Comments on Proposals for Social Security Personal Savings Accounts – The Disability Attorneys' Perspective

Presented to: United States Senator Lindsey O. Graham

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Summary

Proposals to fundamentally alter the Social Security system through the introduction of personal retirement accounts must take into consideration the potential impact on the disability insurance program. Furthermore, attorneys who represent disabled workers in Social Security disability claims have important insight into the difficulties and risks presented by these proposed changes.

There are thousands of attorneys across the United States who represent disabled workers in claims for Social Security benefits. Many of these lawyers are organized under the Social Security sections of the Association of Trial Lawyers of America (ATLA) and the various state trial lawyer associations. Another important attorney group is the National Organization of Social Security Claimants' Representatives (NOSSCR), which has over 3,000 members. The Consortium for Citizens with Disabilities (CCD) is another valuable source of information concerning this issue.

Disability Attorneys Have Key Insight Into The System

About 13% of all Social Security beneficiaries are disabled workers and the number of children who receive dependent's benefits due to a parent's disability pushes the percentage even higher. Each year the Social Security Office of Hearings and Appeals (OHA) processes over 500,000 appeals from denied claims, primarily

involving disability. Most of these claimants are represented by attorneys.

During the course of representation, disability attorneys gain extensive knowledge of the medical, financial, and social circumstances of their clients, and are privy to the hopes, beliefs, concerns, and behaviors of a broad spectrum of Social Security beneficiaries. For this reason, disability lawyers have an unparalleled perspective on the Social Security system.

Social Security Beneficiaries in South Carolina

In 2002, Social Security benefits were paid to 718,990 South Carolinians. Social Security beneficiaries represented 17.5 percent of the total population of the state, and 93% of the state's population age 65 or older. The percentage of South Carolinians receiving Social Security benefits is greater than the national average.

Monthly benefits paid to South Carolinians under the Old Age, Survivors, and Disability Insurance program (OASDI) as of December 2002 were over $564 million. As of December 2003, the monthly benefits paid in South Carolina were over $598 million.

In 2002, retired South Carolinians received an average of $868 per month; widows and widowers, $760; disabled workers, $823; and wives and husbands of retired and disabled workers, $439. Average benefits for children were: $443 for children of retired workers; $555 for children of deceased workers; and $248 for children of disabled workers.

Disability Issues That Would Adversely Affect Personal Retirement Account Proposals

1. Disability Must Remain An Insurance Program. Most Social Security disability beneficiaries become disabled before their personal investment accounts would accrue sufficient value to replace the current insurance benefit. For this reason, the disability program must remain an insurance-based benefit.

2. Transition to Personal Retirement Accounts Would Increase SSA's Administrative Costs Due In Part to the High Administrative Cost of the Disability Program. The disability program pays only 13% of the total benefits paid under all Social Security programs, but it is responsible for a much larger percentage of the administrative costs of SSA. This is due to the complex nature of determining whether a worker is disabled.

A partial or complete conversion of the retirement insurance component would increase the administrative costs of SSA as a whole. The retirement component would expand to two administrations (one for the existing insurance component and a new one for the personal investment account component). Because the disability component would have to retain its current configuration as an insurance program, its large administrative costs would be retained as well.

3. Personal Retirement Accounts Would Create Two Different Classes of Retirees Because Disabled Beneficiaries Who Reach Retirement Age Have To Remain Under the Current Insurance-Based Program. The disability benefits of disabled workers who reach retirement age, convert to retirement benefits at the same rate, at age 65. These beneficiaries would suffer a substantial loss of benefits under a personal retirement account system and they would be unable to work to make up the difference.

For this reason, disabled beneficiaries who reach retirement age would have to remain a separate class of traditional insurance-based retirement beneficiaries. The creation of two different classes of retirees – one insurance-based and the other investment account-based – could lead to political conflict, particularly for those retirees whose personal investment accounts failed to meet earnings expectations.

Personal retirement accounts could also put significant pressure on the disability program by creating an incentive for some workers to file for disability shortly before retirement age if their investments fared poorly. Many older workers have significant health problems, which, combined with the vocational adversities of old age,

make it easier for them to be found disabled under the current legal standard.

