *Millennials' Readiness for Retirement*, CTR. FOR RET. RSCH. B.C., Feb. 2021, at 1, 1, https://crr.bc.edu/wp-content/uploads/2021/02/IB_21_3-1.pdf. Millennials are generally defined as those born between 1981 and 1996 (ages 26 to 41 in 2022). Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins/.

21. Michelle Clark Neely, *Shaking the Third Rail: Reforming Social Security*, FED. RSRV. BANK OF ST. LOUIS (Oct. 1, 1996), https://www.stlouisfed.org/publications/regional-economist/october-1996/shaking-the-third-rail-reforming-social-security.

22. References throughout this Note to "organic" changes mean changes that address the root cause of retirement financing issues, like education and employment

promising solution is to borrow or earmark funds from other sources of government revenue, even though it ends the independent, self-funding nature of Social Security for the foreseeable future. In the long term, though, Congress must enact legislation that makes Social Security more sustainable and decreases our society's dependence on the program altogether.

Part II of this Note will walk through the history of Social Security's development and reform and introduce some commonly-proposed solutions to Social Security's projected insolvency. Part III will identify and analyze the main problems plaguing the current Social Security system and the shortfalls of the common reform proposals. Part IV will explain why borrowing is the best way to meet the program's expensive liabilities in the short term, as well as articulate why and how we can decrease our dependence on Social Security to protect its actuarial balance in the long term. Part V will briefly conclude.

II. BACKGROUND

To be able to appreciate how borrowing from other federal revenue streams and working to decrease our dependence on Social Security can solve the insolvency problem, one must first understand how Social Security works and how it arrived at the system it is today. Thus, what follows is an explanation of how benefits are calculated, a brief history of the development of Social Security as a social insurance system, and a description of two of the most common strategies for fixing the system's financial uncertainty.

A. How Benefits Are Calculated

While Social Security benefit amounts are highly individualized and vary depending on career earnings and age of claiming, the actual computation of those benefits is the same across the board. First, the taxpayer's Average Indexed Monthly Earnings (AIME) is determined by taking the average of the yearly earnings for the thirty-five highest-earning years of the taxpayer's life, indexed for wage inflation using the National Average Wage Index, and then dividing by twelve to

rates, as opposed to changes to the Social Security system itself. Basically, this means investing in the things that decrease dependence and allow Social Security to act as a true safety net for those Americans who need it most.

determine a monthly figure.[23] Then, the taxpayer's Primary Insurance Amount (PIA) is calculated by taking the sum of 90% (the first "bend-point") of the portion of his AIME that is below $1,024, 32% (the second "bend-point") of the portion of his AIME that is between $1,024 and $6,172, and 15% of the portion of his AIME that is above $6,172.[24] This PIA is then subject to an actuarial adjustment based on how early or late the taxpayer elected to start receiving his benefits, as compared to his Full Retirement Age (FRA), and the result is the taxpayer's monthly benefit at his date of claiming. Benefits also typically increase each year through cost-of-living adjustments (COLAs), which are set by the Social Security Administration to combat reductions in the purchasing power of benefits brought on by inflation.[25] This benefit formula is progressive in that it benefits lower-income individuals more than it does higher-income individuals by more fully replacing the annual earnings from their working years that they lose upon retirement; however, individuals with lower lifetime earnings still often struggle financially in old age because of insufficient means by which to prepare for retirement.[26]

23. 42 U.S.C. § 415(b).

24. *Id.* § 415(a); Primary *Insurance Amount*, SOC. SEC. ADMIN., https://www.ssa.gov/oact/cola/piaformula.html. These AIME cutoff amounts are the amounts set by the SSA for 2022. To illustrate how the Primary Insurance Amount is determined, the PIA for an individual with an AIME of $7,000 would be calculated as follows: (1,024 x 0.9) + ((6,172–1,024) x 0.32) + ((7,000–6,172) x 0.15) = 921.60 + 1,647.36 + 124.20 = 2,693.16. Thus, the individual's monthly Social Security benefit would be $2693.16 if she claimed her benefits at her Full Retirement Age.

25. *Cost-of-Living Adjustment (COLA) Information*, SOC. SEC. ADMIN., https://www.ssa.gov/cola/. COLAs are based on changes in the CPI-W, or Consumer Price Index for Urban Wage Earners and Clerical Workers, from the third quarter of the previous year to the third quarter of the current year. The CPI-W is an inflation metric set by the Department of Labor's Bureau of Labor Statistics. However, the COLA for January 2022 is 5.9%, yet the inflation rate for 2021 was 6.8% according to the Department of Labor, so Social Security beneficiaries will face an approximate 0.9% reduction in the purchasing power of their benefits. Paul Brandus, *Social Security Recipients Are Getting a Big Raise—But Also Are Falling Further Behind*, MARKETWATCH (Dec. 30, 2021), https://www.marketwatch.com/story/social-security-recipients-are-getting-a-big-raise-but-also-are-falling-further-behind-11640882704.

26. Peter A. Diamond & Peter R. Orszag, *Saving Social Security*, 19 J. ECON. PERSPS. 11, 12 (2005).

B. A Historical Survey of Social Security

In response to the economic uncertainty many Americans were facing during the Great Depression, President Franklin D. Roosevelt took steps to create an American system of social security,[27] including the creation of the Committee on Economic Security (CES) in 1934.[28] The Social Security Act of 1935 was essentially the product of the CES's findings. The CES's report was considered by Congress, and Roosevelt signed the resulting bill, the Social Security Act, into law on August 14, 1935.[29] Among other things, the Act granted states the power to establish old-age assistance plans, unemployment compensation plans, dependent children assistance plans, and public health services.[30] Most notably, Title II of the Act created an Old-Age Reserve Account and a system for federal old-age benefit payments.[31] It established that payroll taxes would be collected starting in 1937 and that monthly benefits would begin in 1942, and it created the Social

27. In explaining the necessity for such a system, Roosevelt also cited the transition from a society in which the nuclear family was the basic unit to one in which the individual was the basic unit; Americans could no longer fully rely on their families for support in old age due to the rise of the American individualist society. *See Message to Congress Reviewing the Broad Objectives and Accomplishments of the Administration: June 8, 1934*, SOC. SEC. ADMIN., https://www.ssa.gov/history/fdrcon34.html ("So, also, security was attained in the earlier days through the interdependence of members of families upon each other and of the families within a small community upon each other. The complexities of great communities and of organized industry make less real these simple means of security.").

28. *Historical Background*, *supra* note 4. The CES was composed of Frances Perkins, Secretary of Labor; Henry Morgenthau, Jr., Secretary of the Treasury; Homer Cummings, Attorney General; Henry Wallace, Secretary of Agriculture; Harry Hopkins, Federal Emergency Relief Administrator; and Edwin Witte, an economics professor at the University of Wisconsin. *The Committee on Economic Security*, SOC. SEC. ADMIN., https://www.ssa.gov/history/ces.html. Frances Perkins was the first woman to serve on a U.S. Presidential cabinet and played a pivotal role in the development of Social Security and other New Deal programs. *Her Life: The Woman Behind the New Deal*, FRANCES PERKINS CTR., https://francesperkinscenter.org/life-new/.

29. *Historical Background*, *supra* note 4.

30. Social Security Act, H.R. 7260 (1935).

31. *Id.*

Security Board to administer the program.[32] Roosevelt described the Act as follows:

> 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.[33]

Financial assistance to the elderly garnered widespread public favor early on, with support rising steadily from 68% of the population in 1936 to 96% in 1944.[34] The Social Security Act was upheld twice by the Supreme Court in 1937 against challenges asserting that the Act was an unlawful invasion of powers reserved to the states by the Constitution's Tenth Amendment.[35]

Congress amended the Social Security Act for the first time in 1939.[36] Notable changes included the creation of the Social Security Trust Fund, acceleration of the start date for benefits,[37] allowance of benefits for spouses, survivors, and dependents, and placement of the

32. *Historical Background*, *supra* note 4. Before 1942, benefits were paid as a lump sum. *Id.* Although Ms. Fuller received the first monthly benefit check, the earliest reported recipient of a benefit was Ernest Ackerman, who received a lump-sum payment of seventeen cents. *Id.* A New Hampshire resident named Grace Dorothy Owen received the first Social Security number: 001-01-0001. *Id.*

33. *Presidential Statement Signing the Social Security Act—August 14, 1935*, SOC. SEC. ADMIN., https://www.ssa.gov/history/fdrsignstate.html.

