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Raising the Social Security Retirement Ages: Weighing the Costs and Benefits

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RAISING THE SOCIAL SECURITY RETIREMENT AGES: Weighing the Costs and Benefits

Kathryn L. Moore*

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I. INTRODUCTION

The Social Security program¹ faces a long-term funding deficit. The Board of Trustees of the Federal Old-Age and Survivors and Disability Insurance ("OASDI") Trust Funds predicts that unless corrective action is taken, Social Security benefit payments will exceed dedicated tax revenues by the year 2015, and the Social Security program will become insolvent—unable to pay promised benefits in full—by the year 2037.² As a result of this projected deficit, Social Security has become "a lightning rod for far-reaching reform proposals."³

Proposals range from "traditional"⁴ proposals that would maintain the basics of the program's revenue and benefit structure but would alter the program's specifics, such as raising the normal retirement age or increasing the taxable wage base, to proposals that would fundamentally restructure the

1. Unless otherwise specifically noted, the term "Social Security" will be used in its generally accepted manner as referring only to the cash benefits provided by the Old-Age, Survivors, and Disability Insurance ("OASDI") program. The Old-Age and Survivors Insurance ("OASI") provides benefits for retired workers and their spouses and children and to survivors of deceased workers. The Disability Insurance ("DI") program provides benefits for disabled workers and their spouses and children and pays for rehabilitation services for the disabled. See Martynas A. Ycas, *The Issue Unresolved: Innovating and Adapting Disability Programs for the Third Era of Social Security*, 58 SOC. SECURITY BULL., Spring 1995, at 48, 49. For a discussion of other possible definitions of the term "Social Security," see authorities cited in Kathryn L. Moore, *Privatization of Social Security: Misguided Reform*, 71 TEMP. L. REV. 131 & n.2 (1998).

2. SOC. SEC. ADMIN., 2000 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND DISABILITY INSURANCE TRUST FUNDS 3-4 (2000) [hereinafter 2000 BOARD OF TRUSTEES' REPORT] (these figures refer to the combined OASDI trust funds and use intermediate assumptions), available at <ftp://ftp.ssa.gov/Pub/OACT/TR00.pdf>.

3. Adriel Bettelheim, *Saving Social Security*, 8 CQ RESEARCHER 859, 859 (1998).

4. See HEALTH, EDUC., AND HUMAN SERVS. DIV., U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-98-33, SOCIAL SECURITY: DIFFERENT APPROACHES FOR ADDRESSING PROGRAM SOLVENCY 21 n.18 (1998) (defining "'traditional' reform proposals as those aimed at improving Social Security's solvency while maintaining the basics of the program's revenue and benefit structures and preserving the federal government's role in the program's administration"), available at <http://www.gao.gov/archive/1998/he98033.pdf>; *Retirement Security Policy: Proposals to Preserve and Protect Social Security*, 105th Cong. 67 (1998) (statement by Robert J. Myers, Former Chief Actuary and Former Deputy Comm'n SSA) ("Some changes can be described as 'structural' (involving significant alternation of the program's basic principles), while others can be described as 'traditional' (only modifying the benefit and/or financing provisions.)").

system.⁵ This article addresses one of the most popular⁶ of the traditional reform proposals: raising the retirement ages.⁷

Under current law, a retired worker is entitled to full benefits⁸ at her "Normal Retirement Age," or "NRA."⁹ The NRA is age sixty-five for persons attaining age sixty-two before 2000 and is scheduled to increase gradually to age sixty-seven by the year 2022.¹⁰ A worker may elect to receive actuarially reduced benefits as early as age sixty-two.¹¹ This age is typically referred to as the "Earliest Eligibility Age," or "EEA."¹²

In recent years, a wide variety of policymakers and analysts have recommended that the scheduled increase in the Social Security NRA be accelerated, that the NRA be increased even further, and/or that the EEA be increased.¹³ This Article explains why such proposals merit serious consideration.

The Article begins by reviewing the legislative history of the Social Security retirement ages to determine how Congress selected the current

5. Cf. AM. ACAD. OF ACTUARIES, FINANCING THE RETIREMENT OF FUTURE GENERATIONS: THE PROBLEM AND OPTIONS FOR CHANGE, PUB. POLICY MONOGRAPH 1998 No. 1, at 26, available at <http://www.actuary.org/pub/actuary.org/monograf/retirement.pdf>.

The first task for Social Security is to determine whether to make fundamental changes in the underlying philosophy of the program or to preserve the system in its current form. In the context of the current debate, fundamental reform means providing all or part of benefits through individual accounts that are prefunded through the use of market-based securities.

Id. Interestingly, proponents of increasing the normal retirement age in 1983 referred to that change as structural. See, e.g., 129 CONG. REC. 4616 (1983) (statement of Rep. Pickle) ("We need to make structural changes.").

6. Although raising the retirement age is relatively popular among analysts, it appears to be less popular among politicians and voters. See *infra* notes 341–342.

7. Although such proposals are often one element of comprehensive reform proposals, this article focuses solely on proposals to raise the retirement ages.

8. For a more complete discussion of how Social Security benefits are calculated, see Kathryn L. Moore, *Redistribution Under the Current Social Security System*, 61 PITTSBURGH L. REV. 955, 985–90 (2000) and authorities cited therein.

9. See 42 U.S.C. § 402(a) (1994).

10. *Id.* § 416(f). Specifically, the increase applies to those who are treated as reaching age sixty-two in 2027. See Robert J. Myers, *Yes, Changes are Needed*, in RETIREMENT AND PUBLIC POLICY, SECOND ANNUAL CONFERENCE OF THE NATIONAL ACADEMY OF SOCIAL INSURANCE 223, 224 (Alicia H. Munnell ed., 1991) [hereinafter RETIREMENT AND PUBLIC POLICY] (explaining technical application of rules).

11. 42 U.S.C. § 402(q) (1994).

12. See, e.g., CONG. BUDGET OFFICE, PAPER: RAISING THE EARLIEST ELIGIBILITY AGE FOR SOCIAL SECURITY BENEFITS (1999) [hereinafter CBO, PAPER] (using this terminology), available at <ftp://ftp.cbo.gov/10xx/doc1058/ssage.pdf>; HEALTH, EDUC. AND HUMAN SERVS. DIV., U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-99-112, SOCIAL SECURITY REFORM: IMPLICATIONS OF RAISING THE RETIREMENT AGE 1 (Aug. 1998) [hereinafter GAO, IMPLICATIONS] (also using this terminology).

13. See *infra* notes 94–106.

retirement ages. It finds that there is no scientific or gerontological basis for the retirement ages; rather, in selecting the retirement ages, Congress has considered a wide range of factors, ranging from cost to life expectancy to ability to work and find a job.

The Article then weighs the costs and benefits of raising the retirement ages. It first discusses the two principal benefits of raising the retirement ages: (1) raising the NRA would reduce the long-term deficit in the Social Security trust funds; and (2) raising the NRA, particularly if accompanied by an increase in the EEA, would promote general economic gains. It then addresses the three principal costs of raising the retirement ages: (1) raising the retirement ages would constitute a cut in Social Security benefits; (2) raising the retirement ages could increase the risk that some older workers end their lives in poverty; and (3) raising the retirement ages could have a more substantial adverse impact on some subpopulations, such as blue-collar workers, lower-income workers, blacks, and Hispanics, than on other subpopulations, such as white-collar workers, higher-income workers, and non-Hispanic whites.

The Article concludes that Congress should give serious consideration to raising the Social Security retirement ages. There is no magic solution to Social Security's long-term problems; it requires tough choices. Raising the Social Security retirement ages could help solve the long-term deficit, and if accompanied by other changes, such as a reduction in the age at which Supplemental Security Income ("SSI") aged benefits are available or a loosening of the Social Security disability rules for older workers, the adverse impact on subpopulations particularly vulnerable to poverty in old age could be reduced though perhaps not eliminated.

II. LEGISLATIVE HISTORY OF THE RETIREMENT AGES

This section examines the legislative history of the Social Security retirement ages to determine how Congress selected the retirement ages in the past. It finds that there is no scientific or gerontological basis for the retirement ages, but rather, Congress considered a host of factors in selecting the ages. Those factors range from cost to life expectancy to the ability to work and find employment.

A. The Original Retirement Age

When originally enacted, the Social Security Act established sixty-five as the minimum age at which retirement benefits could be obtained.¹⁴ Age sixty-five was not selected as the result of some scientific process;¹⁵ nor did it have some social or gerontological basis.¹⁶ Rather, there was simply general consensus that sixty-five was the most acceptable age.¹⁷

Indeed, Dr. Eveline Burns, who served on the staff of the Committee on Economic Security,¹⁸ testified before Congress that "[65] was chosen because there was nothing very much better. Honestly, a great deal of those decisions in those days were not based on statistics."¹⁹

Age sixty-five constituted a compromise between private pension plans then in existence that used seventy as the normal retirement age and the Townsend plan that recommended age sixty.²⁰ Commentators uniformly

14. Social Security Act, Pub. L. No. 74-271, § 202(a), 49 Stat. 620, 623 (1935).

15. WILBUR J. COHEN, INST. OF INDUS. RELATIONS, RETIREMENT POLICIES UNDER SOCIAL SECURITY 24 (1957) ("This brief account of how age 65 was selected in the old age insurance program in the United States indicates that there was no scientific, social, or gerontological basis for that selection."); see also Myers, *supra* note 10, at 225 ("Age 65 was selected for the U.S. program merely because of the tendency of human beings to like nice round numbers.").

16. COHEN, *supra* note 15, at 24. Because age sixty-five was the only age considered, "[t]here is . . . very little material available to analyze the economic, social, gerontological, or other reasons for the selection of this particular age." *Id.* at 17.

I. M. Rubinow, one of the early experts on Social Security, stated that "it is impossible to give[] an exact chronological limitation of old age (except for purposes of legislative enactment), its economic problems gradually merge into those of chronic illness (premature old age); but for statistical purposes all persons over 70 or over 65 are usually included." *Id.* at 24 (quoting I. M. Rubinow, *Old Age*, in ENCYCLOPEDIA OF THE SOCIAL SCIENCES (1933)).

Moreover, contrary to popular opinion, age sixty-five was not selected because that was the age Chancellor Otto von Bismarck chose for the German social insurance program. In fact, the original age for the German program was seventy. It was reduced to age sixty-five during World War I. ROBERT J. MYERS, SOCIAL SECURITY 519 (4th ed. 1993).

