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A Simple Plan to Address Social Security Insolvency

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A Simple Plan to Address Social Security Insolvency

By Andrew G. Biggs and Kristin A. Shapiro

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Abstract

Social Security's Old Age and Survivors Insurance trust fund is projected to be exhausted in 2033. Without intervening legislative action, current law dictates that benefits at that time would need to be reduced by approximately 21 percent. It is commonly assumed that such benefit reductions must be made on an equal percentage basis for every retiree, a step that would double the elderly poverty rate and reduce total income for the median senior household by almost 14 percent.

However, when a federal program lacks sufficient funds, the executive branch in fact possesses considerable discretion to allocate those limited funds in a reasonable manner. This discretion would allow the President at the time of trust fund exhaustion to pay full Social Security benefits to those in greatest need.

We present a framework in which monthly benefits in 2033 would be capped at \$2,050 (in 2024 dollars), an amount that would provide full scheduled benefits for roughly half of retirees; benefit reductions for the remaining, higher-income, half of retirees would be progressive. This framework would prevent any increase in the elderly poverty rate due to Social Security's insolvency and approximately 80 percent of beneficiaries would receive a smaller benefit reduction than had every retiree been subjected to an across-the-board cut.

In other words, even if Congress does nothing to address Social Security's insolvency between now and 2033, the worst effects of Social Security insolvency could be prevented by executive action. Because our framework could be implemented under existing law, it also provides a reasonable starting point for negotiations over long-term Social Security reforms.

Introduction

Forty years after Social Security's Trustees first reported the program faced long-term insolvency, Congress still shows no signs of addressing Social Security's \$24.8 trillion funding gap before the retirement trust fund is projected to run dry in 2033.¹

At one time, most Republicans and a number of congressional Democrats supported reducing benefits as part of a broader reform effort to address Social Security insolvency. But since the late 1990s, politicians' taste for Social Security benefit reductions has waned. Democrats now almost universally oppose any benefit cuts, with most favoring expanding benefits. And Democrats have more recently been joined by former President Trump and allied Senators such as Josh Hawley and J.D. Vance, the latter of whom is Trump's running mate in the 2024 presidential election.

At the same time, neither Americans' nor their elected officials' taste for tax increases has increased. President Trump has stated that he opposes any increased payroll taxes to fund Social Security,² and even proposed eliminating taxes on Social Security benefits that support the trust fund.³ And while nearly 90 percent of House Democratic Members of Congress endorsed the Social Security 2100 Act of 2019,⁴ which included an increase in the payroll tax rate from 12.4 percent to 14.8 percent, President Biden has opposed any tax increase on Americans earning less than \$400,000. During her presidential campaign, Vice President Harris has similarly pledged to not raise taxes for

¹ Social Security Trustees, The 2024 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, (Washington, DC: Government Printing Office, 2024).

² <https://money.com/donald-trump-kamala-harris-social-security-medicare/>

³ <https://www.cnn.com/2024/08/14/trumps-plan-to-end-taxes-on-social-security-a-fatal-mistake-lawmaker.html>

⁴ <https://www.congress.gov/bills/116/congress/house/bills/860/text/toc-HFA782D205A6D4DA5A17CE245579AA5D3>.

Americans earning under \$400,000.⁵ Without a significant tax increase, any Social Security reform that requires payment of full benefits would fall well short of making Social Security sustainably solvent.