34. Sally R. Sherman, *Public Attitudes Toward Social Security*, 52 SOC. SEC. BULL., No. 12, at 3 (1989), https://www.ssa.gov/policy/docs/ssb/v52n12/v52n12p2.pdf.

35. Helvering v. Davis, 301 U.S. 619, 640–41 (1937) (holding that the Social Security Act was a valid exercise of Congress's taxing power in pursuit of the general welfare); Steward Machine Co. v. Davis, 301 U.S. 548, 581–83 (1937). "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

36. *Historical Background*, *supra* note 4. This would prove to be the first of many amendments to the Social Security Act.

37. This change is what allowed Ms. Ida May Fuller to start receiving her benefits two years prior than expected. Social Security Act Amendments of 1939, Pub. L. No. 76-379, 53 Stat. 1360 (making benefits payable beginning in 1940).

payroll tax in the Internal Revenue Code rather than in the Act itself.[38] A memo issued by John Corson, Director of the Bureau of Old-Age and Survivor's Insurance at the time, demonstrates that some of the goals of Social Security and the 1939 amendment were to strive for "the security of this society"—specifically, old-age financial assurance to all Americans—and to "provide more adequate protection for those whose need is greatest."[39] The 1939 amendments also allowed Social Security to be funded directly by payroll taxes, as opposed to the prior formality of Social Security taxes being collected into the General Treasury fund and then transferred annually to the Trust Fund.[40]

In 1946, the Social Security Board was replaced by the Social Security Administration (SSA), with Arthur Altmeyer, the previous chairman of the Social Security Board, becoming the first SSA Commissioner.[41] The Social Security Act was amended again in 1950 to increase benefits for existing beneficiaries whose benefit amounts had been stagnant for the prior ten years.[42] This increase was essentially the first cost-of-living adjustment. In the years following this amendment, benefits were increased only on an ad hoc basis through legislation by Congress.[43]

The Supreme Court issued a notable ruling regarding Social Security in 1960. In *Flemming v. Nestor*, the Supreme Court, per Justice Harlan, effectively held that one does not have a constitutionally-protected right to receive Social Security benefits.[44] The appellee, a legal resident alien from Bulgaria, was deported for being a member of the Communist Party after having resided in the U.S. for about forty-three years and was thus denied his Social Security benefits under § 202(n) of the Social Security Act.[45] The Court rejected his argument that the

38. *Id.*

39. Memorandum from John Corson to Regional Directors, *Reasons for the 1939 Amendments to the Social Security Act*, https://www.ssa.gov/history/reports/1939no3.html.

40. Social Security Act Amendments of 1939, Pub. L. No. 76-379, 53 Stat. 1360.

41. *Organizational History*, SOC. SEC. ADMIN., https://www.ssa.gov/history/orghist.html.

42. *Historical Background*, *supra* note 4.

43. *Id.*

44. Flemming v. Nestor, 363 U.S. 603, 608 (1960).

45. *Id.* at 604–05; *see* 42 U.S.C. § 402(n).

denial deprived him of an "accrued property right" protected by the Fifth Amendment's due process clause because granting such protected status to Social Security benefits would "deprive [Social Security] of the flexibility and boldness in adjustment to everchanging conditions which it demands."[46] When considering reform, it is important to keep this holding in mind: ideally everyone should receive the full benefits that he paid taxes for, but there is no constitutional requirement that benefits be paid as expected.[47]

Ad hoc benefit increases by Congress became unnecessary in the 1970s because the 1972 amendments to the Social Security Act established regular, automatic COLAs based on annual inflation, set to begin in 1975.[48] They also introduced automatic increases to the taxable maximum and wage base used in the Primary Insurance Amount calculation.[49] But the 1972 amendments had used what was later recognized as a flawed indexing formula for COLAs that increased benefits significantly higher than intended.[50] So Congress again amended the Social Security Act in 1977 in response to the higher deficit the program was facing.[51] The amendments included a correction of the over-adjusted benefits and an increase in FICA taxes,[52] along with other small fixes that led President Jimmy Carter to posit that "from 1980 to the year 2030, the Social Security funds will be sound."[53]

Although the 1977 amendments greatly improved the long-term financial outlook of Social Security, more changes were necessary to address the short-term situation in the early 1980s. In 1981, Congress

46. *Flemming*, 363 U.S. at 608–10.

47. *Id.* at 608. This holding will become especially relevant if and when an automatic benefit cut is allowed to happen, as beneficiaries will essentially have no means of redress and be forced to accept the change. See generally Matthew H. Hawes, *So No Damn Politician Can Ever Scrap It: The Constitutional Protection of Social Security Benefits*, 65 U. PITT. L. REV. 865 (2004), for an in-depth discussion of the constitutional implications of Social Security reform.

48. *Historical Background*, *supra* note 4.

49. *Id.*

50. *Id.*

51. *Id.*

52. Social Security Act Amendments of 1977, Pub. L. No. 95-216, 91 Stat. 1509.

53. SYLVESTER SCHIEBER & JOHN SHOVEN, THE REAL DEAL: THE HISTORY AND FUTURE OF SOCIAL SECURITY 182 (1999). Interestingly, President Carter's offhanded prediction of 2030 is eerily close to the latest projected insolvency date.

created the National Commission on Social Security Reform—often referred to as the "Greenspan Commission" after its chairman, Alan Greenspan—and tasked it with solving the poor financial outlook of Social Security that was likely due in part to increased expenses as the post-World War I baby boom entered retirement.[54] This was the first time that issues created by baby boom generations were considered. The Commission's findings were converted into the 1983 amendments, which, among other things, made benefits above a certain level subject to income taxes and imposed a scheduled increase of the Full Retirement Age.[55] Importantly, this was also the first time that the concept of borrowing to help ease Social Security's actuarial balance was explicitly considered—the Commission recommended collecting $150–200 billion from other government sources to help the Trust Fund meet its short-term obligations.[56]

Smaller adjustments to Social Security have been made or proposed in recent years as well.[57] Lawmakers regularly draft proposals that incorporate a plethora of minute, calculated changes to Social Security, some of which are discussed below. For example, some support calculating COLAs using CPI-E, an inflation index specifically for the elderly, as it better represents how the elderly realistically spend their money.[58] But so far, no groundbreaking solutions have garnered widespread bipartisan support.

54. *Report of the National Commission on Social Security Reform*, SOC. SEC. ADMIN. (Jan. 1983), https://www.ssa.gov/history/reports/gspan.html.

55. Social Security Amendments Act of 1983, Pub. L. No. 98-21, 97 Stat. 65; *Historical Background*, *supra* note 4.

56. *Historical Background*, *supra* note 4. The Greenspan Commission recommended certain "fail-safe mechanisms," including "inter-fund borrowing." *Id.*

57. The No Social Security Benefits for Prisoners Act of 2009 amended the Social Security Act to "prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators." Pub. L. 111-115, 123 Stat. 3029. This policy is yet another obstacle to formerly-incarcerated persons trying to reintegrate into society. The direct interaction between incarceration and the Social Security system is an interesting research topic but is outside the scope of this Note.

58. In 1987, the Bureau of Labor Statistics created the CPI-E at Congress's request in order to more accurately depict the effects of inflation on elderly people, largely with respect to healthcare. Alicia H. Munnell & Patrick Hubbard, *The Impact of Inflation on Social Security Benefits*, CTR. FOR RET. RSCH. B.C., Aug. 2021, at 1, 2, https://crr.bc.edu/wp-content/uploads/2021/08/IB_21-14.pdf. From 1983 to 2020, the

C. An Overview of Commonly-Proposed Solutions to Insolvency

Because the financial instability of Social Security has been known for quite a while now, there is no shortage of reform proposals. This section will introduce the two most common types of reforms: (1) implementing an array of changes to the current tax-benefit structure that either increase revenues, decrease costs, or both; and (2) discarding the current PAYGO methodology in favor of a privatized system.