17. "The simple fact is that at no time in 1934 did the staff or members of the Committee on Economic Security deem feasible any other age than 65 as the eligible age for the receipt of old age insurance benefits." COHEN, *supra* note 15, at 17.

For a discussion of the history of the use of sixty-five as a retirement age in the United States prior to 1935, see DORA L. COSTA, THE EVOLUTION OF RETIREMENT: AN EVOLUTION OF AMERICAN HISTORY 1880-1990, at 11 (1998).

18. Edwin E. Witte, *Twenty Years of Social Security*, 18 SOC. SECURITY BULL., Oct. 1955, at 15, 17 (including Eveline Burns in list of division heads and best known staff members and consultants).

19. HOUSE SELECT COMM. ON AGING, 96TH CONG., SOCIAL SECURITY: A CRITIQUE OF RECOMMENDATIONS TO TAX BENEFITS AND TO RAISE THE ELIGIBILITY AGE FOR RETIREMENT BENEFITS 15 (Comm. Print 1980).

20. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 3-4; HOUSE SELECT COMM. ON AGING, *supra* note 19, at 15; MYERS, *supra* note 16, at 519.

agree that sixty was rejected as too low from a cost standpoint,²¹ but differ on their views as to why age seventy was rejected. According to the General Accounting Office, seventy "appeared too high given that life expectancy [at birth] at the time was fifty-nine years for men and sixty-three years for women."²² According to Wilbur J. Cohen,²³ in contrast, the Committee on Economic Security never considered any age higher than sixty-five "because of the belief that public and congressional opposition would develop against such a provision in view of the widespread unemployment that existed."²⁴

B. Lowering the Retirement Age

Although legislators originally rejected age sixty as too low from a cost standpoint, concerns with unemployment in the early years of the Social Security program led to the introduction of a "great number" of proposals to reduce the retirement age to sixty.²⁵ The proposals, however, never received serious consideration because of their "exorbitant cost."²⁶

21. See, e.g., COHEN, *supra* note 15, at 18 ("It was understood that a reduction in the age below 65 would substantially increase costs and, therefore, might impair the possibility of successful acceptance of the plan by Congress."); GAO, IMPLICATIONS, *supra* note 12, at 3-4 ("60 . . . appeared to be too low an age from a cost standpoint"); MYERS, *supra* note 16, at 519 ("age 60 was too low from a cost standpoint").

22. HEALTH, EDUC. AND HUMAN SERVS. DIV., U.S. GEN. ACCOUNTING OFFICE, GAO/T-HEHS-98-207, SOCIAL SECURITY REFORM: RAISING RETIREMENT AGES IMPROVES PROGRAM SOLVENCY BUT MAY CAUSE HARDSHIP FOR SOME 2 (1998) [hereinafter GAO, SOCIAL SECURITY REFORM]. Cf. MYERS, *supra* note 16, at 519. In discussing lowering the age, Myers states:

Some of those who favored a lower age than 65 in the mid-1930s used fallacious arguments. For example, they stated that, because the expectation of life at birth at that time was less than 65, nobody would live to draw a pension. The fallacy of this was, of course, quite easy to point out—namely, that there were at that time about 8 million people aged 65 or over!

Id.

23. Wilbur J. Cohen was a member of the staff of the Committee on Economic Security which developed the original Social Security program. COHEN, *supra* note 15, at vi.

24. *Id.* at 18. Dr. Edwin Witte, Executive Director and Secretary of the President's Committee on Economic Security, confirms that "[s]ixty-five was fixed as the minimum age at which retirement benefits might be paid without much consideration of any alternative age, except of a lower retirement age for women, which was deemed too costly." Witte, *supra* note 18, at 19; see also COSTA, *supra* note 17, at 11 (noting that the Commission on Economic Security rejected "suggestions that the retirement age be above sixty-five to ensure congressional and public support for old-age pensions in a period of high unemployment").

25. COHEN, *supra* note 15, at 27-28.

26. *Id.* at 28 (quoting Senator Miliken, Chairman of the Senate Finance Comm.). In discussing the cost of the proposed amendment, Senator Miliken stated:

The purpose of the amendment [to reduce the retirement age to 60] is most laudable. As long as I have been around the Capitol and have been on the Senate Finance Committee, we have hoped that we could reduce the age

1. Lower Retirement Age for Women

Proposals to lower the retirement age solely for women, though, did receive more serious consideration.²⁷ The 1948 Social Security Advisory Council recommended that the retirement age for women, but not men, be reduced to age sixty.²⁸

The Social Security Administration offered a similar recommendation, and President Truman endorsed the idea.²⁹ The House Ways and Means Committee gave serious consideration to the proposal in 1949, but ultimately dropped it due to concerns with cost.³⁰

In 1955, the House Ways and Means Committee reopened discussion of the subject³¹ and favorably reported House Bill 7225, that would pay full benefits to working women, wives, and widows and dependent mothers of deceased workers at age sixty-two.³² The Committee offered the following reasons for lowering the retirement age for all women beneficiaries: (1) because "[w]ives are generally a few years younger than their husbands," wife benefits should be available earlier than age sixty-five so that couples can have both retired worker and wife benefits available when the working husband retires; (2) widow benefits should be available at an earlier age

requirements. However, . . . to provide such coverage would cost too much to be practicable . . . [It] involves a very exorbitant cost. On a level premium basis, the cost would be 2 1/4 per cent of payroll.

Id.

27. In fact, some thought was given to offering women a lower retirement age in the original Social Security Act, but the proposal was rejected due to its cost. *See Witte, supra* note 18, at 19.

28. COHEN, *supra* note 15, at 28. The Advisory Council offered the following justification for that proposal:

Since many workers do not retire until several years after attaining age 65, a reduction of the age requirement for wife's benefits to age 60 will permit the wives of about three-fourths of the married men who claim primary or retirement benefits to receive wife's benefits as soon as their husbands retire.

Women aged 60 or over find it practically impossible to get a job unless they have recently been employed. Aged widows and aged dependent mothers of deceased insured workers therefore should also be able to qualify for benefits at age 60. If the age requirement for women were reduced to 60 years, about two-fifths of the insured workers' widows without minor children in their care would be eligible for benefits immediately.

Id. at 29 (quoting *Social Security Act Amendments of 1949: Hearings on H.R. 2893 Before the House Comm. on Ways and Means*, 81st Cong. 44 (1949)).

29. *Id.* at 28-29.

30. *Id.* at 30; *see also* H.R. REP. NO. 1189, at 66 (1955) (noting that House Ways and Means Committee rejected a bill to lower the age of eligibility for all women beneficiaries in 1949 because it was too costly).

31. COHEN, *supra* note 15, at 30. According Wilbur J. Cohen, the House Ways and Means Committee did not consider decreasing the retirement age for women in 1950, 1952, or 1954. *Id.*

32. *See* H.R. REP. NO. 1189, at 2 (1955).

because women who are widowed a few years before age sixty-five often have difficulty finding jobs to support themselves (many of them "never worked or have not" worked recently); and (3) retirement benefits should be available at an earlier age for working women because they face age limits more frequently and at earlier ages than do working men.³³

After holding hearings on House Bill 7225,³⁴ the Senate Finance Committee reported a bill which retained the earlier retirement age of sixty-two for widows, but deleted the provisions for lower retirement ages for working women and wives and dependent mothers.³⁵ The Committee found that widows had a compelling need for benefits at an earlier age and that that need justified the cost of such a benefit.³⁶ With respect to wives, in contrast, the Committee found that the need for wife benefits at an earlier age was not as compelling as the need of widows and thus did not justify the cost involved.³⁷ Finally, the Committee rejected a lower retirement age for working women for a variety of policy reasons as well as the cost involved.³⁸

Following introduction of the amended bill before the Senate, Senator Kerr proposed a floor amendment to the bill that would extend full benefits at

33. *Id.* at 7. A few committee members expressed reservations about lowering the eligibility age for women. They were concerned that no hearings had been held on the bill, and they also questioned the justification for lowering the eligibility age for working women: "Lowering the retirement age for women workers is supported on the ground that they typically retire at an earlier age than men. However, the statistics indicate that this is true only to a slight extent. In 1953, the average age was 68.0 for men and 67.6 for women." *Id.* at 67. They agreed that widows under age sixty-five faced a serious hardship under the then-current system. *Id.*

34. See generally *Social Security Amendments of 1955: Hearings on H.R. 7225 Before the Senate Comm. on Finance, 84th Cong. (1956)* [hereinafter *Social Security Amendments of 1955*].

35. S. REP. NO. 84-2133, at 2-3 (1956), reprinted in 1956 U.S.C.C.A.N. 3877, 3890 (1956).

36. Many women widowed in their fifties or early sixties have never worked or have not had recent work experience and find it difficult to secure jobs. Many are left with no financial resources and face the alternatives of being dependent on their children (who are themselves attempting to make ends meet while raising their own families), or of seeking assistance from public or private welfare agencies.

Id. at 14, 1956 U.S.C.C.A.N. at 3890.

37. *Id.* (noting that couples at least have the husband's benefits and thus are in a better position than widows and that "[s]tudies by the Social Security Administration show that in 98 percent of the cases a man's decision on when to retire and apply for benefits is not based on whether his wife is also eligible").

38. Among the reasons the Committee offered for rejecting a lower retirement age for working women were: (1) reducing the retirement age could reduce employment opportunities for older women; (2) reducing the retirement "age for women workers would be contrary to trends in lifespan, employment, population, and private pension plans"; (3) a variety of women's organizations had strongly opposed treating men and women differently; and (4) lowering the retirement age for women could create pressure to lower the retirement age for men which would be very costly. *Id.* at 14-15, 1956 U.S.C.C.A.N. at 3890-91.

age sixty-two to dependent mothers of deceased workers and would permit wives and working women to receive actuarially reduced benefits at age sixty-two.³⁹ Senator Kerr described his amendment as “a logical compromise” between the House and Senate bills; it would “make it possible to preserve the principle of permitting all eligible women to retire at age 62 with no increase in the tax rates.”⁴⁰ Although a few Senators opposed the proposed amendment in debate,⁴¹ the amendment passed the Senate by unanimous vote (of those voting),⁴² and Congress enacted the Social Security Amendments of 1956⁴³ which, among other things, lowered the retirement age for all women beneficiaries to age sixty-two,⁴⁴ but required an actuarial reduction in the benefits of working women and wives who elected to receive benefits before age sixty-five.⁴⁵ This provision, allowing an earlier age at which beneficiaries may collect actuarially reduced benefits, is now referred to as the “earliest eligibility age” or “EEA,” while the age at which unreduced benefits is available is known as the “normal retirement age” or “NRA.”