Unlike an employer-sponsored pension, where actions must be taken on a regular basis to maintain long-term solvency, Congress has the option to put off action on politically uncomfortable reforms such as increasing Social Security taxes or reducing benefits. Congress has taken that route every year for the past four decades. The seemingly bipartisan agreement neither to reduce Social Security benefits nor to increase taxes by levels sufficient to pay full benefits makes it increasingly unlikely that Congress will act before the retirement trust fund runs dry, which Social Security's Trustees currently project to occur in 2033.⁶

In light of this political stalemate, it is important to explore the precise implications of Social Security insolvency, so that policymakers can better understand the effects of their inaction and so that the executive branch can create a contingency plan to mitigate the most serious effects of trust fund exhaustion. In short, insolvency means that Social Security spending must be reduced to amounts payable with revenues from currently-allotted payroll taxes and income taxes levied on Social Security retirement and survivors benefits. Together, these dedicated revenue sources are projected to be sufficient to fund approximately 79 percent of scheduled benefits, implying that Social Security's Old Age and Survivors Insurance program would be roughly 21 percent short of the funds it needs.⁷

⁵ https://www.yahoo.com/news/kamala-harris-says-she-ll-195217994.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_si_g=AQAAAIR-v9T8M0o3TXh-_9oKQIhfSsORZN1xhIRyQEV-Il_FCP2rvK8ZP8JBOMGIharoFrF9weJfc3H_vWRhNN9pw4Tl_Y6siahXReEk3UCDvxTbU5QxS2bjn0SnrdfkqI7iRl_waYIwmvNz6tAZBRMabkqB_2JksMucWbG2RfgGKGKT.

⁶ <https://www.ssa.gov/policy/trust-funds-summary.html>

⁷ <https://www.ssa.gov/oact/trsum/>

In following sections we discuss what the law does, and does not, say about what might happen in the event of trust fund exhaustion and the surprisingly large discretion afforded to the executive branch under those circumstances. We then offer a proposal that, in the event of insolvency, the President could implement to mitigate the most severe harms of Social Security insolvency. Finally, we discuss the potential implications of our proposal on policymakers' discussions about Social Security reform.

The mixed conventional wisdom on trust fund exhaustion

If the Social Security retirement trust fund become insolvent in 2033 as projected, conventional wisdom is that two things must occur: (1) overall Social Security spending must be reduced to the level payable with incoming revenue from Social Security's dedicated payroll and income taxes, which are projected to cover approximately 79 percent of benefits; and (2) every beneficiaries' benefits must receive a *pro rata* 21 percent cut to account for that deficit. This section explains why only the former assumption is correct.

In the event of insolvency, total Social Security spending must be reduced

It is broadly accepted that, if Social Security's trust funds became exhausted, total Social Security spending would need to be reduced to the level that is affordable given social security's dedicated revenues of payroll taxes and income taxes levied upon Social Security benefits.

On this point, the conventional wisdom is correct. The Appropriations Clause of the U.S. Constitution provides in no uncertain terms that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7. The Appropriations Clause vests Congress with “exclusive power over the federal purse,” and is “one of the most important authorities allocated to Congress in the Constitution[].” *U.S. Dep’t of the Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012).

Likewise, the Antideficiency Act, prohibits agencies from spending in excess of the congressional appropriations available to them.⁸

The congressional appropriation for Social Security dictates that benefits may be paid only from the Social Security trust funds, which are funded through dedicated payroll and income taxes.⁹ As discussed above, those funds are projected to be insufficient to provide full benefits beginning in 2033. Therefore, absent legislation providing a new congressional appropriation to Social Security, total Social Security spending following trust fund exhaustion must be reduced to a level that is payable from incoming revenue from the current payroll and income taxes dedicated to Social Security. That incoming revenue is projected to cover approximately 79 percent of benefits.¹⁰

It is possible that, following insolvency, some Social Security beneficiaries might claim that the Judgment Fund provides an alternative congressional appropriation from which full benefits can be paid.¹¹ The Judgment Fund provides that “[n]ecessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interest and costs specified in the judgments or otherwise authorized by law.”¹² The Judgment Fund appropriation is limited to monetary damages awards and equitable relief that is equivalent to a monetary award (*i.e.*, an injunction to pay a specified sum of money to the plaintiff).¹³ Unlike the appropriation for the Social Security trust funds, which is limited to the amount of revenue from the dedicated payroll and income taxes, the appropriation for the Judgment Fund is open-ended. Beneficiaries therefore might sue the