1. Changes to the Tax-Benefit Structure

The most traditional reform proposals center around the tax-benefit structure of Social Security. The logic is simple: if Social Security is running out of money, then the solution is to raise taxes, cut benefits, or some combination of both. There are direct ways of doing this—like increasing the FICA tax rate or making the PIA formula less generous for benefits. For example, increasing the FICA tax rate immediately and permanently from 12.4% to 14.4% would delay insolvency until about 2050,[59] and increasing it to 15.76% would prevent insolvency for at least the next seventy-five years.[60] Similarly, cutting benefits by approximately 25% would delay insolvency until about 2050, and upon insolvency, retirees would only face a 1% drop in benefits.[61] These changes seem drastic when considered by themselves, but combining them in less extreme amounts can help to "smooth out the pain" so that current workers and current retirees share more equally in bearing the brunt of reform. To illustrate, a one percentage point increase in the FICA tax rate, combined with a 10% cut in benefits, would delay insolvency until about 2045.[62] Also, it is worth mentioning that the conversation around direct structural reforms generally

CPI-E increased annually on average by 2.8%, while the CPI-W increased on average by 2.5%, but this difference has narrowed in recent years. *Id.*

59. *The Reformer: An Interactive Tool to Fix Social Security*, COMM. FOR RESPONSIBLE FED. BUDGET, https://www.crfb.org/socialsecurityreformer/.

60. ZHE LI, CONG. RSCH. SERV., RL 32896 SOCIAL SECURITY: RAISING OR ELIMINATING THE TAXABLE EARNINGS BASE 15 (2021) https://sgp.fas.org/crs/misc/RL32896.pdf.

61. COMM. FOR RESPONSIBLE FED. BUDGET, *supra* note 59.

62. *Id.*

focuses on increasing revenues; hardly anyone wants to implement an across-the-board benefit cut, not even to a small extent.

However, there are also indirect ways to increase revenues or decrease costs. The maximum yearly wages subject to FICA taxes is set each year by the Commissioner of Social Security[63] and largely tracks inflation. For 2022, this taxable maximum is set at $147,000,[64] meaning that any wages earned in 2022 above that amount are not subject to FICA taxes. The rationale behind the taxable maximum is that taxpayers earning high wages will not need Social Security as much, so we don't count earnings above a certain amount towards their benefit calculation, and so it is not fair to tax them on that portion of earnings—and this logic was indeed contemplated when the taxable maximum was first imposed.[65] However, the taxable maximum prevents Social Security from reaching quite a substantial portion of revenue. Social Security revenue could be increased by raising the taxable maximum, making it percentage based, or eliminating it altogether, and many believe this is a worthwhile reform to make.[66] Any of these solutions would effectively increase tax revenue from higher-income taxpayers without raising the FICA tax rate.

The Committee for a Responsible Federal Budget estimates that getting rid of the taxable maximum, thereby subjecting all wages to FICA taxes, would close approximately 57% of the Trust Fund's shortfall, delaying insolvency until 2054.[67] Something of a compromise in the taxable maximum debate is the "Doughnut Hole" proposal, which would target the ultra-wealthy by leaving a portion of untaxed income above the previous taxable maximum but reinstating FICA taxes for wage income above, say, $250,000.[68] Finally, other economists and

63. 42 U.S.C. § 430.

64. *Contribution and Benefit Base,* SOC. SEC. ADMIN., tbl.1 https://www.ssa.gov/OACT/COLA/cbb.html. For comparison, the taxable maximum in 2000 was $76,200. *Id.*

65. KEVIN WHITMAN & DAVE SCHOFFNER, SOC. SEC. ADMIN., POLICY BRIEF NO. 2011-02, THE EVOLUTION OF SOCIAL SECURITY'S TAXABLE MAXIMUM (2011), https://www.ssa.gov/policy/docs/policybriefs/pb2011-02.pdf.

66. ZHE LI, CONG. RSCH. SERV., RL 32896 SOCIAL SECURITY: RAISING OR ELIMINATING THE TAXABLE EARNINGS BASE 15 (2021) https://sgp.fas.org/crs/misc/RL32896.pdf..

67. COMM. FOR RESPONSIBLE FED. BUDGET, *supra* note 59.

68. Benjamin A. Templin, *Social Security Reform: The Politics of the Payroll Tax*, 32 QUINNIPIAC L. REV. 1, 33 (2013). *See generally* Patricia E. Dilley, *Through*

policymakers believe that a percentage-based form of the taxable maximum is the best option, where, for example, simply 90% of wage income would be subject to FICA taxes.[69]

Means-testing benefits to a greater extent and raising the Full Retirement Age are two often-discussed way of indirectly cutting benefits, thereby improving the actuarial balance of Social Security.[70] Social Security benefits are already means-tested in how individuals who still earn income after electing to receive their benefits are subject to a tax on their benefits, but some economists and policymakers have proposed making Social Security even more progressive through more means-testing.[71] One way by which this can be done is to alter the 90-32-15 structure of PIA calculations, perhaps decreasing the top rate or adding a fourth one at the top with a rate less than 15%.[72] As for raising the Full Retirement Age, the popularity of this solution stems from the fact that Americans are simply living longer and are healthier for longer than they used to—the life expectancy at birth in the U.S. has risen steadily from around 69.8 in 1960 to about 77.2 in 2020.[73] Meanwhile,

the Doughnut Hole: Reimagining the Contribution and Benefit Base Limit, 62 ADMIN. L. REV. 367 (2010) (examining and supporting the Doughnut Hole reform option for the taxable maximum).

69. ZHE LI, CONG. RSCH. SERV., RL 32896, SOCIAL SECURITY: RAISING OR ELIMINATING THE TAXABLE EARNINGS BASE 15 (2021), https://sgp.fas.org/crs/misc/RL32896.pdf. Setting the taxable maximum at 90% of wage income would be in line with the effective taxable ratio at the time of the 1983 reform. *See* Templin, *supra* note 66, at 33 ("The 1977 Amendments raised the tax max to 90% of wages in 1983. Many advocates of increasing the taxable maximum point to this figure as historic precedent for return to past percentages."). This reform alone would close approximately 23% of the 75-year deficit. COMM. FOR RESPONSIBLE FED. BUDGET, *supra* note 59.

70. *See* Kathryn L. Moore, *The Aging of the Baby Boomers and America's Changing Retirement System: Fundamental Restructuring or Incremental Change?*, 11 LEWIS & CLARK L. REV. 341, 368 (2007) (introducing reform options of decreasing benefits and raising the full retirement age).

71. Peter A. Diamond, *Questions and Answers: The Future of Social Security*, 56 ECON. INQUIRY 682, 683 (2018).

72. *Id.*; Templin, *supra* note 68, at 27 (noting that creating another bend point could aid reform of the taxable maximum by allowing benefits to rise with an increased taxable maximum while still having a net positive effect on the actuarial balance).

73. *Life Expectancy at Birth, Total (Years)—United States*, WORLD BANK, https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=US.

the FRA has only risen from sixty-five for individuals born in 1937 or earlier to sixty-seven for individuals born in 1960 or later.[74]

Increasing the FICA tax rate, raising the taxable maximum, means-testing retirees' benefits to a greater extent, and raising the Full Retirement Age are just a few of the ways by which the tax-benefit structure could be steered toward solvency. While not always in agreement as to the means, policymakers and commentators have reached a consensus that focusing on Social Security's bottom line is one way to prevent insolvency, be it by raising taxes, cutting benefits, or both.

2. Privatization

Some economists and policymakers, especially from the George W. Bush Administration, have proposed a complete overhaul of Social Security that transforms the system—at least partially—into mandatory private accounts similar to 401(k) retirement accounts.[75] Many support this because it contributes to an "ownership society."[76] And in the words of Ronald Reagan in 1964, "[c]an't we introduce voluntary features [to Social Security] that would permit a citizen who can do better on his own to be excused [from making standard contributions] upon presentation of evidence that he had made provisions for the non-earning years?"[77] Pro-privatization arguments generally rely on the proposition that "individual accounts invested in equities (principally the stock market) are superior as a retirement income system to the public income transfer entitlement."[78] The current Social Security system is troubled by demographics, inefficient rates of return, and high operating costs, and it might discourage private saving—proponents of privatization believe that it is the solution to these issues.[79] In 1981, Chile

74. *Social Security Fact Sheet: Increase in Retirement Age*, SOC. SEC. ADMIN., https://www.ssa.gov/pressoffice/IncRetAge.html.

75. Peter A. Diamond & Peter R. Orszag, *Saving Social Security: The Diamond-Orszag Plan*, 2 ECONOMISTS' VOICE, (SPECIAL ISSUE) 1, (2005) at 1, 5; Moore, *supra* note 70, at 344.

76. John Burritt McArthur, *Private Pensions and the Justification for Social Security*, 48 S. TEX. L. REV. 1, 2–3, 5 (2006).

77. *Id.* at 3–4.

78. Patricia E. Dilley, *Taking Public Rights Private: The Rhetoric and Reality of Social Security Privatization*, 41 B.C. L. REV. 975, 985 (2000).