39. 102 CONG. REC. 12,413 (1956).

40. *Id.* In fact, Senator Kerr conceded that his amendment would increase taxes slightly—“two one-hundredths of 1 percent of payroll”). *Id.* at 12,414.

41. *See, e.g., id.* at 13,034 (Senator Byrd); *id.* at 13,067–68 (Senator Curtis); *id.* at 13,102 (Senator Martin). Their objections mirrored the reasons the Senate Finance Committee offered for eliminating the proposal to extend the earlier retirement age for working women from the original bill. *See supra* note 38.

42. 102 CONG. REC. 13,103 (1956).

43. Social Security Amendments of 1956, Pub. L. No. 84-880, 1956 U.S.C.C.A.N. (70 Stat. 807) 942.

44. *Id.* at § 102(a)(2), 1956 U.S.C.C.A.N. at 945.

45. *Id.* at § 102(q), 1956 U.S.C.C.A.N. at 946. Nine years later, in the Social Security Amendments of 1965, Pub. L. No. 89-97, § 307, 1965 U.S.C.C.A.N. (79 Stat. 286) 305, 405–06 Congress amended the Social Security Act to permit widows to receive actuarially reduced benefits at age sixty. 42 U.S.C. § 402(e)(1)(B)(i) (1994). Much like the arguments made earlier in favor of widows, the Senate Report explained:

Many women are widowed years after having left the labor market to become housewives and mothers, and they lack the skills necessary to qualify for reasonably suitable employment. Women who are widowed in their late fifties and sixties are often denied employment because of their age. . . . This provision would thus extend to these women a choice of applying for benefits at any time between age 60 and 62, with a reduced benefit, or of waiting until age 62 to receive a full widow's benefit. The amount of the reduction . . . would be sufficient to assure that over the long run there will be no additional cost to the social security system as a result of the earlier payment of the benefits.

S. REP. NO. 404, at 97–98 (1965), *reprinted in* 1965 U.S.C.C.A.N. 1943, 2037–38. The Senate also proposed that the Social Security Act be amended so that “workers, wives, husbands, widowers, and parents [also] be eligible for benefits at age 60,” but that amendment was rejected. CONF. REP. NO. 682, at 65 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2228, 2260.

2. Lower Retirement Age for Men

Five years after enacting the Social Security Amendments of 1956, Congress enacted the Social Security Amendments of 1961,⁴⁶ which, among other things, extended the availability of actuarially reduced benefits at age sixty-two to men.⁴⁷ In favorably reporting House Bill 6027, that lowered the retirement age for working men and husbands, both the House Ways and Means Committee⁴⁸ and the Senate Finance Committee⁴⁹ pointed out that the then-current law permitted women to receive Social Security benefits as early as age sixty-two. Equity, however, was not the prime motivation for the amendment.⁵⁰ Rather, throughout the hearings⁵¹ and the committee reports,⁵² the principal justification offered in support of the amendment was that it

46. Social Security Amendments of 1961, Pub. L. No. 87-64, 75 Stat. 131 (1961).

47. *Id.* at § 102.

48. See H.R. REP. NO. 87-216, at 5 (1961) (noting in parenthetical that “[r]educed benefits are provided for women at age 62 under present law”); see also *Social Security Amendments of 1961: Hearings on H.R. 4571 Before the House Comm. on Ways and Means*, 87th Cong. 15 (1961) (statement of Abraham Ribicoff, Sec’y of Health, Educ., and Welfare) (recommending that eligibility age be lowered for men, noting that “[b]enefits . . . are provided on this basis under present law”).

49. S. REP. NO. 87-425, at 4 (1961), reprinted in 1961 U.S.C.C.A.N. 1855, 1858 (“Under present law, reduced benefits are provided for women workers and wives at age 62.”).

50. See MYERS, *supra* note 16, at 520 (“This [reduction in the minimum retirement age for men] was done, not because of pressure for equal treatment, but rather because there was considerable unemployment in the Appalachian coal-mining area and an influential senator from West Virginia (Senator Robert Byrd) pushed for this change.”).

When the method for calculating benefits was later amended, however, it was changed for equitable reasons. See *infra* notes 58–60 and accompanying text.

51. See, e.g., *Social Security Amendments of 1961: Hearings on H.R. 4571 Before the House Comm. on Ways and Means*, 87th Cong. 15 (1961) (statement of Abraham Ribicoff, Sec’y of Health, Educ., and Welfare) (recommending that eligibility age be lowered for men, asserting, “[t]he proposal is needed to make the social security program more effective in helping to meet the problems of older persons forced into premature retirement”); *Social Security Benefits and Eligibility: Hearings on H.R. 6027 Before the Senate Comm. on Finance*, 87th Cong. 50 (1961) (statement of Senator Byrd) (testifying that “this provision in the bill is of great importance to that relatively small number of men who, because of ill health, unemployment, and underemployment, or other personal reasons, find it impossible or ill advised to continue working until they attain the age of 65.”).

52. See, e.g., H.R. REP. NO. 87-216 (1961)

The provision of benefits at age 62 for men will help to alleviate the hardships faced by that group of men who, because of ill health, technological unemployment, or other reasons, find it impossible to continue working until they reach 65. It is well known that older workers who lose their jobs find it more difficult to get new jobs than do younger unemployed workers.

Id. at 5; S. REP. NO. 87-425, at 4 (1961), reprinted in 1961 U.S.C.C.A.N. 1855, 1858 (“The provision of benefits at age 62 for men will help to alleviate the hardships faced by that group of men who, because of ill health, automation, or other technological change, are forced into premature retirement before age 65.”).

would help older workers who have a difficult time finding new employment when they lose their jobs.⁵³

The bill, as originally proposed, based men's eligibility and benefits on earnings through age sixty-two, which would have imposed a cost of .10% of payroll.⁵⁴ Finding such additional cost unacceptable,⁵⁵ the House Ways and Means Committee amended the proposal to base men's eligibility and benefits on earnings through age sixty-five so that the amendment, as enacted, imposed no additional cost on the Social Security trust funds.⁵⁶ In favorably reporting the amended bill, both the House Ways and Means Committee report and the Senate Finance Committee report stressed that the amendment would impose no additional costs.⁵⁷ Thus, Congress extended the availability of early retirement benefits to men, but ensured that such extension would impose no additional cost on the Social Security system.

Eleven years later, in the Social Security Amendments of 1972, Congress amended the Social Security Act to base men's eligibility and benefits on earnings through age sixty-two.⁵⁸ The House Report recognized that the change would involve a cost, \$6 million in additional benefits in the first full year,⁵⁹ but explained that the amendment was designed to equalize the

53. The United States was experiencing a mild recession when the amendment was under consideration. See VICTOR ZARNOWITZ, *BUSINESS CYCLES: THEORY, HISTORY, INDICATORS, AND FORECASTING* 24 (1992) (referring to the period of April 1960 to February 1961 as a mild recession).

54. See *Social Security Amendments of 1961: Hearings on H.R. 4571 Before the House Ways and Means Comm.*, 87th Cong. 15-16 (1961) (statement of Abraham Ribicoff, Sec'y of Health, Educ., and Welfare).

The reason why the proposal increases cost is that in lowering the age of first eligibility to age 62 it would for all men reduce the insured-status requirement slightly (since the period over which insured status is measured would end at 62 instead of 65) and would also shorten the period over which the average monthly wage, on which the benefits are based, must be computed.

Id.; *id.* at 143 (statement of Abraham Ribicoff, Sec'y of Health, Educ., and Welfare) (explaining that provision in bill as introduced had some cost on the fund but that it had been revised so that there would be no extra cost to the fund).

55. H.R. REP. NO. 87-216, at 7 (1961) ("In view of the significant cost that would be incurred, your committee has concluded that it is not advisable to include such a provision.").

56. See *id.* Women's benefits and eligibility, in contrast, were calculated based on a period ending at age sixty-two. *Id.*

57. *Id.* at 18 tbl.2 (showing that House bill as amended would impose no additional cost); S. REP. NO. 87-425, at 6 (1961), reprinted in 1961 U.S.C.C.A.N. 1855, 1860 ("There would be no level-premium (long-range) costs for this proposal since early-year benefit disbursements will be balanced by the reduced benefits payable in the future.").

58. Social Security Amendments of 1972, Pub. L. No. 92-603, § 104, 86 Stat. 1329 (1972).

59. The change was phased in over a three year period. *Id.* § 104(j).

treatment between men and women, whose benefits and eligibility were already based on earnings through age sixty-two.⁶⁰

C. Raising the Retirement Age

Proposals to raise the NRA, or the age at which unreduced benefits are available, were advanced as early as 1975.⁶¹ Specifically, the 1975 Advisory Council on Social Security recommended that "serious consideration be given to gradually extending the retirement age, starting in the year 2005."⁶² Like the current proposals to raise the retirement ages, the early proposals were designed to address a long-term deficit in the program that is projected to arise from changing demographics early in the twenty-first century.⁶³ Although the 1975 Advisory Council did not devote a great deal of attention to the proposal, the Council offered "expected advances in health care and longevity" as justifications for the proposal.⁶⁴ The 1979 Advisory Council on Social Security renewed the recommendation that "serious consideration" be given to enacting a deferred gradual increase in the NRA.⁶⁵

60. H. R. REP. NO. 92-231, at 50 (1971), *reprinted in* 1972 U.S.C.C.A.N. 4989, 5036. In this same legislation, Congress amended the Social Security Act to extend the availability of actuarially reduced benefits to widowers at age sixty. See Social Security Amendments of 1972, Pub. L. No. 92-603, § 107, 86 Stat. 1329 (1972). The House Report explained that "[t]he committee believes that the age of eligibility should be the same for aged dependent widowers as for aged widows." H.R. REP. NO. 92-231, at 50 (1971), *reprinted in* 1972 U.S.C.C.A.N. 4989, 5036. It noted that because the benefits would be actuarially reduced there would be no long-range cost to the program. *Id.*; see also 42 U.S.C. § 402(f)(1)(B)(i) (1994).

61. In 1957, Wilbur J. Cohen stated, "Although from time to time an isolated suggestion will be made by some individual for an increase in the retirement age, no important employer, union, or other group in the United States has suggested any increase in the age 65 provision." COHEN, *supra* note 15, at 27.

