Pulling at the Thread: Anti-Immigrant Proposals Threaten Social Security Traditions

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It is not charity but a right, not bounty but justice, that I am pleading for.

–Thomas Paine

Economic security in the form of retirement benefits although not formalized until the early part of the 20th century, has traditional philosophical, economic and social roots that pre-date the Civil War, the American Revolution and even the original colonies. The first published proposal on the issue of retirement security in the United States was written by Thomas Paine in his 1795 treatise, *Agrarian Justice*. In it he described a proposal to organize a common fund to provide for the economic security of the elderly and others, into which all persons would contribute. He recognized that "[i]t is only by organizing civilization… to act like a system of pulleys, that the whole weight of misery can be removed."

Over the past two years, multiple amendments have been proposed in Congress that adversely target immigrants' retirement security in ways that would require the Social Security Administration (SSA) to alter the current retirement benefits framework by significantly changing the way work history is credited to individuals. The most extreme of these proposals would have required the re-determination of the work histories of millions of foreign-born individuals in the United States, including naturalized U.S. citizens and lawfully present immigrants, placing them and their dependents at risk of losing some, or all, of their hard-earned benefits. Many would be forced into indigence, unnecessarily obliging state and local governments and community services to provide assistance at their own expense, instead of through the worker's lifetime contributions to the federal government.

These punitive proposals have been touted as necessary to prevent undocumented immigrants from accessing benefits, even though they are already ineligible for social security benefits and therefore unable to collect them. Proponents have also argued that the proposals are necessary to discourage identity theft, but in actuality, they exacerbate the problems associated with identity theft by deterring individuals from correcting their SSA records and work histories.

Although beneficiaries and their families would be primarily impacted, the secondary impact on the social security system is more far-reaching and damaging than immediately discernable. The danger of these proposals lies in the fact that they undercut time-honored public policy values and impose new, unheard of, administrative burdens on SSA (an agency already buckling under its current workload). The traditional "system of pulleys" whereby contributions made by all workers into the common fund of Social Security can be relied upon for economic benefits in case of disability, old-age or death, has become increasingly vulnerable to attacks in the name of politics.

An extreme version of these proposals was offered twice by Senator John Ensign (R-NV) in 2007; first during the debate over immigration reform and again as part of a higher education bill.[1] It

[1] *See* S. Amdt. 2355 to S.Amdt. 2327 to H.R. 2669 College Cost Reduction Act of 2007, Recorded Vote 263, July 19, 2007. http://thomas.loc.gov/cgi-bin/bdquery/D?d110:94:./temp/~bd9c8J::|/bss/d110query.html.

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stated that "no quarter of coverage shall be credited …. to an individual who is not a natural born United States citizen, unless the Commissioner of Social Security determines …that the individual was authorized to be employed in the United States during such quarter."[2] SSA, however, does not possess the data necessary to determine past status on a quarterly basis. Therefore, millions of foreign-born individuals, including naturalized citizens, would be forced to verify that they were authorized to work during each and every quarter of credited earnings. The burden to prove past employment authorized status would fall on elderly retirees, the disabled, and those receiving survivor benefits, such as widows and children. Their inability to re-verify past work history—even if all quarters were earned while in legal status—would result in the disqualification of quarters of coverage, reducing or even completely terminating benefits.

Ultimately, this proposal did not receive the votes necessary for passage. However, a later and less extreme proposal by Senator Ensign did pass as part of the 2008 omnibus appropriations bill enacted into law on December 26, 2007.[3]

The enacted provision states that no funds appropriated during FY 2008 under the Labor-HHS title of the bill may be used "for purposes of administering Social Security benefit payments…to process claims for credit for quarters of coverage based on work performed under a social security account number that was not the claimant's number which is an offense prohibited under section 208 of the Social Security Act [42 U.S.C. 408]."[4] Section 208 lists a variety of offenses prohibiting the intentional misuse of a SSN. The supporting explanatory statement clarifies that the prohibition is intended to apply only "if such use of the Social Security Number has been found to be an offense prohibited under section 208 of the Social Security Act."

The enactment of this provision represents a meaningful departure from the historical system of how work history is credited (based on actual contributions) and it is not yet clear how this new provision will be administered. Although currently limited to FY 2008 appropriations, it is expected that Sen. Ensign and others will attempt a more permanent change later this year. What has also become clear is that the Social Security system as we know it is at risk of being unraveled by a Congress that does not seem to appreciate either the short-term or long-term ramifications of such changes.

Americans have typically relied on the long-standing policy that paying into the Social Security fund yields financial benefits when they are most needed; the simple premise that what you "get out" is based on what you "pay in." By enacting the "Ensign amendment", Congress sets a dangerous precedent that earnings paid into the system are not necessarily guaranteed to be counted towards "fully insured status" or actual retirement benefits. If Congress is willing to start pulling at the thread of the contributory principle underlying the social security entitlement program, there is no telling where it will stop and who else it will harm.

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[2] *Id.*
[3] See H.R. 2764 Consolidated Appropriations Act of 2008, http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.02764: which became Public Law 110-161.
[4] Section 527 of Public Law 110-161.