79. *Id.* at 986.

changed its retirement pension system from PAYGO to privatized in response to challenges similar to those our system is facing currently.[80] Chile's system was viewed for many years as an attractive model for privatization, but, as discussed later in this Note, the prevailing current perspective on the Chilean system has a much different tone.[81]

Social Security is an almost ninety-year-old social insurance system, yet remarkably it is a very similar system today as it was at its inception. However, the fact that it has lasted this long by no means suggests that it has sound footing for the next ninety years. Having laid out how benefits are calculated, how Social Security developed through the Social Security Act and its numerous amendments, and how many propose we fix its looming insolvency, the next step is to discuss why these common proposals are in fact not the best strategy to ensure that Social Security lives on.

III. ANALYSIS

As discussed above, many policy experts and lawmakers believe Social Security must either undergo changes to its tax-benefit structure or transform into a privatized system. There are certain problems with the Social Security system as it stands, and those two options will not effectively solve the problems. There are larger issues at play—financial literacy, education, and employment—that put into perspective why retirement saving is such an important topic.

A. Problems With Our Current Social Security System

When creating Social Security, Congress failed to consider age-demographic abnormalities. The system was effectively premised on relatively constant population growth, with a fund that could cover small and intermittent yearly deficits. The Congress and presidential administration of the 1930s did not anticipate the coming downward trend in the fertility rate and the large baby boom generation. Nevertheless, the fertility rate dropped during and after the Great Recession

80. Neely, *supra* note 21.

81. Chile's retirement system has been heavily criticized for shifting all risk from the government to the working citizens. *See* discussion *infra* Part III.B.2.

and has failed to recover.[82] This has and will continue to have a detrimental effect on Social Security, as the labor force is growing at a much slower rate and the share of the population relying on Social Security is increasing.[83] To demonstrate just how influential the fertility rate is for Social Security, it is estimated that a drop in the fertility rate from 2.0 to just 1.8 would increase Social Security's seventy-five-year deficit by nearly $2 trillion.[84] As of 2021, the seventy-five-year unfunded obligation was $19.8 trillion.[85]

Another issue with Social Security is the low rate of return it has earned on its Trust Fund. Investment of the Trust Fund is governed by 42 U.S.C. § 401(d), and thus by law, the Trust Fund is invested in low-risk, special-issue Treasury bonds.[86] Trust Fund investment is a touchy subject for many reasons. On one hand, the Trust Fund would undoubtedly yield much higher returns in most years if it were invested in equities rather than Treasury bonds, and it is "unlikely that workers are so risk averse that a [Social Security] portfolio completely invested in Treasury bonds is optimal."[87] But on the other hand, one could reasonably argue that, if there's anything that should be conservatively invested, it is the Social Security Trust Fund, given the fact that many retirees rely on it to help provide them with a stable form of income late in life. And many are wary of overbearing government influence in private financial markets.[88] But regardless of whether investing the Trust Fund more aggressively is a good idea, it is a dead end for the

82. Alicia H. Munnell et al., *Is the Drop in Fertility Due to the Great Recession or a Permanent Change?* 21 (Ctr. for Ret. Rsch. Bos. Coll., Working Paper No. 7, 2019).

83. *Id.* at 22 ("At the societal level . . . lower fertility has serious consequences: a smaller future workforce will result in slower overall economic growth and higher tax burdens to support pay-as-you-go programs such as Social Security.").

84. *Id.* at 2.

85. *2021 OASDI Trustees Report*, at 5, SOC. SEC. ADMIN., https://www.ssa.gov/OACT/TR/2021/tr2021.pdf.

86. 42 U.S.C. § 401(d).

87. Peter Diamond & John Geanakoplos, *Social Security Investment in Equities*, 93 AM. ECON. REV. 1047, 1066 (2003).

88. *See* Robert D. Reischauer, *Investing Social Security Reserves in Private Securities*, BROOKINGS (Mar. 3, 1999), https://www.brookings.edu/testimonies/investing-social-security-reserves-in-private-securities/ (noting that "politicians . . . might be tempted to use reserve investment policy to interfere with markets or meddle in the activities of private businesses").

purposes of reform. The balance of the Trust Fund has dwindled too low for a change in its investment to have any real power to harness.

Social Security's COLAs have given rise to a lose-lose scenario. On one hand, switching the COLA indexing method from the CPI-W to the CPI-E—the aforementioned consumer price index for the elderly—would be a step in the wrong direction because it would raise benefits at a faster rate by using a more generous index and would thus make the Trust Fund's financial outlook even worse.[89] And the CPI-E is not without its flaws; it has a relatively small sample size and does not represent differences in geographical areas and retail outlets between younger and older people.[90] On the other hand, switching to the CPI-E would address the fact that COLAs currently do not sufficiently help net benefits to keep up with inflation. Medicare Part B premiums are deducted automatically from benefits, and the CPI-W does not allow COLAs to keep up with inflationary effects on these premiums.[91] Also, Social Security benefits are taxed for households that maintain income above a certain threshold after their date of claiming, and net benefits suffer because the income thresholds are not adjusted for inflation.[92] In short, COLAs are not generous enough in our current system given the relatively higher cost of living faced by our elderly, but making them more generous would draw the insolvency date even nearer, so COLA reform is not a high priority.

Another interesting facet of our current Social Security system is that not all forms of compensation are subject to FICA taxes—only wages reported to the IRS on a Form W-2 and most self-employment income are subject to the tax.[93] Like the issue of the taxable maximum,

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89. *See* Alicia H. Munnell & Patrick Hubbard, *What Is the Right Price Index for the Social Security COLA?*, CTR. FOR RET. RSCH. B.C., Nov. 2021, at 1, https://crr.bc.edu/wp-content/uploads/2021/11/IB_21-19.pdf (explaining that the CPI-E has traditionally risen at a higher rate than the CPI-W).

90. *Id.* at 2; Munnell & Hubbard, *supra* note 58.

91. Munnell & Hubbard, *supra* note 58.

92. *Id.*

93. *See* 42 U.S.C. § 409; Caroline Lewis Bruckner & Thomas L. Hungerford, Symposium, *Failure to Contribute: An Estimate of the Consequences of Non- and Underpayment of Self-Employment Taxes by Independent Contractors and On-Demand Workers on Social Security*, 9 IND. J.L. & SOC. EQUAL. 52, 61 (2021) ("[T]axpayers with self-employment income pay the combined employee and employer share of Social Security and Medicare taxes pursuant to the Self-Employment Contributions Act (SECA).").

this is another situation of a missed revenue opportunity for Social Security as we continue to see a rise in the use of passive streams of income and the gig economy. For example, it has been estimated that underreporting of self-employment income by independent contractors and gig-economy workers in 2014 resulted in approximately $5.95 billion in unpaid Social Security contributions for that year alone.[94] Also, investment income is subject to Medicare taxes, so some believe it should be subject to FICA taxes for Social Security as well.

Economic recessions sometimes impose an interesting two-fold strain on the financial outlook of the Trust Fund. During the 2008 Great Recession, massive layoffs decreased FICA tax revenues, while simultaneously some older workers were effectively forced into retirement and claimed their Social Security benefits earlier than they otherwise would.[95] And again, the Great Recession put downward pressure on fertility rates.[96] One might assume that the economic recession caused by the Covid-19 pandemic[97] will have similar effects. However, Alicia Munnell and Anqi Chen of Boston College's Center for Retirement Research have noted that the effects might not be so severe,[98] as the Great Recession caused only a minor uptick in early Social Security claimants among an otherwise steady trend of later claiming.[99] And as sad as it is to say, the recent increase in mortality rates

94. Bruckner & Hungerford, *supra* note 93, at 53.

95. Templin, *supra* note 68, at 6.

96. Munnell et al., *supra* note 82.

97. Covid-19 refers to the respiratory coronavirus that began to spread in late 2019 and reached pandemic status in early 2020. As of September 20, 2022, there have been 609,247,113 reported confirmed cases of Covid-19 globally, resulting in 6,503,894 deaths, per the World Health Organization. *WHO Coronavirus (COVID-19) Dashboard*, WORLD HEALTH ORG., https://covid19.who.int/ (last visited Sept. 20, 2022).

98. Alicia H. Munnell & Anqi Chen, *COVID-19 Is Not a Retirement Story*, CTR. FOR RET. RSCH. B.C., Feb. 2021, at 1, https://crr.bc.edu/wp-content/uploads/2021/02/IB_21-4.pdf ("A hot topic these days is how COVID-19 and the ensuing recession have affected retirement. The surprising answer may be 'not very much.'").