62. ADVISORY COUNCIL ON SOC. SEC., REPORTS OF THE ADVISORY COUNCIL ON SOCIAL SECURITY 62 (1975) [hereinafter 1975 REPORTS OF THE ADVISORY COUNCIL].

63. See *id.* at 49; see also AM. ACAD. OF ACTUARIES, *supra* note 5, at 6-10 (for a comprehensive discussion of the reasons why the current Social Security system faces long-term funding difficulties).

64. 1975 REPORTS OF THE ADVISORY COUNCIL, *supra* note 62, at 63 ("given the expected advances in health care and longevity, it seems sensible to at least consider some modest increase in the retirement age so as to maintain a reasonable ratio of workers to beneficiaries and thereby hold down the tax rates").

65. HOUSE COMM. ON WAYS AND MEANS, 96TH CONG., REPORT OF THE 1979 ADVISORY COUNCIL ON SOCIAL SECURITY 173 (Comm. Print 1980). Over the next few years, the recommendation was repeated. For example, in February 1981, the President's Commission on Pension Policy recommended that "to help solve the long-run financing problem, an increase in the normal retirement age to 68 . . . be phased in over a 12 year period beginning in 1990." PRESIDENT'S COMM'N ON PENSION POLICY, COMING OF AGE: TOWARD A NATIONAL RETIREMENT INCOME POLICY 2 (1981). Similarly, in March 1981, the National Commission on

In December 1981, President Reagan established the National Commission on Social Security Reform, a bipartisan group chaired by Alan Greenspan, to review the financial condition of the Social Security trust funds and offer recommendations on how its financial condition might be improved.⁶⁶ The National Commission "was convened in an atmosphere of crisis. Since at least the last year of the Carter Administration, it had been apparent to both Social Security experts and a growing number of policy experts that the [Social Security] system was drifting into deep trouble."⁶⁷ Although the National Commission devoted most of its energy to Social Security's short-term funding crisis,⁶⁸ it did address the program's long-term funding problem by, among other things, recommending that the NRA be gradually increased.⁶⁹

Seven of the twelve members of the National Commission⁷⁰ recommended that Congress enact legislation gradually increasing the NRA, beginning with beneficiaries who reach age sixty-two in 2000, by increasing the NRA by one month each year until the NRA reaches age sixty-six in 2015.⁷¹ The seven members further recommended that, beginning with beneficiaries who attain age sixty-two in 2012, the NRA be automatically increased with increases in life expectancy.⁷² The principal justifications given for this delayed gradual increase in the NRA were:

Social Security also recommended that the NRA be increased to age sixty-eight. NAT'L COMM'N ON SOC. SEC., *SOCIAL SECURITY IN AMERICA'S FUTURE: FINAL REPORT* 121 (1981).

66. See Exec. Order 12,335, 3 C.F.R. 217 (1981), reprinted in 42 U.S.C. § 401 (1994), available at <http://www.reagan.utexas.edu/resource/speeches/1981/121681b.htm>.

67. Forrest P. Chisman, *Social Security Reserves and the Budget Deficit*, in *SOCIAL SECURITY AND ECONOMIC WELL-BEING ACROSS THE GENERATIONS* 30, 42 (John R. Gist ed., 1988) ("The trouble arose primarily from the economic 'stagflation' of the 1970s and early 1980s, when inflation and recession occurred simultaneously. 'Stagflation' is precisely the type of economic environment that creates the greatest difficulties for Social Security.").

68. *Id.* at 45 ("By most accounts, the Greenspan Commission spent very little time on [the] long-term [funding] issue, partly because of its remoteness and partly because an easy solution came readily to hand.").

69. The proposed increase in the NRA was designed to satisfy one-third of the program's long-range financial shortfall. The remaining two-thirds of the long-range budget shortfall was to be met by a "consensus" package of reforms that included changes such as extending coverage to nonprofit and new federal employees. Most of the proposed changes would address the short-term as well as long-term budget requirements. See NAT'L COMM'N ON SOC. SEC. REFORM, *REPORT* 2-3, 2-5 (1983).

70. The remaining five members of the National Commission recommended that the long-range shortfall be addressed by an increase in the contribution rates in 2010. *Id.* at 2-3.

71. *Id.* at Statement 1, at 2.

72. *Id.*

Beginning with those who attain age 62 in 2012, the normal retirement age would be automatically adjusted (on a phased-in basis) so that the ratio of the

- (1) Americans are living longer.
- (2) Older workers will be in a greater demand in the future years.
- (3) The disability benefits program can be improved to provide cash benefits and Medicare to those between age 62 and the higher normal retirement age who, for reasons of health, are unable to continue working.
- (4) Because the ratio of workers to beneficiaries is projected to decline after the turn of the century, younger generations are expected to pay significantly increased taxes to support the system in the 21st century. An increase in the normal retirement age will lessen the increase.
- (5) Given sufficient notice, coming generations of beneficiaries can adjust to a later retirement age just as earlier generations adjusted to age 65.⁷³

Shortly after the National Commission issued its report on January 20, 1983, Senator Robert Dole introduced Senate Bill 1,⁷⁴ that, among other things, would gradually increase the NRA to age sixty-six.⁷⁵ The report accompanying the bill explained that the bill was following the National Commission's recommendations, but did not explain why the bill did not include a provision for automatic adjustments beyond age sixty-six.⁷⁶ On the Senate floor, however, Senator Heinz explained that the bill limited the increase in the NRA to age sixty-six because of concerns that increasing the NRA could affect different people "very unequally" and adversely affect some workers: "primarily those on stressful or hazardous jobs—who [would] need to maintain the option to retire early."⁷⁷

Meanwhile, Representative Rostenkowski reported from the House Ways and Means Committee a bill, House Bill 1900, that did not contain any

retirement-life expectancy to the potential working-lifetime (from age 20 to the 'normal' retirement age) remains the same over the years as it was in 1990.

Id.

73. *Id.* at Statement 1, at 1.

74. Social Security Amendments of 1983, S. 1, 98th Cong. § 119 (1983).

75. At the same time that Senator Dole introduced Senate Bill 1, he introduced Senate Bill 76 that incorporated the National Commission's majority recommendation that the NRA be automatically adjusted to increases in life expectancy. 129 CONG. REC. 409, 430 (1983); *see also* John A. Svahn & Mary Ross, *Social Security Amendments of 1983: Legislative History and Summary of Provisions*, 46 SOC. SECURITY BULL., July 1983, at 3, 8 n.13. Senate Bill 76 was referred to the Finance Committee, but no further action was taken on the bill. 129 CONG. REC. 409 (1983).

76. *See* S. REP. NO. 98-23, at 2021 (1983), *reprinted in* 1983 U.S.C.C.A.N. 143, 161-62 (noting that increase was recommended by a majority of the members of the National Commission on Social Security and that "[i]n addition, they recommended indexing the retirement age to changes in longevity, beginning in 2012.>").

77. 129 CONG. REC. 5491-92 (1983).

increase in the NRA.⁷⁸ Instead, the original House Bill 1900 proposed to satisfy the long-range Social Security deficit by reducing initial benefits levels beginning in 2000 and by increasing the contribution levels beginning in 2015.⁷⁹ Shortly after Representative Rostenkowski introduced House Bill 1900, Representative Pickle introduced an amendment to the bill that eliminated the original House bill's proposed method of addressing the long-term deficit and replaced it with a gradual increase in the NRA from age sixty-five to age sixty-seven.⁸⁰

Representative Pickle explained that the Social Security program faced a long-term deficit of .68% and his proposed amendment would correct that deficit.⁸¹ He contended that because of demographic changes early in the twenty-first century and increases in longevity, an increase in the retirement age was inevitable.⁸² He argued that his proposal was best because it phased the change in over a long period of time and thus permitted workers to adjust to that change.⁸³ Proponents of the Pickle amendment frequently pointed to increases in life expectancy to justify the amendment.⁸⁴ Opponents of the

78. 129 CONG. REC. 4157 (1983).

79. H.R. 1900 §§ 201 & 202, discussed in H.R. REP. NO. 98-25, at 65-68 (1983), *reprinted* in 1983 U.S.C.C.A.N. 224, 284-87.

80. *See* 129 CONG. REC. 4158 (1983).

81. *See, e.g.*, 129 CONG. REC. 4597 (1983).

82. *Id.* at 4597-98.

83. *Id.* The phased in change offers an additional advantage of eliminating any "notch" problem whereby benefits decrease substantially from one year to the next. *See The Future of Social Security for this Generation and the Next: Raising the Retirement Age: Hearing Before the House Subcomm. on Soc. Security of the House Comm. on Ways and Means*, 105th Cong. 2 (1998) (testimony of Ron Gebhardtshauer, Senior Pension Fellow Am. Acad. of Actuaries). Gebhardtshauer stated:

If the NRA had increased to age 66 all in one year, the benefits would have dropped immediately by about 7%. This large decrease would be similar to the notch baby decreases which caused much alarm among the elderly in the 1980s. Phasing in the increase in retirement age over 6 years from 2000 to 2005 avoids this problem.

Id.

84. *See, e.g.*, 129 CONG. REC. 4596 (1983) (statement of Rep. Daschle) ("Finally, I believe it is time to recognize increased longevity in this Nation and by doing so adopt the Pickle amendment to phase in an increase in the retirement age from 65 to 67."); *id.* at 4600 (statement of Rep. Anthony) ("It is also important to note that between 1940 and 1980, life expectancy at birth has increased by 12 years. Moreover, longevity is predicted to increase even further in the future. Given this general increase in longevity, an increase in the age of full retirement is inevitable."); *id.* at 4601 (statement of Rep. Campbell) ("I think it is extremely good news that people are living longer. . . . The Pickle amendment recognizes this happy fact of life."); *id.* at 4603 (statement of Rep. Gradison) (contending that age sixty-seven for full benefits could be justified in 1983 because of increases in life expectancy); *id.* at 4614 (statement of Rep. Frenzel) ("With the increases in life expectancy, and the increase in the number of older Americans choosing to keep on working in many cases far past the age of 65, the Pickle amendment makes sense."); *id.* (statement of Rep.

amendment, in contrast, pointed to its likely disproportionately adverse impact on women, minorities, and blue collar workers (because of the relative inability of all three groups to extend their working lives and the relatively shorter life expectancies of minorities).⁸⁵ Representative Pickle did not address the issue of shorter life expectancies but contended that disability benefits should be available to workers who are unable to continue to work for health reasons.⁸⁶

Following debate, the House approved the amendment,⁸⁷ and the Conference Committee adopted the House's provision without explanation.⁸⁸ Congress then enacted the 1983 Social Security Amendments Act, which, among other things, provided for a deferred, gradual increase in the NRA.⁸⁹

The increase is scheduled to begin in 2000 when the NRA will be sixty-five and two months for individuals who reach sixty-two that year.⁹⁰ The NRA will continue to increase by two months each year until it reaches sixty-six in 2005.⁹¹ Then, after a hiatus until 2017, the NRA will resume increasing by two months each year until it reaches age sixty-seven in 2022.⁹²

Glickman) (offering as first justification for supporting Pickle amendment that "[p]eople are living longer and healthier lives").