⁸ 31 U.S.C. § 1341

⁹ 42 U.S.C. § 401(h)

¹⁰ <https://www.ssa.gov/oact/trsum/>

¹¹ Law professor Matthew B. Lawrence suggests that the Judgment Fund might be available in the related hypothetical context of Medicare insolvency. *Medicare “Bankruptcy”*, 63 B.C. L. Rev. 1657, 1690–95 (2022)

¹² 31 U.S.C. § 1304(a)

¹³ Matter of: Judgment Fund & L. Enf’t Seizure Claims, B-259065 (Dec. 21, 1995).

federal government claiming a statutory entitlement to Social Security benefits and resulting damages from the Judgment Fund.

However, the Supreme Court has held that plaintiffs suing the federal government for payment may do so only under statutes that “can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.”¹⁴ Such “so-called money-mandating provisions” are rare,¹⁵ and courts are exceedingly unlikely to hold that the Social Security statute is one of them after the trust fund is exhausted. Indeed, the Social Security Act only authorizes courts to enter judgments “affirming, modifying, or reversing [a] decision of the Commissioner of Social Security”—which would not be a monetary award payable from the Judgment Fund—and otherwise states that “[n]o action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.”¹⁶ Moreover, while the Supreme Court has held that certain statutes that “attempt to compensate a particular class of persons for past injuries or labors” are money-mandating, it is reluctant to conclude that laws which “subsidize future state expenditures” are money-mandating.¹⁷ A lawsuit seeking to force the government to pay full Social Security benefits from the Judgment Fund would fall into the latter, suspect category.

Another problem with the Judgment Fund theory is that the Judgment Fund is limited to paying awards that are “not otherwise provided for.” 31 U.S.C.A. § 1304(a)(1). The Government Accountability Office (GAO) and the Department of Justice’s Office of Legal Counsel have long held that “[w]hether payment is otherwise provided for is a

¹⁴ *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 322 (2020) (quotation marks omitted).

¹⁵ *Id.* at 324.

¹⁶ 42 U.S.C. § 405(g)–(h).

¹⁷ *Me. Cmty. Health Options*, 590 U.S. at 325 (quotation marks omitted).

question of legal availability rather than actual funding status. In other words, if payment of a particular judgment is otherwise provided for as a matter of law, the fact that the defendant agency has insufficient funds at that particular time does not operate to make the Judgment Fund available.”¹⁸

Conventional wisdom is wrong that every beneficiaries’ benefits must be reduced by the same percentage

While conventional wisdom that Social Security spending must be reduced by approximately 21 percent following Social Security insolvency is correct, there is a second level of conventional wisdom that is incorrect. Specifically, it is commonly assumed that a benefit reduction triggered by trust fund insolvency must be proportioned equally. That is, all beneficiaries, rich and poor, younger and older, would be subject to the same percentage reduction to their benefits.

When the Social Security Administration and the Congressional Budget Office illustrate benefits that would be payable following trust fund insolvency, both agencies assume that all beneficiaries are subject to the same percentage reductions relative to scheduled benefits. The Congressional Research Service, in its discussion of “What Would Happen If the Trust Funds Ran Out?,” notes that “One option would be to pay full benefits on a delayed schedule; another would be to make timely but reduced payments.”¹⁹ The possibility of paying different beneficiaries different percentages of their scheduled benefits is not discussed.

In 2023, the House Ways and Means Committee reported that in less than a decade the trust fund will be exhausted, “at which point beneficiaries will face a 21

¹⁸ Government Accountability Office, Principles of Federal Appropriations Law, (Washington, DC 2016).