99. To illustrate this trend, about 60% of sixty-two-year-olds were claiming their Social Security benefits in the 1980s and 90s, while closer to 25% of sixty-two-year-olds have been claiming at that age in recent years. Anqi Chen and Alicia H. Munnell, *Pre-COVID Trends in Social Security Claiming*, CTR. FOR RET. RSCH. B.C., May 2021, at 1–2, https://crr.bc.edu/wp-content/uploads/2021/05/IB_21-9.pdf.

due to Covid-19 has brought on a slight decrease in benefit outlays for Social Security's financing.[100] It is tragic to think how a social insurance system would get to a such a point of financial instability that the loss of life from a pandemic could be viewed in any sort of positive light.

B. The Shortfalls of Commonly-Proposed Solutions

Returning to the two common reform proposals discussed earlier—changing the tax-benefit structure and privatizing the Social Security system—neither of these is a sustainable solution to Social Security's looming insolvency. Structural changes are difficult to implement in fair ways that benefit taxpayers and retirees, and privatization is contrary to the original goals of Social Security as a social safety net in retirement.

1. Issues with Changing the Tax-Benefit Structure

As previously mentioned, all structural solutions to Social Security's future insolvency involve either effective tax increases or effective benefit cuts. Some groups of people will inherently be disadvantaged by any change to the tax-benefit structure that positively affects the actuarial balance. Thus, there will always be pushback to this type of reform to some extent because the change will be deemed unfair. Cries of unfairness are nothing new to Social Security reform. The 1977 amendments received major pushback from "Notch Babies," a cohort born between 1917 and 1921 that reached retirement right after the amendments were implemented.[101] As previously mentioned, the

100. Alicia H. Munnell, *Social Security's Financial Outlook: The 2021 Update in Perspective*, CTR. FOR RET. RSCH. B.C., Sept. 2021, at 1, 8, https://crr.bc.edu/wp-content/uploads/2021/09/IB_21-15_.pdf. However, the decrease in fertility rates due to Covid-19 has contributed to a slight worsening of the overall financial outlook of Social Security. *Id.*

101. *Historical Background*, *supra* note 4. This cohort was called "Notch Babies" in references to the notch-shaped, or peak-shaped part of the graph for Social Security replacement rate over time for retirees with average earnings. *Issues and Answers: The Notch*, SOC. SEC. ADMIN. OFF. OF GOV'T AFFS. (1988), https://www.ssa.gov/history/pdf/notch.pdf. Prior to the 1977 amendments, the extent to which benefits replaced prior monthly earnings had been increasing significantly due to the high COLAs, but the amendments caused that replacement rate to decline

1972 amendments had used what was later recognized as a flawed indexing formula for COLAs that increased benefits higher than intended. And when the problem was corrected by the 1977 amendments, there was major pushback from Notch Babies because they were the first ones to miss out on the higher-than-normal benefits.[102]

The issue with raising or eliminating the taxable maximum primarily stems from the aforementioned rationale of the taxable maximum's existence in the first place. Workers earning above the taxable maximum are each already contributing over $9,000 (or over $18,000 for the self-employed) to Social Security each year.[103] Considering their lifetime earnings, they are significantly less likely to have much need for Social Security benefits in retirement.[104] Also, only about 6% of covered workers earn above the taxable maximum, and this has been the case since the early 1980s.[105] The time for effective reform via the taxable maximum would have been the 1950s and 60s when the share of covered workers earning above the taxable maximum fluctuated between 25% and 35%.[106] Raising or eliminating the taxable maximum would also give rise to an issue with the connection between contributions and benefits. There would be two options: either (1) allow benefits for higher earners to also rise, corresponding with the wages above the maximum that would now be subject to FICA taxes; or (2) maintain a cap on the amount of wages included in the calculation of benefits, even though wages above that level are subject to tax.[107] With the first option, the upside of increased revenues would be largely negated by the increase in benefits promised to those who would now pay more in

back to historical levels—forming a notch in the graph—just as the Notch Babies were entering retirement. *Id.*

102. *Historical Background*, *supra* note 4.

103. *Contribution and Benefit Base*, SOC. SEC. ADMIN., https://www.ssa.gov/oact/cola/cbb.html.

104. WHITMAN & SCHOFFNER, *supra* note 65. Although it is not always true that high earners earn above the taxable maximum the majority of their careers, retire comfortably, and do not rely on Social Security, they tend to retire with much higher levels of personal savings than those who pay FICA taxes on their entire wages.

105. *Taxable Maximum Earners*, SOC. SEC. ADMIN., https://www.ssa.gov/policy/docs/population-profiles/tax-max-earners.html.

106. *Id.*

107. Templin, *supra* note 68, at 23.

FICA taxes,[108] and Social Security would still be insolvent by 2054.[109] But with the second option, there would be too little of an equitable connection between contributions into the system and benefits received from the system.[110] Taxing more wages while not allowing those wages to be included in the calculation of benefits runs contrary to the idea that benefits are wage related and earned by the taxpayer.[111]

Again, raising the Full Retirement Age is a commonly-proposed structural change. But implementing this change would receive major pushback from Americans who are getting set to retire in the next few years, and even a delayed increase would likely be disfavored. For example, in France, President Emmanuel Macron recently proposed an increase in the full-benefits retirement age for France's retirement system from sixty-two to sixty-four, but the proposal had to be abandoned due to violent protests by tens of thousands of Parisians.[112] It is also important to consider that many Americans, often through little fault of their own, end up retiring earlier than they had previously planned, be it due to health, job loss, or other shocks to retirement planning.[113] Increasing the FRA would undoubtedly pressure more Americans to continue to work at older ages because people would need income to hold them over until the newly increased age at which they can claim benefits without a penalty for early claiming.[114]

108. *See* Templin, *supra* note 68, at 26. Templin notes that this issue—increased revenues being negated by the accompanying increase in benefits—could be mitigated by adding more progressivity with perhaps another bend-point in the PIA calculation. *Id.* at 27. On another note, an additional issue would arise in how there would be a "staggering disparity between the monthly payments of high- and low-income workers." *Id.* at 26.

109. CONG. RSCH. SERV., supra note 60, at 15.

110. Templin, *supra* note 68, at 27.

111. *Id.*

112. Adam Nossiter, *Macron Scraps Proposal to Raise Retirement Age in France*, N.Y. TIMES (Jan. 11, 2020), https://www.nytimes.com/2020/01/11/world/europe/france-pension-protests.html.

113. Alicia H. Munnell, Matthew S. Rutledge & Geoffrey T. Sanzenbacher, *Retiring Earlier Than Planned: What Matters Most?*, CTR. FOR RET. RSCH. B.C., Feb. 2019, at 1, https://crr.bc.edu/wp-content/uploads/2019/01/IB_19-3.pdf.

114. Tim Slack & Leif Jensen, *Employment Hardship Among Older Workers: Does Residential and Gender Inequality Extend into Older Age?*, J. GERONTOLOGY SERIES B: PSYCH. SCI. & SOC. SCI. (Feb. 2008), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4243493/.

It is difficult to implement structural solutions like increasing the FRA or effectively increasing payroll taxes in a fair way. It is arguably too late for gradual structural changes. If we implement immediate changes now, the current generation of workers would arguably bear an unfair burden, but if we don't, future generations will face even tougher decisions about breakneck changes due to their parents' and grandparents' inaction.[115] When approaching Social Security reform, we must keep in mind the goal of "intergenerational equity"—the notion that it would be unfair to shift a disproportionate burden to future generations.[116] Intergenerational equity is not achieved when different generations reap different benefits for each tax dollar contributed to Social Security.[117] The key takeaway from traditional structural solutions is that they frankly regress away from intergenerational equity and would be widely unpopular; we should not burden today's workers for the sake of a lower-cost program in the future.[118]

2. Issues with Privatization

It is not likely that the U.S. will transition to a privatized retirement program.[119] The once-praised Chilean system has received significant pushback from Chilean workers and retirees in recent years, and it has been criticized for shifting all of the risk from the government to the workers.[120] Privatization is contrary to the original goals of

115. *See* Templin, *supra* note 68, at 22 ("If tax increases are inevitable but Congress delays in implementing an increase, then the eventual 'increases required to balance the system would be much higher.'").

116. *Id.* at 18–20.

117. *Id.* at 19.