85. See, e.g., *id.* at 4598 (statement of Rep. Richardson) ("This amendment would have an extremely adverse effect on women and minorities."); *id.* at 4600 (statement of Rep. Kennelly; "it will impact hardest on women, low-skilled workers, and minorities"); *id.* at 4601 (statement of Rep. Wise) (objecting to Pickle amendment because it would have adverse effect on miners who are unable to extend their working lives for health reasons); *id.* at 4602 (statement of Rep. Burton) ("There can be no doubt in the world that extending the time for which a social security beneficiary can receive full benefits discriminates against those who have had to spend their work lives using physical and manual labor. . . . There is a roaring inequality in this proposal . . ."); *id.* at 4603 (statement of Rep. Obey) (contending that impact of increased retirement age on hard labor workers should be studied before increase in retirement age legislated).

86. *Id.* at 4601 (statement of Rep. Pickle) ("My bill requires the Secretary to give us a formula and a plan by which we can put into force these occupational disability programs.").

87. *Id.* at 4616. Immediately after approving the Pickle amendment, the House rejected the Pickle amendment which would have increased the payroll tax by .53 percentage points in 2010 instead of increasing the NRA. *Id.* at 4631.

88. H.R. CONF. REP. NO. 98-47, at 138 (1983), *reprinted in* 1983 U.S.C.C.A.N. 404, 423-24.

89. Social Security Amendments of 1983, Pub. L. No. 98-21, § 201, 97 Stat. 65, 107-08 (1983). For a detailed discussion of the legislative history of the 1983 Amendments, see, for example, Svahn & Ross, *supra* note 75, at 3.

90. See 42 U.S.C. § 416(l) (1994).

91. *Id.*

92. *Id.*

D. Conclusion

The legislative history makes it clear that there is no scientific or gerontological basis for the Social Security retirement ages.⁹³ Cost is clearly an important, if not the most important, factor in selecting the Social Security retirement ages, but it is not the only relevant factor. In selecting the retirement ages, legislators have taken into consideration a host of other factors, ranging from need to life expectancy to the ability to work and find employment.

III. WEIGHING THE COSTS AND BENEFITS

In recent years, a wide variety of policymakers⁹⁴ and analysts⁹⁵ have recommended that the scheduled increase in the Social Security NRA be accelerated, that the NRA be increased even further, and/or that the EEA be increased.⁹⁶ For example, a majority of the members of 1994–1996 Social

93. Cf. Dan M. McGill, *Broad Perspectives*, in SEARCH FOR A NATIONAL RETIREMENT INCOME POLICY 13, 17–18 (Jack L. VanDerhei ed., 1987). In discussing the proper level of benefits, McGill states:

“Unfortunately, one cannot arrive at the determination of the proper level of social insurance benefits by mathematical means, or by scientific tests, or even by pure logic. The answer depends upon one’s economic and social philosophy—the sympathy he has for human misfortune, the stress he places on preserving individual dignity, and the kind of society he envisions as desirable.”

Id. (quoting Economist Richard A. Lester of Princeton University).

94. See, e.g., Clara W. Dworsky, *The Pitfalls of Social Security Privatization*, EXPERIENCE, Summer 1999, at 32 (“The Federal Reserve’s Greenspan has suggested alternatives to privatization, saying both a higher retirement age and a reduced cost of living adjustment would help Social Security deal with the aging of the huge baby boom generation.”); David M. Walker, *The Looming Retirement Crisis*, 22 EMPLOYEE BENEFITS J. 17, 23 (1997) (offering increase in retirement age as a strategy for averting impending retirement crisis).

95. See, e.g., AM. ACAD. OF ACTUARIES, *supra* note 5, at 27 (contending that increases in life expectancy would track Social Security’s financial needs well and would be reasonable if health status improves along with increases in life expectancy); C. EUGENE STEUERLE & JON M. BAKIJA, *RETOOLING SOCIAL SECURITY FOR THE 21ST CENTURY: RIGHT AND WRONG APPROACHES TO REFORM* 196 (1994) (“Among various benefit options, therefore, an increase in the retirement age is one of the easiest to justify under Social Security principles.”); Robert J. Myers, *Is the Only way to Save Social Security to Destroy It?*, 13 BENEFITS Q. 40, 44 (1997) (recommending that NRA be increased by two months each year beginning in 2003 until it reaches 70 in 2037). *But see More Americans Prefer Raising Tax to Cutting Benefits, Actuaries’ Survey Finds*, PENS. & BEN. REP. (BNA) No. 25, at 807 (April 6, 1998) (“Gebhardt’sbauer, [a senior pension fellow at the American Academy of Actuaries] cautions on raising the retirement age to 70 because of the ‘negative impact on the Social Security net for lower-income and blue-collar workers.’”).

96. Frequently, these are not stand alone proposals, but instead, are one element of a comprehensive reform package. Because this article focuses only on raising the retirement age(s), it will not discuss the other elements of reform.

Security Advisory Council⁹⁷ recommend that the currently scheduled increase in the NRA be accelerated so that the NRA reaches sixty-seven by the year 2011, and that after 2011, the NRA continue to be increased gradually (at the rate of about one month every two years) in conjunction with increases in life expectancy.⁹⁸ A few members of the Advisory Council further recommend that the EEA also be gradually increased until it reaches age sixty-five in 2035.⁹⁹

The Committee for Economic Development ("CED")¹⁰⁰ recommends that the currently scheduled increase in the NRA be accelerated and that the NRA continue to be increased by two months each year until it reaches age seventy in the year 2030.¹⁰¹ The Committee further recommends that the NRA be indexed thereafter to changes in life expectancy.¹⁰² Although the CED supports a substantial increase in the NRA, it opposes any increase in the EEA.¹⁰³

The National Commission on Retirement Policy ("NCRP")¹⁰⁴ recommends that the currently scheduled increase in the NRA be continued

97. In recent years, an Advisory Council on Social Security was appointed every four years by the Secretary of Health and Human Services to review the status of all of the Social Security trust funds in relation to the long-term commitments of the Social Security programs. See ADVISORY COUNCIL ON SOC. SEC., REPORT OF THE 1994-1996 ADVISORY COUNCIL ON SOCIAL SECURITY vol. 1, at 2 (1997) [hereinafter 1994-1996 REPORT OF THE ADVISORY COUNCIL]. The recommendations of the Advisory Council are particularly noteworthy because the Advisory Council has historically played a vital role in policymaking. See Moore, *supra* note 1, at 149 n.108 and authorities cited therein.

98. 1994-1996 REPORT OF THE ADVISORY COUNCIL, *supra* note 97, vol. 1, at 21, 28-29, 31.

99. *Id.* at 31 & n.23.

100. The Committee for Economic Development ("CED") is an independent research and policy organization of some 250 business leaders and educators. CED is nonprofit, nonpartisan, and nonpolitical. Its purpose is to propose policies that bring about steady economic growth at high employment and reasonably stable prices, increased productivity and living standards, greater and more equal opportunity for every citizen, and an improved quality of life for all.

COMM. FOR ECON. DEV., FIXING SOCIAL SECURITY: A STATEMENT BY THE RESEARCH AND POLICY COMMITTEE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT vi (2000), available at <http://www.ced.org/docs/sec.pdf>.

101. *Id.* at 39.

102. *Id.* ("Increases in the NRA thereafter should be linked (indexed) to changes in average life expectancy in a way that maintains a constant average ratio of working years to retirement years.")

103. *Id.* ("Nevertheless CED does not favor an increase in the early eligible age ("EEA"), which is now 62 years, because some jobs are too strenuous for older workers, and such a change is likely to result in a significant increase in applications for disability benefits.")

104. The National Commission on Retirement Policy is a self-nominated bipartisan panel consisting of "[l]awmakers, economists and private sector experts." *Panel Proposes Personal*

until it reaches age “70 at the end of year 2029,” and that the EEA also “be increased by two months” each year until it reaches age sixty-five in the year 2017.”¹⁰⁵ The NCRP further recommends that both the EEA and NRA be indexed with increases in life expectancy thereafter.¹⁰⁶

This section analyzes the costs and benefits of such proposals. It begins by discussing the two principal benefits of raising the retirement ages: (1) raising the NRA would reduce the long-term deficit in the Social Security trust funds, and (2) raising the NRA, particularly if accompanied by an increase in the EEA, would likely promote general economic gains. The section then turns to the three principal costs of raising the retirement ages: (1) increasing the retirement ages would constitute a reduction in benefits; (2) raising the retirement ages could increase the risk that older workers—and their dependents—end their lives in poverty; and (3) raising the retirement ages is likely to have a disproportionately adverse impact on some subpopulations particularly vulnerable to poverty in old age, such as blue-collar workers, lower-income workers, and blacks. In addressing the costs of raising the retirement ages, the Article discusses the ways in which these costs may be reduced—to the extent possible.

A. Reducing the Long-Term Deficit

The most obvious benefit of accelerating the scheduled increase in the NRA or increasing it even further is that such a change would reduce the long-term deficit in the Social Security trust funds.¹⁰⁷ The Social Security

Accounts, Raising Retirement Eligibility Age, Pens. & Ben. Rep. (BNA) No. 25, at 1203 (May 25, 1998). It “is an initiative of the Center for Strategic and International Studies, a public policy research institution located in Washington, D.C.” NAT’L COMM’N ON RET. POLICY, CAN AMERICA AFFORD TO RETIRE?: THE RETIREMENT SECURITY CHALLENGE FACING YOU (1998), available at <http://www.csis.org/retire/ncrpbroc.pdf>.

