



August 20, 2020

Dear Member of Congress:

On behalf of Social Security's 65 million beneficiaries and 180 million contributors, Social Security Works is, frankly, alarmed about President Trump's unilateral, unprecedented action to defer the collection of employee contributions to Social Security. We are even more alarmed about the implications of his declared goal to permanently terminate all contributions, if re-elected.

The Strengthen Social Security Coalition, of which Social Security Works is a part, is transmitting a letter that includes a discussion of the impact of the executive action President Trump took this August 8th. This letter is more limited, focusing exclusively on our disturbing conclusion that the president's claimed authority to defer the collection of Social Security's dedicated contributions gives him the power to end Social Security.

It is a maxim in the law that justice delayed is justice denied. Analogously, the power to delay Social Security's dedicated revenue, for just a few years, will cause all Social Security benefits to cease being paid automatically and abruptly. The implication of what the president has already done is that he can take that further action on his own, without any Congressional involvement whatsoever.

That is, 42 U.S.C. sec. 401(h) unambiguously states that Social Security's old age, survivors, and disability benefits "shall **ONLY** be made from" Social Security's trust funds. (Bold lettering and capitalization added for emphasis.) Social Security's trust funds include revenue from three sources: (1) employee contributions matched dollar-for-dollar by employers; (2) investment income on the Treasury bonds held by Social Security in trust for the beneficial owners – the contributors and beneficiaries; and (3) dedicated revenue from the taxation of benefits.

In 2019, eighty-nine percent of Social Security's revenue came from the first source, the contributions that Donald Trump has asserted he will "terminate" if re-elected. Eight percent came from the second source, the interest on Social Security's reserve, which totaled \$2.9 trillion at the end of the year. Three percent came from the taxation of benefits.¹ These percentages do not vary substantially from year to year.

¹ Please note that all numbers cited in this letter can be found in the [2020 Annual Report](#) of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds (April 22, 2020).

Social Security's actuaries project that the trusts will have obligations of \$3.7 trillion between January 1, 2021 and December 31, 2023. That \$3.7 trillion outgo is, of course, \$800 billion more than Social Security's reserve of \$2.9 trillion currently held in trust. That means that, if a re-elected President Trump used the same power under which he executed the current deferral to defer all Social Security contributions, employer and employee, for just three years, all benefits would cease to be paid. Social Security's reserve would be depleted with no new revenue coming in.²

The president is claiming his authority under 26 U.S.C. Sec. 7508A, which permits internal revenue deferrals for up to one year when a disaster is federally declared. Although one might argue with the interpretation, it would not be beyond reason for the president to interpret the statute to permit an additional twelve month deferral with the declaration of another disaster, and one more, which is all that would be required to cause all Social Security benefits to cease and the program to effectively terminate.³

It is unclear who might have standing to challenge that interpretation, since no one would be immediately injured. Moreover, litigation takes time and money. Congress could only undo the president's action with a veto-proof majority.

The logical conclusion of President Trump's asserted authority, therefore, is the authority to cause all benefits to stop in just a few years. The president has ordered his Treasury secretary to "explore avenues... to eliminate the obligation to pay the taxes deferred." Even if the Administration concludes that Congressional action is necessary to forgive the obligation, deferral is all the power that is necessary to cause Social Security benefits to stop, as just explained.

Consequently, if he chose this course of action and felt himself totally unaccountable, once safely re-elected, never again to have to face the electorate, he would have enormous leverage to force Congress to enact a Social Security reform package that the American people opposed and that radically transformed Social Security.

President Trump has shown himself willing to attack numerous fundamental institutions. Prior to running for president, he showed disdain for the institution of Social Security. While a private citizen, Trump slandered the institution by calling it a Ponzi scheme, which, of course, is a criminal activity. He endorsed privatizing Social Security and raising its full retirement age to 70, asking, "how many times will you really want to take that trailer to the Grand Canyon?"