¹⁹ Barry F Huston, Social Security: What Would Happen If the Trust Funds Ran Out?, (Washington, DC 2022).

percent benefit cut.”²⁰ In 2024, CNBC reported that “Social Security will still exist after 2035, according to the trustees’ findings, but retirees will only receive 83% of their full benefits.”²¹ Likewise, Biggs (2004), an analysis of the effects of trust fund exhaustion, “assumes a proportionate cut in benefits for all beneficiaries,” while noting that “this is only one possible option for allocating the benefit reduction among beneficiaries.”²² Yet no other scenarios are considered.

The assumption of proportionate reductions in benefits is even embedded in the actuarial projections of how large total benefit reductions must be. For instance, the summary of the 2024 Trustees report states:

The Old-Age and Survivors Insurance (OASI) Trust Fund will be able to pay 100 percent of total scheduled benefits until 2033, unchanged from last year's report. At that time, the fund's reserves will become depleted and continuing program income will be sufficient to pay 79 percent of scheduled benefits.

These figures are likely generated based upon the assumption that, following trust fund insolvency, each beneficiary would be subject to the same percentage reduction in benefits.²³

As Biggs (2004) shows, a 27 percent across-the-board cut taking place in 2039 would push millions of seniors into poverty and impair the lifestyles of even middle-class retirees. At the time of that analysis, exhaustion of the Social Security trust fund would result in a

²⁰ <https://waysandmeans.house.gov/2024/05/06/social-security-trust-fund-report-brings-more-bad-news-for-seniors/>

²¹ <https://www.cnbc.com/select/will-social-security-run-out-heres-what-you-need-to-know/>

²² Andrew G. Biggs, *The Distributional Consequences of a "No-Action" Scenario*, (Baltimore, MD 2004).

²³ Note that even the size of the benefit reductions required in the case of trust fund insolvency depends in part upon the revenues that Social Security receives from income taxes levied upon retirement benefits, and the level of such income tax revenues depends upon how benefit cuts are distributed. Reductions focused on individuals receiving lower benefits would have little impact upon receipts from benefit taxation, as few such beneficiaries pay income taxes on their benefits. Similarly, if benefit reductions were focused on higher income beneficiaries who are more likely to pay income taxes on their benefits then revenue losses would be larger and the aggregate cut required also would grow.

doubling of the elderly poverty rate and 13.9 percent reduction in total income for the average senior. Facing such dire circumstances, and with Congress's inability to tackle complex public policy changes on a bipartisan basis, it is increasingly easy to imagine even fiscally conservative Members of Congress accepting the \$350 billion-plus in annual tax increases or borrowing to maintain full benefits for all.

Assuming equal proportionate reductions in Social Security benefits is not unreasonable in the context of a typical bankruptcy proceeding, where creditors are generally paid *pro rata*.²⁴ But in the context of Social Security insolvency, the assumption that each beneficiary must receive the same percentage benefit cut is mistaken. As one of us previously wrote in the *Wall Street Journal* with law professor Conor J. Clarke, the President possesses considerable discretion in allocating limited resources when faced with a funding shortfall.²⁵

In *Morton v. Ruiz* (1974), the Supreme Court considered how the Bureau of Indian Affairs could manage a program for which Congress made more individuals legally eligible for benefits than it allocated funds to provide for them. The Court stated, “if there were only enough funds appropriated to provide meaningfully for 10,000 needy Indian beneficiaries and the entire class of eligible beneficiaries numbered 20,000, it would be incumbent upon the BIA to develop an eligibility standard to deal with this problem,” so long as standards were “applied consistently and so as to avoid both the reality and the appearance of arbitrary denial of benefits to potential beneficiaries.”²⁶ The D.C. Circuit has similarly explained that “[i]f Congress does not appropriate enough money to meet the

²⁴ <https://www.abi.org/abi-journal/chapter-11-101#:~:text=It's%20pretty%20straightforward%3A%20Pro%20rata,percent%20of%20his%20allowed%20claim.>

²⁵ Conor J. Clarke Shapiro and A. Kristin, "The Phony Debt-Ceiling 'Calamity'," *The Wall Street Journal*, May 22, 2023, <https://www.wsj.com/articles/the-phony-debt-ceiling-calamity-x-date-default-social-security-roll-over-treasury-ac939d83>.