105. NAT’L COMM’N ON RET. POLICY, THE 21ST CENTURY RETIREMENT SECURITY PLAN 33–34 (1999), available at <http://www.csis.org/retire/ncrpbroc>.

106. *Id.* at 33.

107. This assumes, of course, that such a change would be accompanied by actuarially fair, or almost fair, adjustments to benefits for early or delayed retirement. See *infra* note 119 (discussing actuarial adjustments in current system). Raising the NRA would likely result in increased disability claims and thus an increase in the DI trust fund deficit. See *infra* note 282 and accompanying text. Such increased disability claims, however, are expected to be less than the decreased retirement benefits and thus should not offset the substantial cost savings that would accrue to the OASI trust fund from raising the NRA. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 6 (“for all the options we assessed, the increased costs from a higher DI caseload would not offset the significant cost savings that would accrue to the OASI portion of the Social Security Trust Funds”); H. Dennis Tolley & Kenneth G. Manton, *Disability Adjusted Cost Savings for Changes in Normal Retirement Age*, 59 SOC. SECURITY BULL., Winter 1996, at 71, 74 (finding that increases in disability prevalence between the ages of sixty-five and seventy-five will not substantially reduce

Administration has found that accelerating the scheduled increase in the NRA by eliminating the currently scheduled hiatus and then further increasing it to age sixty-eight (by indexing the NRA by one month for every two years) would resolve about twenty percent of Social Security's long-term deficit,¹⁰⁸ while accelerating the scheduled increase by eliminating the currently scheduled hiatus and then increasing it even further to age seventy (by indexing the NRA by one month for every two years) would resolve about twenty-six percent of the program's long-term deficit.¹⁰⁹

The fact that increasing the NRA and/or accelerating the scheduled increase in the NRA would effectively reduce Social Security's long-term deficit is hardly surprising since increasing the NRA while leaving the EEA unchanged is almost economically¹¹⁰ identical¹¹¹ to an across-the-board

the cost savings attributable to increasing NRA up to age seventy-five). Raising the NRA could also result in increased SSI claims, but technically, such changes would not affect the OASDI trust fund because SSI benefits are paid out of general revenues, not the OASDI trust fund. GAO, *IMPLICATIONS*, *supra* note 12, at 6 ("Because SSI is financed by general revenues, any increase in SSI caseloads would affect general funds but would not affect the solvency of the Social Security Trust Funds.").

108. Memorandum from Keith Fontenot, Assistant Deputy Commissioner for Policy, Social Security Administration, to Jane Ross, Deputy Commissioner for Policy, Social Security Administration, Information on the Distributional Effects of Various Social Security Solvency Options by Gender and Income (May 18, 1999), available at <http://199.173.225.108/policy/pubs/memDistImp.pdf>. [hereinafter Fontenot Memorandum].

109. *Id.*; See also GAO, *IMPLICATIONS*, *supra* note 12, at 6-9 (showing how various proposals to increase NRA (and sometimes EEA) would increase solvency of Social Security Trust Funds); GAO, *SOCIAL SECURITY REFORM*, *supra* note 22, at 3.

SSA's actuaries estimate that increasing the NRA from 65 to 69 over the years 2000 through 2015, and raising the ERA at the same rate, would close over one-half of the long-term trust fund shortfall and thereby extend the period of projected solvency by 13 years. If the NRA and ERA were further increased at the rate of 1 month every 2 years starting in 2016, then depletion of the fund would not occur for an additional 5 years (because 19 percent more of the shortfall would be made up). The combined effect of these retirement age increases would eliminate 72 percent of the difference between the Social Security trust fund's revenues and outlays over the next 75 years.

Id.

110. There are important noneconomic differences between raising the NRA and an across-the-board cut in benefits.

First, increasing the NRA signals to workers that the same monthly benefit can be obtained by postponing retirement, which may encourage some workers to delay retirement rather than accept a lower pension. . . . Second, in light of the well-known improvements in life expectancy, American workers might find increases in the retirement age to be more understandable and fairer than equivalent reductions in full pensions.

Gary Burtless & Joseph F. Quinn, *Retirement Trends and Policies to Encourage Work among Older Americans*, in *ENSURING HEALTH AND INCOME SECURITY FOR AN AGING WORKPLACE*, TWELFTH ANNUAL CONFERENCE OF THE NATIONAL ACADEMY OF SOCIAL INSURANCE 375, 403 (Peter P. Budetti et al. eds., 2001).

reduction in benefits.¹¹² If the NRA were increased, and no adjustment were made to the EEA, workers would have two choices: (1) they could retire later and receive the same level of benefits for fewer years; or (2) they could retire at the same time as they would have under the old NRA and receive smaller monthly benefits for the same number of years.¹¹³ If the EEA were increased in conjunction with the NRA, workers would only have the first option: receiving the same level of benefits for fewer years. Obviously, either choice involves a reduction in benefits and thus helps reduce Social Security's long-term deficit.

Increasing only the EEA should not have a significant impact on Social Security's long-term deficit.¹¹⁴ The current law is designed¹¹⁵ to provide an actuarially fair¹¹⁶ reduction in benefits so that workers who choose to receive

111. It will not be identical until 2009 when the scheduled modification of the delayed retirement credit is complete and actuarially fair. See 1994-1996 REPORT OF THE ADVISORY COUNCIL, *supra* note 97, vol.2, at 91; and *infra* notes 112-113.

112. According to the Congressional Budget Office, "[t]he main difference between raising the normal retirement age and imposing an across-the-board cut in benefits is that the latter approach would also reduce benefits for Social Security Disability Insurance." CBO, PAPER, *supra* note 12, at 2 n.2. Cf. MICHAEL V. LEONESIO ET AL., EARLY RETIREES UNDER SOCIAL SECURITY: HEALTH STATUS AND ECONOMIC RESOURCES 1 n.1 (Soc. Sec. Admin., ORES Working Paper No. 86, 2000) (stating that "increasing the NRA is equivalent to reducing lifetime benefits, at a rate of approximately 7% for each year of increase"); Fontenot Memorandum, *supra* note 108, at tbl.3 (finding that raising NRA to sixty-eight is equivalent to six percent reduction in benefits for the average worker while raising NRA to seventy is equivalent to seventeen percent reduction in benefits for the average worker).

113. Current law already provides an actuarial reduction in benefits for workers who retire before the NRA. If the NRA were increased, benefits would be reduced even further. See *infra* note 259-265.

114. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 8 fig.2 (showing that proposal to increase NRA to seventy and EEA to sixty-five by 2065 would only have slightly larger effect on solvency than would proposal that would increase NRA to seventy by 2065 but leave EEA at sixty-two).

115. CBO, PAPER, *supra* note 12, at 4.

The size of the early-retirement reduction for workers [under current law] is intended to be "actuarially fair" in the sense that the total value of the reduced monthly benefits that an average worker could expect to receive between age 62 and death is similar to the total value of the full monthly benefits he or she could expect to receive over that time by delaying initial benefits until age 65.

Id.

116. Using the Social Security Administration's (SSA's) inflation-adjusted discount rate of 2.8 percent, a 62-year old worker would earn the same total amount from early reduced benefits or delayed full benefits if he or she lived for about 17 more years (to age 79). However, although the life expectancy for 62-year-old men is approximately 17 years, for women it is about 21 years. With that longevity, a 62-year-old woman would theoretically accrue greater total benefits by waiting until normal retirement age to begin collecting them.

Id. at 4-5.

benefits before the NRA¹¹⁷ should¹¹⁸ receive the same total lifetime benefits as if they had retired at the NRA.¹¹⁹ Thus, if the EEA were increased, and there were no adjustment in the NRA, workers would be forced to wait longer to receive benefits, but their monthly benefits would be larger (because the actuarial reduction would be reduced or eliminated). The increased amount of monthly benefits should offset the shorter period over which benefits are to be paid, and thus increasing the EEA alone should not have a significant impact on Social Security's long-term deficit.¹²⁰

Of course, increasing only the EEA may provide for a slight reduction in Social Security's long-term deficit. The current actuarial reduction roughly offsets the extra benefits an early retiree receives, but it does not adjust for contributions to the system. "In almost all cases, the reduction in lifetime tax contributions resulting from early retirement is larger than the reduction in benefits. As a consequence, early retirement generally increases net

117. Current law also provides for a "delayed retirement credit" for workers who elect to delay the receipt of benefits until after NRA. 42 U.S.C. § 402(w) (1994). Although the delayed retirement is not currently actuarially fair, a modification of this credit has been phased in so that by 2009, the delayed retirement credit should be actuarially fair. For a discussion of the history of the delayed retirement credit, see Joseph Bondar, *Beneficiaries Affected by the Annual Earnings Test*, 1989, 56 SOC. SECURITY BULL., Spring 1993, at 20; see also JOSEPH F. QUINN, EMPLOYEE BENEFIT RESEARCH INST., RETIREMENT PATTERNS AND BRIDGE JOBS IN THE 1990S, at 78 (Employee Benefit Research Inst., EBRI Issue Brief No. 206, 1999) [hereinafter QUINN, RETIREMENT PATTERNS] (discussing actuarial fairness of delayed retirement credit); Myers, *supra* note 10, at 227 (noting that "eventual DRC of 8 percent per year is close to the actuarial equivalent").

118. See generally COURTNEY COILE & JONATHAN GRUBER, SOCIAL SECURITY INCENTIVES FOR RETIREMENT (Nat'l Bureau of Econ. Research, Working Paper No. 7651, 2000), available at <http://dsl.nber.org/papers/w7651.pdf> (using data from Health and Retirement Survey, finding that Social Security is actuarially fair for workers between the ages of sixty-two and sixty-four, at the median, but "that there is a substantial amount of heterogeneity in these incentives across the sample"); see also STEUERLE & BAKUA, *supra* note 95, at 219 (finding that for a worker who retires "at age 62 instead of age 65 . . . the actuarial reduction for early retirement roughly offsets the extra benefits one receives before 65").

119. Of course, actuarial adjustments are based on "average" life expectancy and particular workers may live beyond the average life expectancy or die earlier than expected and thus receive greater or fewer total lifetime benefits. HENRY J. AARON, ECONOMIC EFFECTS OF SOCIAL SECURITY 62 n.19 (1982) (noting that administrative capabilities prevent the calculation of precise actuarial reductions in each case). COUNCIL OF ECON. ADVISORS, ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISORS, in ECONOMIC REPORT OF THE PRESIDENT 144-45 (1999) (noting that the increase of Social Security benefits by 8.3% per year from ages sixty-two to sixty-five is an amount that is thought to be actuarially fair for a person with average life expectancy), available at <http://w3.access.gpo.gov/usbudget/fy2000/pdf/erp.pdf>.