118. Alicia H. Munnell et al., *How to Pay for Social Security's Missing Trust Fund?* 12 (Ctr. for Ret. Rsch. Bos. Coll., Working Paper No. 18, 2017).

119. Jason Furman, William G. Hale & Peter R. Orszag, *Should the Budget Exclude the Cost of Individual Accounts?*, TAX BREAK, 477 (Jan. 24, 2005), https://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/1000742-Should-the-Budget-Exclude-the-Cost-of-Individual-Accounts-.PDF ("Replacing part of Social Security with individual accounts is not necessary to restore Social Security solvency.").

120. Michael Hiltzik, *Chile's Privatized Social Security System, Beloved by U.S. Conservatives, Is Falling Apart*, L.A. TIMES (Aug. 12, 2016), https://www.latimes.com/business/hiltzik/la-fi-hiltzik-chile-social-security-20160812-snap-story.html.

Social Security as being a social safety net,[121] and it would create a massive cash-flow problem with high transition costs.[122] One of the main advantages of Social Security is that it "protect[s] against the risks of outliving one's assets or seeing them eroded by inflation during retirement," and a privatized system would promise no such thing.[123] It would do nothing to combat the problem of legacy debt, which is one of the main underlying factors of Social Security's projected insolvency,[124] and it is hard to imagine that the operating costs of a privatized system could be any lower than those of the current system. Additionally, privatization would subject individuals' retirement investments to significantly more risk by doing away with risk-pooling and allowing individuals to invest their Social Security accounts more aggressively.[125] Because of these simple yet monumental obstacles, privatization is arguably the least viable solution to Social Security's projected insolvency.

C. Larger Issues That Affect Retirement Saving

Many larger policy issues outside of the Social Security system can have serious consequences for retirement saving in the U.S. These issues would have to be addressed by long-term solutions that would help to achieve a more sustainable retirement system. A large number of Americans fall short of any baseline level of financial literacy, or "financial capability," which is "the knowledge, ability, and opportunity of all individuals to manage their personal finances."[126] There is a strong connection between the lack of financial literacy and personal financial uncertainty in retirement. Not only do many Americans fail to appreciate the value of compounding returns for retirement

121. Moore, *supra* note 70, at 347.

122. Diamond & Orszag, *supra* note 75, at 5.

123. *Id.* at 6.

124. Moore, *supra* note 70, at 346–47.

125. McArthur, *supra* note 76, at 5 ("[P]rivatization proposals would subvert [Social Security's] most important accomplishment, its success in putting retirement security beyond marketplace risks.").

126. *Examining the State of Retirement Security in the United States: Hearing Before the Subcomm. on Econ. Pol'y of the S. Comm. Banking, Hous., and Urb. Affs.*, 115th Cong. (2017) [hereinafter *Hearing*] (prepared statement of Kent Conrad, Co-Chair, Bipartisan Policy Center's Commission on Retirement Security and Personal Savings).

saving,[127] but they also underestimate the dangers of "leakage," a term that refers to premature withdrawals from retirement funds.[128] Leakage often happens because only about one-third of middle-aged individuals has a rainy-day fund,[129] and drawing from retirement savings prematurely to cover emergency expenses not only reduces retirement assets but is also accompanied by early-withdrawal fees.[130] The lack of financial literacy is a huge reason why many people end up relying too heavily on Social Security due to a lack of personal saving throughout their lives, as benefit payments comprise the majority of retirement income for almost two-thirds of elderly Americans.[131] This fact is yet another reason why policymakers must act swiftly, cautiously, and strategically to fix the insolvency crisis.

Lack of financial education is not the only education problem; the intersection of broader education and employment affects individuals' ability to save for retirement as well. Low literacy is directly correlated with incarceration by many metrics.[132] Eighty-five percent of all juveniles who have run-ins with the juvenile court system are "functionally low literate," and high school dropouts are 63% more likely to spend time in prison than college graduates.[133] Those who are in prison cannot contribute to Social Security.[134] According to the Education Law Center, Tennessee spends about 25% less in dollars per student than the national average for educational purposes.[135] The state also

127. *Id.* (statement of Sen. Tom Cotton) (discussing the "miracles of compound interest").

128. *Id.* (prepared statement of Kent Conrad, Co-Chair, Bipartisan Policy Center's Commission on Retirement Security and Personal Savings).

129. *Id.*

130. *Id.*

131. *Id.* (statement of Sen. Elizabeth Warren).

132. Troy Wiggins, *The Relationship Between Incarceration and Low Literacy*, LITERACY MID-SOUTH (Mar. 16, 2016), https://literacymidsouth.wordpress.com/2016/03/16/incarceration-and-low-literacy/.

133. *Id.*

134. Stephanie Hunter McMahon, *Inmates May Work, But Don't Tell Social Security*, 72 S.C. L. REV. 757, 767 (2021) ("In most cases, inmate labor does not constitute covered employment. Therefore, any earnings inmates receive are generally not subject to FICA [taxes].").

135. *Making the Grade 2020 State Profiles, Tennessee*, EDUC. L. CTR., https://edlawcenter.org/research/making-the-grade-2020-state-

allocates less funding towards education as a percentage of state gross domestic product than the national average.[136] This lack of investment in education is bound to have a negative impact on students' likelihood of making a comfortable salary later in life, which in turn suppresses both their Social Security PIA and their ability to accrue personal retirement savings. Additionally, education does not always correlate with salary,[137] and when people are underemployed,[138] they are not reaching their full potential for lifetime earnings that have a direct impact on their future Social Security monthly benefit. This is especially relevant considering that underemployment tends to be the most prevalent among the young and the elderly.[139]

IV. PROPOSED SOLUTION

Because Social Security operates on a generational scale and nearly all short-term solutions are destined to give someone the short end of the stick, long-term solutions are clearly necessary. However, because Congress went so long without adequately addressing the program's financial problems, it must now do something in the short term in order to prevent the acute and sudden effects of allowing benefits to be cut across the board in 2033. Therefore, an effective solution to Social Security's pending insolvency must include both short- and long-term aspects. In the short term, funding for Social Security's

profiles.html?utm_campaign=PR&utm_medium=Referral&utm_source=%7bBEP+Inadequate+Says+NPEF%7d.

136. *Id.*

137. Jessica Dickler, *More Education Doesn't Always Get You More Money, Report Finds*, CNBC (Oct. 13, 2021), https://www.cnbc.com/2021/10/13/more-education-doesnt-always-get-you-more-money-report-finds.html.

138. "[U]nderemployment is most commonly defined as comprising workers in one of four mutually exclusive employment conditions: *sub-unemployed* or *discouraged workers* (those who would like to be employed but are out of work and not seeking a job because they believe their prospects are bleak); the *unemployed* (those who are not employed but are looking for work, or are on layoff with the expectation of being called back); *involuntary part-time workers* (those who are employed part time but would opt for full-time work were it available) and *low-income workers* or the *working poor* (those who are working full time but for very low pay)." Slack & Jensen, *supra* note 114.

139. *Id.*

shortfall should be borrowed from other government revenue sources. In the long term, Congress should focus on implementing policies that will safeguard against financial strain on the Social Security Trust Fund in the future.

A. Borrowing: The Best Solution in the Short Term

Given that structural reform is not an ideal solution for the short term, borrowing from other government revenue sources is the most promising path. Borrowing was discussed as a possible solution as early as 1983 by the Greenspan Commission.[140] In some respects, the self-funding, independent nature of Social Security is what predisposed it to vulnerabilities from demographic irregularities in the first place.[141] One possible source from which to borrow is the General Fund of the Treasury. This fund has contributed to the Social Security Trust Fund in the past; for example, when payroll taxes were cut in an effort to stimulate a stagnant economy in 2011 approximately 13% of Trust Fund income—$88 billion—came from compensating transfers from the General Treasury.[142] The General Fund of the Treasury has also historically reimbursed Social Security for costs associated with certain tax incentives and wage credits.[143] The idea of Social Security drawing from the General Treasury from time to time was a part of the conversation from the start. Prior to the 1939 amendments, all OASI tax

140. *Supra* text accompanying note 56.