² Between January 1, 2021 and December 31, 2023, Social Security's actuaries project that Social Security will have interest income of \$216.3 billion and income from taxation of benefits of \$143.6 billion. If the newly elected president extended the deferral, though, these already insufficient amounts would be much smaller. As the Treasury bonds held in trust were redeemed to pay benefits, interest would reduce to zero. Once the trusts held insufficient funds to cover the cost of benefits, those benefits would cease to be paid and there would, of course, be no more tax liability generating income so that revenue source would also stop.

³ Concerningly, the Supreme Court found that similar statutory language as granting the president, "[b]y its plain language...broad discretion." See *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), upholding the president's travel ban. In that case, the court was interpreting 8 U.S.C. sec. 1182(f), which states, "Whenever the President **finds**..." (Emphasis added.) Similarly, the power to defer taxes rests on a disaster "**determined** by the President to warrant federal assistance," and a taxpayer "**determined** by the Secretary to be affected by [that] disaster." See 26 U.S.C. sec. 165(i)(5), and 26 U.S.C. sec. 7508A(a). (Emphasis added.)

Other prominent Republicans have called for means-testing Social Security and adopting the technical but far-reaching change of price-indexing. Those are not only deeply unpopular, but would impose enormous cuts, while also ending Social Security as it has existed since its enactment 85 years ago.

Even simply substituting general revenue for Social Security's dedicated contributions would radically alter Social Security. Its dedicated revenue and inability to deficit-spend means that Social Security does not add a penny to the nation's federal debt. President Franklin D. Roosevelt explained that the insurance contributions employees pay to Social Security "give the contributors a legal, moral, and political right to collect their pensions."

It is noteworthy that Donald Trump has not urged Congress to substitute general revenue. Against our objections, Social Security's contributions have been deferred or temporarily reduced in the past, but, at least, always before general revenue has been substituted simultaneously in the same piece of legislation. President Trump apparently lacks the power to unilaterally transfer general funds, but he obviously has the power to urge Congress to do so during the time his executive action is in place. That he has not done.

Just the threat to have all benefits stop would give a lame duck president tremendous leverage over Congress. Any attempt to re-start the contributions or fill in with general revenue would be subject to the president's veto. With the leverage of the threat to have zero benefits paid whatsoever, Congress, absent a veto-proof majority, would effectively be held hostage. It is not hard to imagine, at that point, a backroom deal that fulfilled the longstanding right-wing goal of eliminating the features of Social Security that have made it so successful and so popular.

Adding insult to injury, it is easy to imagine a Rose Garden signing ceremony where Donald Trump and his allies in Congress take credit for saving Social Security.

Providing additional credence to this prediction, it was reported that Senator Chuck Grassley, the powerful chairman of the Senate Budget Committee, would only consider Congressional action in response to the president's defunding of Social Security "if it was coupled with a larger reform."

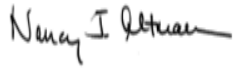
Social Security provides modest but vitally important benefits to 65 million Americans, including seniors, people with disabilities, veterans, children, and others. To ensure that the nation is not faced with Social Security policy being taken hostage after election day, Social Security Works urges you to alert your constituents of the real and present danger to our Social Security system in his declaration that he will "terminate" Social Security's dedicated revenue, if re-elected. Please make sure that they know that: he has already exerted the unitary authority necessary to make that threat a reality and could only be stopped by a veto-proof majority in the Senate.

We additionally encourage members to express their concern to the Trump Administration as many have already done by signing the letter authored by Rep. John Larson and Rep. Joe Kennedy III.

As an organization formed to protect Social Security, we take the president's action and declaration as an extremely serious threat. The new Congress should not be forced to face the prisoner's dilemma of watching all benefits stop or acceding to his demands.

Thank you for considering our concerns. Please know that we are happy to work with you in any way that we can to keep this essential institution strong.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy J. Altman".

Nancy J. Altman
President

A handwritten signature in black ink, appearing to read "Alex Lawson".

Alex Lawson
Executive Director