120. HENRY J. AARON & ROBERT D. REISCHAUER, COUNTDOWN TO REFORM: THE GREAT SOCIAL SECURITY DEBATE 63 (1998) (stating that "raising the age of initial entitlement saves little money in the long run because the increase in benefits associated with delaying retirement from age 62 to age 65 approximately offsets the shorter period over which benefits must be paid").

transfers—benefits less taxes—from Social Security.”¹²¹ If the EEA alone were increased, workers would be required to contribute to the system for a longer period of time, but their increased benefits would not offset their increased payroll contributions. Instead, their increased payroll taxes would help to reduce Social Security’s long-term deficit—albeit only slightly.

B. General Economic Gains

Between the time the Social Security system was originally enacted and the mid-1980s,¹²² there was an undeniable trend towards earlier retirement¹²³ among American¹²⁴ men.¹²⁵ In 1950, nearly sixty percent of American men between the ages of sixty-five and sixty-nine participated in the labor

121. STEUERLE & BAKUA, *supra* note 95, at 221; *see also* AM. ACAD. OF ACTUARIES, RAISING THE RETIREMENT AGE FOR SOCIAL SECURITY 3 (Issue Brief, Fall 1997), *available at* <http://www.actuary.org/pub/actuary.org/issuebrf>.

[Raising the EEA in addition to raising the NRA] would improve the OASDI program’s financial condition by providing more years of revenue to the program through FICA income taxes. At present, the reduction in benefits for early retirement compensates only for more years. . . . This is particularly significant if the NRA moves to age 70 and the EEA remains at 62.

Id.

122. There is some debate as to whether the trend towards earlier retirement began in the late nineteenth century or after 1937. *Compare* COSTA, *supra* note 17, at 6–9 (documenting decline in employment rates of older men since 1880) *with* Roger L. Ransom & Richard Sutch, *The Decline of Retirement in the Years Before Social Security: U.S. Retirement Patterns, 1870-1940*, in ISSUES IN CONTEMPORARY RETIREMENT 3, 4 (Rita Ricardo-Campbell & Edward P. Lazear eds., 1988) (contending that trend towards earlier retirement did not occur until after 1937). Regardless of whether the trend began in the late nineteenth century or after the enactment of Social Security, it is clear that the labor force participation rates of older American men dropped substantially between the enactment of Social Security and the mid-1980s.

123. For purposes of this article, retirement means withdrawal from the paid labor force. For discussions of other definitions of retirement, *see* JOSEPH F. QUINN ET AL., PASSING THE TORCH: THE INFLUENCE OF ECONOMIC INCENTIVES ON WORK AND RETIREMENT 5 (1990); Gordon F. Streib, *Discussion*, in ISSUES IN CONTEMPORARY RETIREMENT, *supra* note 122, at 27–29; Michael V. Leonesio, *Social Security and Older Workers*, 56 SOC. SECURITY BULL., Summer 1993, at 56 n.1 [hereinafter Leonesio, *Social Security and Older Workers*].

124. There has been a similar decline in most developed nations, and in fact, the decline in most European countries has been even more dramatic than that in the United States. Jonathan Gruber & David A. Wise, *Introduction and Summary*, in SOCIAL SECURITY AND RETIREMENT AROUND THE WORLD 1, 3–4 (Jonathan Gruber & David A. Wise eds., 1999).

125. The trend does not hold true for women. Women’s increasing rate of participation in the labor force over time dominates “any trend towards earlier retirement.” Peter Diamond & Jonathan Gruber, *Social Security and Retirement in the U.S.*, in SOCIAL SECURITY AND RETIREMENT AROUND THE WORLD, *supra* note 124, at 437, 439–40. For a discussion of labor force participation and retirement decisions of women, *see* David A. Weaver, *The Work and Retirement Decisions of Older Women: A Literature Review*, 57 SOC. SECURITY BULL., Spring 1994, at 3 and authorities cited therein.

force.¹²⁶ By 1985, the labor force participation rate of these men had dropped to about twenty-five percent.¹²⁷ Similarly, in 1960, more than eighty percent of men between the ages of sixty and sixty-four participated in the labor force;¹²⁸ this figure fell to about fifty-five percent by 1985.¹²⁹ Indeed, the labor force participation rate of older men in each of four different age groups: forty-five to fifty-four, fifty-five to fifty-nine, sixty to sixty-four, and sixty-five and over, declined between the years of 1960 and 1985.¹³⁰ Since the mid-1980s, retirement ages have stabilized,¹³¹ and currently more than half of all workers elect to retire and receive actuarially reduced Social Security benefits at the EEA of sixty-two.¹³²

126. Diamond & Gruber, *supra* note 125, at 438.

127. QUINN ET AL., *supra* note 123, at 17 fig.1.1.

128. Diamond & Gruber, *supra* note 125, at 438.

129. QUINN ET AL., *supra* note 123, at 17 fig.1.1.

130. Diamond & Gruber, *supra* note 125, at 438. For additional discussion detailing the trend towards earlier retirement, see COSTA, *supra* note 17, at 6-14; QUINN ET AL., *supra* note 123, at 14-36; QUINN, RETIREMENT PATTERNS, *supra* note 117, at 4 tbl.1; Gary Burtless, *An Economic View of Retirement*, in BEHAVIORAL DIMENSIONS OF RETIREMENT ECONOMICS 7, 7-14 (Henry J. Aaron ed., 1999).

131. See, e.g., CBO, PAPER, *supra* note 12, at 9 & n.14 ("By the mid-1980s, however, the employment rates of older men had fallen to near the current levels."); Richard V. Burkhauser et al., *Who Takes Early Social Security Benefits?: The Economic and Health Characteristics of Early Beneficiaries*, 36 GERONTOLOGIST 789, 789 (1996) ("Since about the mid-1980s, the labor force participation rates of men [around age sixty-two] have been approximately constant."). But see EUGENE STEUERLE & CHRISTOPHER SPIRO, ADJUSTING FOR LIFE EXPECTANCY IN MEASURES OF LABOR FORCE PARTICIPATION (Urban Inst., Straight Talk on Social Security and Retirement Policy No. 10, Oct. 30, 1999), available at <http://www.urban.org/retirement/st/Straight10.pdf> (contending that if life expectancy is taken into account, the trend toward earlier retirement has slowed but not stopped).

Whether the trend towards earlier retirement has reversed since the 1980s is subject to debate. Compare QUINN, RETIREMENT PATTERNS, *supra* note 117 (contending that trend towards earlier retirement stopped in mid-1980s and may have even reversed) with Dora Costa, *Has the Trend Toward Early Retirement Reversed?* (presentation at the First Annual Joint Conference for the Retirement Research Consortium "New Developments in Retirement Research," May 20-21, 1999) (contending that conjecture that trend towards early retirement may have reversed since 1985 is premature). See also CBO, PAPER, *supra* note 12, at 9.

From 1993 to 1997, the participation rate of men ages 65 to 69 increased by 3 percentage points to 28.4 percent, and those of men ages 55 to 59 and 60 to 64 increased by smaller amounts. It is too soon to tell whether those increases resulted from the recent overall strength of the labor market or from more fundamental factors.

Id. at n.14.

132. HOUSE COMM. ON WAYS AND MEANS, 105TH CONG., 1998 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 21, tbl.1-12 (Comm. Print 1998) http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.88&filename=wm007_

Proponents of accelerating the scheduled increase in the NRA or increasing the NRA even further contend that such a change, particularly if accompanied by an increase in the EEA, would promote general economic gains by encouraging older workers¹³³ to remain in the work force longer and thus increase national productivity.¹³⁴ For these purposes, economic gains refer to wage-producing labor, and not general social utility, and thus do not include the value of leisure time.¹³⁵ Whether raising the NRA, the EEA, or

01.pdf&directory=/disk2/wais/data/105_green book.[hereinafter 1998 GREEN BOOK] (showing that in 1995 58.3% of workers elected to receive Social Security retirement benefits at age sixty-two, 19.5% at ages sixty-three to sixty-four, 16.3% at age sixty-five, and six at ages sixty-six or older).

133. This article will not attempt to define precisely the term "older worker." Generally speaking, the article will view "older workers" as those who are in their late fifties or beyond, but the article may sometimes refer to different specific ages. Cf. 29 U.S.C. § 631(a) (1994) (limiting Age Discrimination in Employment Act protection to individuals who are at least forty years of age); Scott A. Bass, *Older and Active*, in *OLDER AND ACTIVE: HOW AMERICANS OVER 55 ARE CONTRIBUTING TO SOCIETY* 1, 1 (Scott A. Bass ed., 1995) [hereinafter *OLDER AND ACTIVE*] ("[T]he phrase ['older person'] customarily refers to those beyond the traditional retirement age of 65. It is not uncommon, however, to include people from age 55 on in the definition."); Eric R. Kingston, *Demographic Trends and the Future of Older Workers*, in *HANDBOOK ON EMPLOYMENT AND THE ELDERLY* 57, 58 (William H. Crown ed., 1996) [hereinafter *HANDBOOK ON EMPLOYMENT*] (noting that the term "older worker" is "used in a variety of ways in popular and academic discourse").

134. 1994-1996 REPORT OF THE ADVISORY COUNCIL, *supra* note 97, vol.1, at 31 n.23 (offering "potential gains to economy" as justification for increasing the retirement age); AARON & REISCHAUER, *supra* note 120, at 102 (contending that raising EEA from sixty-two to sixty-five in conjunction with currently scheduled increase in NRA from sixty-five to sixty-seven would, among other things, "enlarge the labor force, boost national production, and reduce the burden of supporting the economically inactive"); see also CBO, PAPER, *supra* note 12, at 2 (stating "if raising the earliest eligibility age encouraged people to work longer, their need for retirement income would be reduced and the nation would have more resources"); GAO, IMPLICATIONS, *supra* note 12, at 2 ("Raising the retirement ages might also contribute to economic growth because workers would be likely to extend their careers."); Richard V. Burkhauser, *Touching the Third Rail, Time to Return the Retirement Age for Early Social Security Benefits to 65*, 36 GERONTOLOGIST 726, 726 (1996) (contending that "[r]aising the earliest age of eligibility would start a chain of events in our retirement system that would push labor force participation dramatically upward at ages 62 through 64, and thus overall productivity and the labor earnings base on which Social Security taxes are collected"); Myers, *supra* note 10, at 229 ("I believe that increasing the [EEA] is desirable, so that people are not tempted to retire too early and thus lower the economic productive capacity of the nation.").