141. Moore, *supra* note 70, at 357 ("Social Security's long-term deficit is due in large part to what Peter Diamond and Peter Orszag refer to as the system's 'legacy cost' or 'legacy debt.'"). "Legacy debt" refers to the fact that the system "paid the first generation of retirees far more than their contributions to the system could finance." *Id.* at 347. It is estimated that legacy debt transferred approximately $29 trillion to pre-1932 birth cohorts. Munnell et al., *supra* note 118, at 6–7. And other experts estimate that "Social Security beneficiaries born before 1937 received about $10 trillion more in benefits than the economic value of their contributions to the system." Moore, *supra* note 70, at 347 (citing John Geanakoplos et al., *Would a Privatized Social Security System Really Pay a Higher Rate of Return?*, *in* FRAMING THE SOCIAL SECURITY DEBATE: VALUES, POLITICS AND ECONOMICS 137, 146 (R. Douglas Arnold et al. eds., 1998)).

142. H.R. DOC. NO. 112-102, at 6 (2012). For comparison, $482 billion of the Trust Fund's income came from FICA tax revenue that year.

143. *Old-Age and Survivors Insurance Trust Fund Income*, at n.(a), SOC. SEC. ADMIN., https://www.ssa.gov/oact/STATS/table4a1.html. For reference, the General Fund reimbursed $1 million in 2021 and as high as $97.7 billion in 2012. *Id.*

revenue passed through the General Treasury before being transferred to the Social Security Trust Fund.[144] The Committee on Economic Security had initially recommended that Social Security's legacy debt be financed by General Treasury revenues beginning in 1965.[145] However, President Roosevelt had that provision removed from the CES Report before it was submitted to Congress,[146] likely because of his "desire not to be criticized for proposing legislation with built-in large federal subsidies for long-distant future years."[147] In 1977, President Jimmy Carter the use of general funds to bolster Social Security, but Congress insisted on structural reforms instead.[148] President Clinton proposed borrowing from the General Treasury, justifying it by the fact that Social Security surpluses at the time were being used to lower the national debt and save the interest that would have been paid on that debt.[149] Also, policy analyst Hans Riemer opposed George W. Bush's privatization agenda by asserting that General Treasury revenue should be redirected from the 2001 Tax Relief Act to protecting the Social Security actuarial balance instead.[150]

Some experts have also identified the estate tax fund as another possible source to be borrowed from, or even drawn from without repayment.[151] The House of Representatives introduced the Social Security Solvency Act of 2004, Section 4 of which, if passed, would have allowed estate tax revenue to be transferred from the General Treasury fund to the OASI Trust Fund.[152] The Senate introduced a similar bill in 2019—the Strengthen Social Security by Taxing Dynastic Wealth

144. *Supra* text accompanying note 40.

145. Moore, *supra* note 70, at 357.

146. *Id.*

147. *Id.* (quoting ROBERT J. MYERS, SOCIAL SECURITY 496 (4th ed. 1993)).

148. Hawes, *supra* note 48, at 878.

149. ROBERT M. BALL, INSURING THE ESSENTIALS: BOB BALL ON SOCIAL SECURITY 230 (2000). The late Robert Ball was a distinguished social policy expert who played an influential role in Social Security policy during his long career with the Social Security Administration. Carolyn Puckett, *Robert M. Ball: A Life Dedicated to Social Security*, 68 SOC. SEC. BULL., No. 3 (2008), https://www.ssa.gov/policy/docs/ssb/v68n3/v68n3p67.html.

150. Hans Riemer, *Prepared Testimony Before the President's Commission to Strengthen Social Security* (Oct. 18, 2001), https://www.ssa.gov/history/reports/pcsss/Reimer_Testimony.pdf.

151. Moore, *supra* note 70, at 360–62; Templin, *supra* note 68, at 14.

152. H.R. 5179, 108th Cong. § 4 (2004).

Act—which would have implemented the same principle.[153] In 2020, estate and gift tax revenue combined amounted to $17.6 billion, the vast majority of which came from the estate tax, but this revenue comprised a mere 0.5% of total federal revenue.[154] Meanwhile, $17.6 billion amounts to around 1.82% of 2020 Social Security revenue.[155] The estate tax's small share of federal revenue suggests it is a feasible source that would have little effect on the overall federal budget, and its size relative to Social Security revenue leads to the conclusion that it would be more valuable in Social Security's wallet. After many years of recommending borrowing from the General Treasury, Robert Ball became a proponent of using the estate tax to bolster Social Security.[156] The rationale stems from the idea that the decedents who currently bear the burden of the estate tax are largely the ones who benefited from Social Security legacy debt.[157] And pushback from the taxpayers is unlikely, as the tax itself is not being changed. Those that are paying the tax would be paying it regardless; the tax revenue would merely be serving a different purpose.

Borrowing from the General Treasury or estate tax funds can help to ease the financial strain placed on Social Security due to generational demographic shifts from time to time. Critics of outside borrowing protest that it would weaken the direct link between benefits and taxes,[158] but so long as the amounts borrowed are perhaps capped at a certain maximum, the benefits far outweigh this downside. On the whole, borrowing from other federal revenue sources would not undermine the original tenets of the Social Security system.[159] Social

153. *See* S. 1950, 116th Cong. § 3 (2019).

154. *Understanding Federal Estate and Gift Taxes*, CONG. BUDGET OFF., (June 2021) https://www.cbo.gov/publication/57272.

155. *See supra* text accompanying note 9.

156. BALL, *supra* note 149, at 3. Ball also believed that leveraging the popularity of Social Security could "save" the otherwise unpopular estate tax. Moore, *supra* note 70, at 367; *see also* Diamond & Orszag, *supra* note 26, at 17 n.5 (noting that "dedicating the estate tax to Social Security could change the politics of whether that tax should be eliminated").

157. Moore, *supra* note 70, at 361–62. See *supra* note 141, for an explanation of legacy debt.

158. Moore, *supra* note 70, at 359.

159. *Id.* at 368 (Social Security is "mature enough to withstand an infusion of [estate tax] revenues without undermining its basic principles." (alteration in original) (quoting ALICIA H. MUNNELL, THE FUTURE OF SOCIAL SECURITY 149 (1977))).

Security would be able to repay the borrowed amounts, with interest, once the demographic strains subside—with the help of outside-the-system reforms that help to address those demographic strains directly.

The implementation of this short-term solution is relatively straightforward. Congress should amend 42 U.S.C. § 401(l) to include borrowing from the General Treasury or estate tax funds, not just borrowing between the OASI and DI Trust Funds. Codifying outside borrowing would allow the SSA unilaterally to take steps to improve Social Security without the obstacle of approval from a partisan-divided Congress, which is far too often deadlocked on financial matters, especially in the realm of social welfare. Granting this power unilaterally to the SSA accords with the general reasoning behind the invalidity of the legislative veto—the idea that Congress should not be allowed to maintain control over an independent agency's authority if it has created that agency and delegated rulemaking authority to it.[160] Congress has already granted broad authority to the SSA to administer Social Security; the SSA should be able to draw a certain amount of funds from other sources of federal revenue without having to obtain express permission from a partisan Congress each time.

B. Organic Improvements to Social and Economic Wellbeing

Although borrowing from the General Treasury or using estate tax funds to prevent complete insolvency is a promising short-term solution, that alone will not make the system fully sustainable. Congress must implement policies that prevent financial strains on the Social Security Trust Fund from occurring in the future. There are ways by which our society can decrease its reliance on Social Security by addressing the larger issues of financial literacy and education[161] as well as the demographic and economic situations that put stress on the Trust Fund in the first place.

Currently, there is no incentive for older workers to delay claiming their benefits past age seventy; benefits increase for each month that a person delays claiming past his full retirement age, but that

160. *Cf.* I.N.S. v. Chadha, 462 U.S. 919, 951–59 (1983) (holding the legislative veto to be unconstitutional).

161. *See* discussion *supra* Part III.C.

increase stops at seventy.[162] A simple, logical change is to get rid of this arbitrary age cutoff—or at least increase it—so that older workers who are willing and able to continue working past seventy are not disincentivized from doing so. Even if the "reward" for delaying one's date of claiming benefits has to be lesser past age seventy, there should still be *some* incentive for those who wish to wait longer before they begin imposing their own personal cost on Social Security.

The previously-discussed 2017 Senate hearing on retirement security contains sound starting points for achieving a financially literate society. Hudson Institute Distinguished Scholar Walter Russell Mead asserted that the complex economic environment of today's society demands that we cultivate a generation of young people that has qualities of financial literacy and entrepreneurial spirit.[163] North Carolina Senator Thom Tillis suggested that states should maintain curriculums that educate people on personal finance at a young age and that financial literacy should be discussed in the workplace.[164] Kent Conrad, Co-Chair of the Bipartisan Policy Center's Commission on Retirement Security and Personal Savings, similarly recommended expanding education on personal finance at all ages, while also stressing "the importance of 'just-in-time' interventions, in which individuals are provided with important information at the moment that they are making major financial decisions."[165] Mead and North Dakota Senator Heidi Heitkamp even discussed the positive impact that a retirement investment product that guarantees monthly income would have on retirement planning.[166] On a related note, the Internal Revenue Code provides tax incentives for personal retirement saving such as the deductibility of Traditional IRA contributions and the Retirement Savings

162. *Your Options: Working, Applying for Retirement Benefits, or Both?*, SOC. SEC. ADMIN., https://www.ssa.gov/benefits/retirement/matrix.html (last visited Sept. 22, 2022).