²⁶ *Morton v. Ruiz*, 415 U.S. 199, 231 (1974).

needs of a class of beneficiaries prescribed by Congress, and if Congress is silent on how to handle this predicament, the law sensibly allows the administering agency to establish reasonable priorities and classifications.”²⁷ This is precisely the situation facing Social Security following the exhaustion of the trust funds: Americans are legally entitled to benefits, but Congress has not appropriated sufficient funds to fully provide for those benefits.

The GAO similarly endorsed this conclusion in its periodically-updated treatise, *Principles of Appropriation Law*. The GAO asks, “What is an agency to do when it finds that it does not have enough money to accommodate an entire class of beneficiaries?” The GAO explained, “[i]f the agency cannot get additional funding and the program legislation fails to provide guidance, the agency may, within its discretion, establish reasonable classifications, priorities, and/or eligibility requirements, as long as it does so on a rational and consistent basis.”²⁸

The Social Security Act does not provide any guidance on how Social Security benefits should be reduced in the event of Social Security insolvency. Accordingly, pursuant to the foregoing principles, in the event of insolvency, the President could direct Social Security’s limited resources to the most vulnerable seniors, while reducing benefits for high-income retirees or for younger retirees, who may be able to delay retirement.²⁹ To be clear, the President could not unilaterally increase Social Security taxes, nor would the President be entitled to reduce aggregate Social Security benefits by *more* than the amount needed to maintain the program’s solvency. Similarly, the President could not

²⁷ *City of Los Angeles v. Adams*, 556 F.2d 40, 49–50 (D.C. Cir. 1977).

²⁸ Government Accountability Office, *Short Principles of Federal Appropriations Law*.

²⁹ Note, trust fund insolvency would not by itself extinguish beneficiaries’ underlying legal entitlement to full benefits, and thus if the trust funds ever regained sufficient funds to provide full benefits, the government would be required to pay full benefits. *See id.* n. 39.

alter Social Security benefits such that a beneficiary received more than he or she was entitled to under the current benefit formula.

But there is no legal basis for the view that the President would be required to reduce every beneficiaries' benefits *by the same percentage*. While that would be one possible option available to the President in the event of insolvency, the President alternatively could choose to create reasonable criteria that would focus the necessary benefit reductions on the retirees who are most able to absorb them. So long as the criteria for applying differential benefit reductions are reasonable and consistent, the President would have the power to craft an adjustment to benefits to keep Social Security solvent while protecting beneficiaries deemed most in need of the benefits Social Security provides.

A plan to mitigate the most severe effects of Social Security insolvency

Below we outline a proposed plan that, consistent with the legal principles outlined above, the President could implement in the event of Social Security insolvency, as an alternative to reducing every retirees' benefits by the same percentage.

Assumptions

Before we introduce our proposal, we note at the outset some of the assumptions that impact our calculations. Most significantly, while discussions of Social Security often reference the program's "trust fund," Social Security is in fact two programs with two separate trust funds. The Old Age and Survivors Insurance (OASI) and Disability Insurance (DI) programs each have dedicated payroll taxes and dedicated trust funds where surpluses and deficits of tax collections are recorded.