4. Separation of the Disability Program Would Weaken Its Political Support and Threaten Curtailment of Disability Benefits. The Disability Trust Fund also faces actuarial shortfall. As long at the retirement program remains an insurance-based system, the measures taken by Congress to achieve actuarial balance will accrue to both the disability and the retirement programs. However, if the disability program is put out on its own, it will lose the significant political clout of the retirement system which serves a much larger constituency. If political support for the disability program is eroded, there is a substantial risk that Congress may choose to make the legal standard for disability more difficult in order to achieve actuarial balance. Such a result would have tragic consequences for large numbers of disabled workers and their families.

Experience From Representation of Disability Claimants Provides Insight Into Other Problems That May Result from Private Retirement Account Proposals

1. Many Workers Are Poorly Equipped to Make Responsible Investment Decisions. The goals of the ownership society are admirable. All Americans should be encouraged to take greater responsibility for their financial future and that of their families. However, extensive experience in representing a broad range of workers has taught Social Security attorneys that many citizens are ill equipped to participate effectively or responsibly in private investment. Adverse factors include lack of education, limited intellectual capacity, mental illness, and social problems. A mandatory private investment program could result in disaster for a large group of citizens who have the greatest need for economic security.

2. Mandatory Personal Retirement Accounts Would Create Unreasonable Expectations. Private investors generally understand the risks of the stock market. However, litigation and investment trends over the last few years show that even sophisticated investors may look for someone to blame when their portfolios go sour.

Mandatory private investment, however, would bring large numbers of unsophisticated or inexperienced workers into the private markets. Once again, extensive experience in dealing with Social Security disability claimants, suggests that many of these citizens will have unreasonable expectations about the nature of investment risk, particularly when the proponents of private retirement accounts present these proposals as a more fiscally sound alternative to the current insurance-based system.

If losses occur or profits are lower than expected, many Americans would hold the government responsible, resulting in litigation and calls for a government bailout. Similarly adverse consequences would occur with regard to retirees who outlived their investment accounts, a risk that they do not face under the current insurance-based retirement program.

3. Private Investment Accounts Could Backfire Due to Unintended Consequences Resulting from a Major or Sudden Changes to a Complex Federal System. Social Security lawyers are keenly aware of the dangers of major or sudden changes to federal government systems. For example, in 1996 Congress amended the Social Security legal standard for disabled children, and for adults with substance abuse problems, to address significant public concerns over these issues. These relatively minor changes to the Social Security program caused enormous disruption in the processing of disability claims, increased court litigation, significant delays in approval and payment of claims and many other adverse consequences that took years to be resolved.

Based on experience, it seems that there are great risks involved in making major or sudden changes to such a large and complex federal program. If Congress decides to adopt some type of private retirement account system, a more cautious approach would be to create a voluntary add-on program in order to build and test the administrative machinery and to gauge both its effectiveness and its popularity with the public. If it proved successful, it could gradually be phased in as a mandatory program.

4. Deficit Spending and the Federal Debt Pose the Greatest Danger to Program Solvency and Workers' Economic Security. It is our sense that citizens, particularly those on Social Security, are deeply concerned about ballooning deficits and increased federal debt. Our nation's growing international responsibilities, coupled with the explosion of health care costs will only heighten public unease. The large transition costs, and the risks, both known and unknown, associated with the private retirement account proposals, suggest that the timing of this proposal may be unfavorable in light of budgetary concerns.

The general consensus of the disability bar is that projected actuarial shortfalls in the current insurance-based system should be delayed, reduced, and perhaps even eliminated through a variety of measures, including the following:

- Increase in cap on wages subject to Social Security tax
- Consolidation of currently exempt state and local government employees
- Modest and gradual adjustment of COLA
- Gradual increase in retirement age

No matter what choices are made in Washington about the future of Social Security, the solvency of the program is inextricably linked to the health of the federal budget and the national economy. Until the federal government can bring deficit spending and federal debt under control, Congress should be highly cautious about making drastic changes to a highly popular and proven program.