163. *Hearing*, *supra* note 126 (statement of Walter Russell Mead, Distinguished Scholar in American Strategy, Hudson Institute, and Chace Professor of Foreign Affairs, Bard College).

164. *Hearing*, *supra* note 126 (statement of Sen. Thom Tillis).

165. *Hearing*, *supra* note 126 (prepared statement of Kent Conrad, Co-Chair, Bipartisan Policy Center's Commission on Retirement Security and Personal Savings).

166. *Hearing*, *supra* note 126 (statements of Sen. Heidi Heitkamp and Walter Russell Mead, Distinguished Scholar in American Strategy, Hudson Institute, and Chace Professor of Foreign Affairs, Bard College).

Contributions Credit.[167] Amending the Code to provide even greater tax incentives for private saving is another way we may decrease our dependence on Social Security.

The low fertility rate in the U.S. since the 1970s is a direct cause of the lack of enough covered workers to support current beneficiaries; thus, the government ought to take steps to encourage and incentivize childrearing, such as making childcare and college more affordable and strengthening parental leave policies.[168] It is important that we make it more financially reasonable for younger generations to have and raise children responsibly so that there is a larger base of financially literate taxpayers to support Social Security beneficiaries in the future, and in turn be supported themselves.[169] Creating future taxpayers is not—and should not be—the primary thrust behind the decision to have children, and over-adjusting pro-fertility policies has the potential to create another baby boom that could cause problems decades down the road. However, our Social Security system thrives in a society of steady, gradual population growth, and to achieve such a society, it is Congress's duty to use policy to encourage childrearing for those who wish to have children but simply do not view it as financially feasible.

There is a close nexus between financial literacy and a steady, organic increase in the fertility rate. The Child and Dependent Care Tax Credit (CDCTC) is a great example of this. If certain couples—the ones who wish to have children but do not think it is financially feasible—were made aware through increased financial literacy of the

167. 26 U.S.C. §§ 25B, 219, 408.

168. Munnell et al., *supra* note 82. Although it is an issue too large to adequately address here, the housing shortage is another problem that suppresses the fertility rate. In recent years, it has become increasingly more difficult for younger couples to afford housing with enough space in which to raise children.

169. On a slightly different note, expanding immigration policies to help Social Security is an interesting topic for future research. Allowing more immigrants to enter the U.S. is another possible avenue for increasing the number of Social Security contributors. *See Aging Global Population: Hearing Before S. Spec. Comm. on Aging*, 108th Cong. (2003) (testimony of Alan Greenspan, Chair, Federal Reserve of the United States) ("Immigration, if we choose to expand it, could prove an even more potent antidote for slowing growth in the working-age population."). See Alexander V. Ifill, Comment, *Spain's Double Shock: Hindsight from the United States Regarding an Immigration Influx and Its Effect on Social Security Funding*, 28 U. PA. J. INT'L ECON. L. 487 (2007), for a discussion of how a country's immigration policy can affect the funding of its social security program.

many tax-saving opportunities available to them, then they would likely feel much more financially comfortable with having the children that they want.

If the federal budget allows, improving the Child and Dependent Care Tax Credit is a good starting point for pro-fertility policies. The CDCTC allows taxpayers to claim a tax credit[170] for a percentage of childcare expenses they incur for employment purposes.[171] But the expenses allowed for calculation of the credit for a given taxable year are limited to $3,000 for one dependent or $6,000 for two or more dependents,[172] and the credit is phased down by one percentage point—starting at 35% but not to fall below 20%—for each $2,000 of adjusted gross income beyond $15,000 to yield the applicable percentage for the credit.[173] The Biden Administration's American Rescue Plan made the CDCTC refundable for 2021, meaning that in the event it causes the taxpayer's 2021 tax liability to be negative, the taxpayer will receive a refund,[174] but by statute the credit is nonrefundable.

Altering the CDCTC would have positive effects on the future of Social Security. Congress should amend 26 U.S.C. § 21 to make the tax credit permanently refundable and use the American Rescue Plan's more generous temporary levels as a model for permanent reform, increasing the starting point of the applicable percentage and the adjusted gross income starting point for the phasedown. These changes would help to make it more feasible for taxpayers in their twenties and thirties to have children so that the next generations of retirees are adequately supported and the number of covered workers per retiree increases again. Even if the CDCTC must remain unchanged to not upset the delicate balance struck by the Internal Revenue Code, a simple increase in the awareness of its benefits would likely have positive long-term

170. Tax credits are dollar-for-dollar reductions of tax liability, as opposed to a tax deduction, which instead subtracts an expense from a taxpayer's taxable income and thus reduces his tax liability by the product of the deduction and his marginal tax rate.

171. 26 U.S.C. § 21(a)(1).

172. *Id.* § 21(c). The American Rescue Plan temporarily increased these limits on covered expenses to $8,000 and $16,000, respectively. *Id.* § 21(g).

173. *Id.* § 21(a)(2). The American Rescue Plan temporarily increased the phasedown's starting point for the applicable percentage to 50% and increased the adjusted gross income threshold to $125,000. *Id.* § 21(g).

174. *Id.* § 21(g)(1).

effects on the welfare of Social Security because it would contribute to the more steady, gradual rise in fertility rates that makes Social Security thrive.

Congress's spending power is a valuable policy tool for long-term social and economic well-being. This power is incident to Congress's taxing power enumerated in Article I, Section 8 of the Constitution,[175] and it often allows Congress to do indirectly what it cannot do directly by conditioning states' receipt of federal money in order to further broad policy objectives.[176] This tool can be targeted to address some of the root causes of Social Security's financial distress. Some existing federal grants to states should be conditioned on a minimum per-student investment for education, a minimum ratio of state education investment to state GDP, minimum teacher compensation, and mandatory financial literacy classes in public schools and optional ones in the workplace.[177] If these types of conditions are placed on federal grants, then states will be heavily incentivized to invest in education, financial literacy, and other things that work together to positively impact individual retirement saving. Our system must invest in its workers in order to increase those workers' capacity to sustain and contribute to Social Security.[178]

V. CONCLUSION

It is clear—and has been clear for quite a while now—that the depletion of the Old-Age and Survivor's Insurance Trust Fund will cause Social Security beneficiaries' benefits to automatically decrease to 76% of promised benefits in 2034 if no reform measures are taken.

175. U.S. CONST. art. I § 8, cl. 1 (granting Congress the power to tax).

176. South Dakota v. Dole, 483 U.S. 203, 206–07 (1987).

177. Federal funds conditioned by Congress's spending power must be in pursuit of the general welfare, must be unambiguous, must be related to the involved federal interest, and cannot otherwise run afoul of the Constitution. *Id.* at 207–08. The exercise of spending power also must not amount to coercion. *Id.* at 210.

178. Unfortunately, Congress tends to repeal policies that help taxpayers increase their ability to make more money. For example, the Tax Cuts and Jobs Act repealed the moving expense deduction, which had previously helped taxpayers relocate to higher-paying jobs. Lauren Swavely, *Tax Cuts and Jobs Act—Significant Changes to Moving Expense Deductions*, HERBEIN (Feb. 7, 2018), https://www.herbein.com/blog/tax-cuts-and-jobs-act-significant-changes-to-moving-expense-deductions.

Structural reforms to the program are ineffective at this point because of unpopularity and generational inequity, and privatization would be accompanied by tremendous transition costs and would entirely get rid of the OASI social safety net as we know it. Therefore, borrowing from the General Treasury or estate tax funds is the best short-term solution to ease the financial strain placed on Social Security due to generational demographic shifts. But in order to prevent insolvency from again becoming a pressing issue and to prevent exorbitant borrowing levels, long-term solutions are necessary and should include betterments to education and pro-fertility tax credits. With this multi-tiered approach that creates a more sustainable Social Security system, we will be able to reduce our dependence on Social Security in the future while still maintaining that it will always be there for us when we need it.