Commentators, including Social Security's actuaries, often assume for illustrative purposes that, as the exhaustion of one of Social Security's trust funds became imminent, Congress would merge the funds to buy an extra year or so of solvency prior to benefit

reductions becoming necessary. Merging the trust funds is not allowable under current law, however, and so we do not make such an assumption.³⁰

Moreover, merging the OASI and DI trust funds appears less likely even in practice because, contrary to most of the past several decades, the Disability Insurance program is better-funded than the Old Age and Survivors Insurance program. In fact, while the OASI trust fund is projected to be exhausted in 2033, the DI fund is projected to remain solvent for at least 75 years. Since the DI program serves beneficiaries who are in general lower-income and more dependent upon Social Security than does the Old Age and Survivor's program, it would be surprising to see the disabled forced to accept benefit reductions in order to reduce cuts imposed on better-off retired beneficiaries. For these reasons, we assume that the OASI program must survive upon its own resources.³¹

Social Security's actuaries estimate that the OASI trust fund will be exhausted in 2033, after which dedicated payroll tax and income tax revenues would be sufficient to fund only 79 percent of scheduled benefits. While, as noted previously, this precise figure depends upon an assumption that benefits would be reduced uniformly, for these purposes we will assume that total benefit outlays must be reduced by the 21 percent figure implied by the actuaries' calculations.

Proposal

We offer the following proposal for reducing Social Security spending by 21 percent if the trust fund becomes insolvent. Instead of reducing each retirees' benefits by 21 percent, the President could cap benefits at approximately \$2,050 (in 2024 dollars). Benefits would be paid per the current law benefit schedule up to a monthly maximum of

³⁰ Assuming that the two funds were merged would change the following discussion and figures only slightly, as the OASI fund is significantly larger than the DI fund.

³¹ Assuming the two trust funds were merged would not alter the figures significantly, since the OASI program remains substantially larger than DI.

\$2,050, with beneficiaries entitled to benefits exceeding that amount receiving a flat \$2,050 per month.^{32, 33} This proposal would make Social Security solvent without any tax increases or new debt.

Under this framework, *approximately half of all retirees and survivors would receive 100 percent of their scheduled benefits.* (Table 1.) To reiterate, our proposal would permit the President to pay *full benefits* to approximately fifty percent of retirees even after the trust fund becomes insolvent. The lowest-income retirees—and even many middle-income retirees—would not have their benefits reduced by even one cent.

Moreover, since the federal poverty threshold for a single individual over age 65 is \$1,170 per month (using 2023 figures), no retirees would see either their benefit or their total income pushed below the poverty threshold as a result of these benefit reductions.³⁴ Even households where only one earner qualified for benefits under their own earnings record and the second relied solely on spousal benefits would be protected against any increased risk in poverty. Under the current law benefit formula, a retired spouse who is not entitled to a benefit under their own earnings record can instead receive a benefit equal to half that of their spouse. The 2023 poverty threshold for two over-age 65

³² These figures are based upon the distribution of OASI benefits payable as of December 2022, obtained from the Social Security Administration's annual Statistical Supplement, increased annually to 2033 by projections for economy-wide wage growth from the 2024 Social Security Trustees Report. As such, they do not precisely replicate the distribution of OADI beneficiaries in 2033, but provide a reasonable estimate of the size and distribution of benefit reductions that would be sufficient to reduce outlays to the levels payable with Social Security's dedicated payroll taxes and revenues from income taxes levied on Social Security benefits. See Social Security Administration, *Social Security Bulletin: Annual Statistical Supplement* (Baltimore, MD: Social Security Administration, 2023). and Social Security Trustees, Short The 2024 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds.

³³ Social Security Trustees, Short The 2024 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds.

³⁴ Poverty thresholds are drawn from "Poverty Thresholds," updated January 23, 2024, 2024, accessed September 9, 2024, 2024, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

individuals was \$18,430 per year, or \$1,536 per month.³⁵ A retiree couple where only one spouse had a benefit based upon their own earnings and the second relied upon a spousal benefit would have a total household benefit of \$36,900, or over twice the elderly poverty threshold, before any benefit reductions would be applied.

In fact, a couple each receiving the maximum annual benefit under our proposal would have an income of \$49,200, roughly 2.7 times the elderly poverty threshold, before touching a penny of their own retirement savings. Approximately 80 percent of beneficiaries would receive a smaller reduction than they would under a policy of uniform percentage benefit cuts.

