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WHY AMERICANS SHOULD OWN THEIR SOCIAL SECURITY RETIREMENT BENEFITS

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The new Congress will face a number of important decisions about the future of the Social Security system. These decisions should focus on ways to prevent the payments crisis that is expected to begin within the next decade and to increase the extremely low rate of return that most Americans receive on their Social Security taxes.

Regardless of what other reforms it considers, Congress must give every American who qualifies for Social Security retirement benefits the security of keeping those benefits through an explicit property right. Establishing a property right would mean that Americans would own their Social Security retirement benefits, and those benefits could not be taken away or reduced in any way later on. The reasons Congress should take this step are clear:

- The Supreme Court has said that Congress can legally end Social Security benefits at any time. In 1960, the Supreme Court decided in *Flemming v. Nestor* that Americans have no property right to their Social Security benefits. In his dissent, Justice Hugo Black observed that this decision “simply tell[s] the contributors to this insurance fund that despite their own and their employers’ payments the Government, in paying the beneficiaries out of the fund, is merely giving them something for nothing, and can stop doing so when it pleases.” Establishing a property right would overturn this decision so that benefits are protected.
- The Social Security debt owed to future retirees should be declared morally the same as if the government had issued them a Treasury bond. When the government borrows money from individuals, financial institutions, or other countries, it gives them a bond containing the explicit right to be repaid every cent that was borrowed along with a specific rate of interest. Future Social Security recipients, however, have no such guarantee: Congress could reduce the stated benefits at any time. Yet, there is no moral difference between what the government owes to those who own Treasury bonds or what it owes to future Social Security recipients. Congress should enshrine that principle in law.

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As Congress considers ways to preserve and protect Social Security, it should ensure that Americans have an explicit written property right to their Social Security retirement benefits once they have paid taxes for the appropriate number of quarters to qualify. An explicit property right changes the

Executive Memorandum

relationship between the government and future Social Security recipients to that of a contract that cannot be broken or altered without the consent of both parties. This change would:

- **Protect those who most depend on Social Security.** Millions of Americans depend on Social Security for a large proportion of their retirement income. The Social Security Administration (SSA) has estimated that, after about 2030, it will take in only enough in taxes to pay about 75 percent of the benefits for which it will be liable under current law. Giving an explicit property right to one's Social Security retirement benefits would prevent a future Congress from cutting benefits and hurting those Americans who can least afford a reduction in benefits.
- **Prevent hidden cuts in benefits.** It is easy to hide significant payment cuts by making seemingly minor changes that would take effect far in the future to the complex formula that determines Social Security retirement benefits. Under an explicit property right that in effect makes Social Security a contract between the individual and the government, Congress could not change benefits that individuals already have earned.
- **Allow Americans to plan more effectively for their retirement years.** Currently, benefits are decided by applying a complex formula to each person's earnings record. It is almost impossible for people to have more than an approximate idea of how much they will receive. An explicit property right and a more accurate annual benefits statement would allow people to know exactly what they have earned so far, with the security of knowing that Congress did not have the power to reduce these benefits.
- **Allow an explicit measure of the system's overall liability.** With individual property rights, the overall future liability of the Social Security system would be clear. Congress and the public would be able to judge for themselves the system's financial health.

- **Allow flexibility in the system for additional major reforms.** If Congress also were to create a system of individually owned, privately managed Social Security accounts, then an explicit property right would give Americans in the current system an additional level of security. They would know what retirement benefits they have earned already and what they could depend on receiving at retirement from the current system. This amount would be in addition to what they have earned in their individual accounts.

Property Rights: Feasible and Doable. Starting in fiscal year 2000, the SSA is already mandated to send every American over the age of 25 an annual Personal Earnings and Benefit Estimate Statement (PEBES) that estimates their retirement benefits. Americans should receive, instead, an annual legal certificate containing the amount of Old-Age and Survivors' Insurance (OASI) taxes that each individual and their employers have paid, and the amount of retirement benefits earned to date. This information should be clear and easy to understand, unlike that contained in the current PEBES. The certificate also could include a projection of future retirement benefits if real income levels remain stable (while making it clear that this is only a projection, not a guarantee).

Conclusion. Giving Americans an explicit property right to their Social Security retirement benefits would protect those who are least able to afford cuts in benefits. In addition, it would provide a specific measure of the Social Security system's future liability, which would allow every American to judge its overall health. It would also de-emphasize rhetoric by forcing Congress to be open and explicit about its plans to preserve and protect Social Security. Instead of being able to hide behind hidden cuts in benefits, Congress would have to face up to its responsibility to the American people to put the system on a sound financial footing.

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