Table 1: The distribution of benefit reductions under our proposal

Percentile of beneficiaries	Percentage benefit reduction
5%	0%
10%	0%
25%	0%
50%	0%
75%	-16%
90%	-27%
95%	-32%

Source: Authors' calculations based on *Social Security Administration data and assumptions*.

Retirees entitled to the very highest benefits available under the current law benefit schedule—roughly, \$50,000 per year and up in 2033, in 2024 dollars—would receive a roughly 40 percent cut relative to scheduled levels. But Census Bureau [research](#)

³⁵ United States Census Bureau, "Poverty Thresholds."

shows that the richest current seniors receive just 10 percent of their incomes from Social Security, meaning their total incomes would fall by only around 5 percent.³⁶

Political implications of the President's broad authority in the event of Social Security insolvency

The President's ability to unilaterally adjust Social Security benefits in the event of trust fund insolvency could alter the political field of play in favor of fiscally-prudent entitlement reforms. As insolvency approached, the President could announce in advance that, in the event Social Security's retirement trust fund were exhausted, he would instruct the Commissioner of Social Security to adjust benefit payments in such a way as to protect the bottom half of beneficiaries against any benefit reductions and to protect nearly four-fifths against the level of reductions implied by a uniform benefit cuts policy.

This step would not only prevent panic among retirees and other potentially affected beneficiaries. It would turn Social Security's insolvency from a cataclysmic event for retirement income security and potentially the economy to a more manageable, albeit still very significant, fiscal adjustment. In doing so, it could reset the terms of negotiations on Social Security reform.

Rather than arguing over very significant tax increases to protect all retirees against cuts, the two parties in Congress could negotiate the how much incremental tax increases are preferred to increase benefits for the highest-income fifth of retirees back toward scheduled levels of benefits. That amount of preferred tax increases may well not

³⁶ Adam Bee and Joshua Mitchell, "Do older Americans have more income than we think?" (paper presented at the Proceedings. Annual Conference on Taxation and Minutes of the Annual Meeting of the National Tax Association, 2017).

be zero. Yet it also is likely to be significantly less than would be necessary to pay full benefits to all, which requires the largest peacetime tax increase in history.³⁷

We far prefer for Congress to enact comprehensive Social Security reforms before 2033. But four decades of procrastination suggest a backup plan is required. Our approach is more defensible than a 21 percent across-the-board benefit cut and could serve as an opening bid for fiscal conservatives to address Social Security's long-term solvency. The President's ability to unilaterally implement this plan should negotiations fail would give that bid a significant amount of force.

Conclusion

In the event of Social Security insolvency, the President would have considerable discretion to prioritize the limited funds available to mitigate the effects of insolvency on the nation's most vulnerable seniors. We have outlined one simple proposal that would accomplish this result: Instead of reducing every retirees' benefits by the same amount, the President could reduce the maximum monthly benefit. Under our proposal—which could be implemented by the President unilaterally in the event of insolvency—nearly fifty percent of retirees would receive no benefit cut, and no retiree would be pushed into poverty. And while cuts in benefits would fall disproportionately on higher-income retirees, higher-income retirees both depend less on Social Security as retirement income source and would tend to fair worse under a Social Security reform plan that requires a tax increase.

The legal principles and proposal outlined in this paper are significant on their own terms, as Congress's repeated failure to reform Social Security suggests that policymakers should start crafting contingency plans for addressing Social Security insolvency. But they

³⁷ Based upon figures presented in Garrett Watson, *Placing the House Build Back Better Act Tax Increases in Historical Context*, The Tax Foundation (October 4, 2021), <https://taxfoundation.org/house-democrats-tax-increases-historical-context/>.

also have significant political implications for any Social Security reform efforts that may occur between now and 2033, as they focus policymakers on the question that is truly at state in Social Security reform: Should we increase taxes to maintain full benefits for high-income retirees?

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