135. Cf. Gary Burtless & Alicia H. Munnell, *Does a Trend Toward Early Retirement Create Problems for the Economy*, in *RETIREMENT AND PUBLIC POLICY*, *supra* note 10, at 59, 74 (contending that there is no economic reason to encourage individuals to work longer: "National output will be lowered by the reduction in their hours, but this decline simply measures the goods that they are willing to forgo in order to enjoy more leisure, which they value just as highly as the goods and services they give up."); E-mail from Robert Clark, Professor, Department of Economics and Business Management, North Carolina State University, to Kathryn Moore, Associate Professor of Law, University of Kentucky College of Law (July 19, 2000) (on file with author) ("In general, the trend towards early retirement was a manifestation of economic gains,

both would result in general economic gains, as defined above, depends principally on three factors: (1) whether raising the NRA, the EEA, or both would encourage workers to delay retirement; (2) whether older workers would be physically able to extend their working lives; and (3) whether jobs would be available for older workers.

1. The Retirement Decision

In introducing the 1983 delayed gradual increase in the NRA,¹³⁶ Representative Pickle explained that the purpose of the increase was "to encourage people to delay retirement."¹³⁷ Unfortunately, it is too early to tell whether the scheduled increase in the NRA will have its intended effect because the increase has only recently gone into effect, and it is phased in over a long period of time.¹³⁸

A number of economic studies, however, support the proposition that increasing the NRA should increase the average retirement age, albeit only modestly.¹³⁹

In the 1980s, when Congress debated and ultimately enacted legislation implementing the scheduled gradual increase in the NRA to age sixty-seven,¹⁴⁰ several economists studied the specific question of whether raising the NRA would likely encourage workers to delay retirement. Gary Burtless

people had more income and they chose to use some of this income to purchase more lifetime leisure because this enhanced their well-being. Thus, less work reflected economic gains.").

136. See *supra* note 80 and accompanying text.

137. 129 CONG. REC. 4615 (1983) (statement of Rep. Pickle) ("[T]he purpose of raising full benefits is to encourage people not to retire at age 62. Rather, the purpose is to encourage people to delay retirement, at which time they would receive full benefits."); see also Leonesio, *supra* note 123, at 47 (stating that 1983 Amendment gradually increasing NRA to sixty-seven was "intended to promote work").

138. In the future, it may be possible to determine how increasing the NRA actually affects retirement behavior. The fact that the earnings limit for those at or above the NRA was repealed the same year that the gradual increase in the NRA first went into effect, see Senior Citizens Freedom to Work Act of 2000, Pub. L. No. 106-182 § 2, 114 Stat. 198, 199 (2000), however, will likely complicate any study of the actual effect of increasing the NRA. For a discussion of the earnings test and its effect on retirement behavior, see Leonesio, *supra* note 123, at 51-55.

139. Economists have devoted considerable attention to studying retirement behavior in general and the role Social Security plays in the retirement decision in particular. For recent reviews of that literature, see CORI E. UCCELLO, URBAN INST., PUB. NO. 9810, FACTORS INFLUENCING RETIREMENT: THEIR IMPLICATIONS FOR RAISING RETIREMENT AGE (1998), available at http://research.aarp.org/econ/9810_retire.pdf; Diamond & Gruber, *supra* note 125, at 464-68; Michael V. Leonesio, *The Economics of Retirement: A Nontechnical Guide*, 59 SOC. SECURITY BULL., Winter 1996, at 44 [hereinafter Leonesio, *Nontechnical Guide*]; Leonesio, *Social Security and Older Workers*, *supra* note 123. For book length studies of retirement behavior, see generally COSTA, *supra* note 17; QUINN ET AL., *supra* note 123.

140. See *supra* Part II.C.

and Robert Moffitt predicted that raising the Social Security NRA from sixty-five to sixty-eight would add a little more than four months to the full-time working careers of nondisabled men;¹⁴¹ Gary Fields and Olivia Mitchell predicted that increasing the NRA from sixty-five to sixty-eight would increase the average retirement age by 1.6 months.¹⁴² These and similar studies¹⁴³ suggest that accelerating the scheduled increase in the Social Security NRA or increasing it even further would likely cause workers, as a whole, to extend their working lives, but only modestly.¹⁴⁴

141. Gary Burtless & Robert A. Moffitt, *The Joint Choice of Retirement Age and Postretirement Hours of Work*, 3 J. LAB. ECON. 209, 229 (1985) (using life-cycle model of consumption and labor supply finding that "[a]dvancing the normal retirement age to 68 from 65 should be expected to delay retirement. . . . The expected retirement age rises by about one-third (.35) of a year.").

142. Gary S. Fields & Olivia S. Mitchell, *Restructuring Social Security: How Will Retirement Ages Respond*, in THE PROBLEM ISN'T AGE: WORK AND OLDER WORKERS 192, 202 (Steven H. Sandell ed., 1987); see also Gary S. Fields & Olivia S. Mitchell, *The Effects of Social Security Reforms on Retirement Ages and Retirement Incomes*, 25 J. PUB. ECON. 143, 155 (1984) (presenting the same study with more detailed discussion of methodology).

143. See Stephan F. Gohmann & Robert L. Clark, *Retirement Responses to Social Security Changes*, 44 J. GERONTOLOGY S218, S224 tbl.3 (1989) (finding that as a result of increasing NRA to sixty-seven and accompanying changes in delayed retirement credit in 1983 Amendments, probability of labor force participation at age sixty-two increases by .8 percentage points while probability of participation at age sixty-five falls by 6.1 percentage points); Alan L. Gustman & Thomas L. Steinmeier, *The 1983 Social Security Reforms and Labor Supply Adjustments of Older Individuals in the Long Run*, 3 J. LAB. ECON. 237, 245-51 & fig.2 (1985) (using structural life-cycle retirement model, predicting that increasing NRA to age sixty-seven should result in six percent increase in number of individuals working full-time at age sixty-five and two percent decrease in number working part-time at that age); David A. Wise, *Retirement Against the Demographic Trend: More Older People Living Longer, Working Less, and Saving Less*, 34 DEMOGRAPHY 83, 93 (1997) (finding that the currently scheduled increase in the NRA to age sixty-seven is likely to have a very small effect on the retirement decisions of workers who are also covered by an employer-sponsored defined benefit plan: "The retirement rate of persons age 62, for example, is reduced from 26% to 23% and the age 65 rate is reduced from 35% to 26%. But the percentage of persons employed at age 50 who are retired by age 65 is reduced only from 86% to 83%."); see also LAWRENCE THOMPSON, OLDER & WISER: THE ECONOMICS OF PUBLIC PENSIONS 79 (1998) ("Estimates from both the United States and Japan suggest that the reduction in benefits produced by increasing the normal retirement age by a couple of years would cause people to delay retirement by only a few months, on average."); Merton C. Bernstein, *No, Changing the Retirement Age Is a Blunt Instrument*, in RETIREMENT AND PUBLIC POLICY, *supra* note 10, at 231, 242 ("The Social Security Office of the Actuary (1990) has assumed that when the NRA has completed its rise to age 67, the median actual retirement age will have increased by seven months—not all attributable to the NRA change.").

144. Of course, if the NRA in employer-provided pension plans were increased concurrently with the increase in the Social Security NRA, there might be a much more substantial impact on the average retirement age. Cf. Robin L. Lumsdaine et al., *Retirement Incentives: The Interaction between Employer-Provided Pensions, Social Security, and Retiree Health Benefits*, in THE ECONOMIC EFFECTS OF AGING IN THE UNITED STATES AND JAPAN 261, 279-85 (Michael D. Hurd & Naohiro Yashiro eds., 1997) (finding that effect of changing Social Security provisions much more significant if provisions of employer-provided pensions changed to correspond to those

The reason that accelerating the scheduled increase in the NRA or raising it even further is likely to increase the average retirement age is that raising the NRA is almost identical to an across-the-board reduction in benefits,¹⁴⁵ and retirement propensities are directly related to retirement wealth; that is, the greater an individual's retirement wealth or income, the more likely he is to retire.¹⁴⁶ On the other hand, the reason that accelerating the scheduled increase in the NRA or raising it even further is likely to have only a modest effect on the average retirement age is that Social Security is only one factor in the retirement decision.¹⁴⁷ The decision to retire is a very complex one that depends on a wide variety of factors ranging from the physical demands of an individual's job to the individual's general health¹⁴⁸ to the availability of health insurance to the amount and sources of income available to the

provisions than if Social Security provisions alone changed with no change in private plan provisions); Gustman & Steinmeier, *supra* note 143, at 248 (finding that increasing pension plan NRA to sixty-seven in conjunction with increase in NRA to sixty-seven "would have little effect at ages other than 65 and 66, but at those two ages it would increase full-time work by 3-4 percentage points in comparison with previous results").

145. See *supra* notes 110-112 and accompanying text.

146. QUINN, RETIREMENT PATTERNS, *supra* note 117, at 5 ("[C]onsiderable research suggests that increasing levels of wealth and the financial incentives embedded in Social Security and many employer pension plans have combined to induce many older workers to leave the labor force at earlier and earlier ages."); Leonesio, *Social Security and Older Workers*, *supra* note 123, at 50.

Other things being equal, higher benefits are expected to promote earlier retirement, decrease the likelihood of working among retirees, and reduce the hours of work by labor-force participants. . . .

Studies that use appropriate statistical procedures to account for the simultaneity between Social Security benefits and the timing of retirement usually find a negative relationship between benefit amounts and both retirement age and postretirement labor supply, although there is some variation in the estimated magnitude of the effects.

Id.

147. Moreover, it may be worth noting that Social Security interacts with the retirement decision in a very complex way. 1994-1996 REPORT OF THE ADVISORY COUNCIL, *supra* note 97, vol. 1, at 13-20 (describing in detail the effects of Social Security incentives on the retirement decision); Leonesio, *Nontechnical Guide*, *supra* note 139, at 37 (describing in some detail the "complicated way that Social Security can influence work and retirement decisions over the life cycle"); see also Diamond & Gruber, *supra* note 125, at 467-68 (pointing to limitations in current Social Security literature because of its failure to address two complexities in the way Social Security impacts the retirement decision: (1) the fact that social security benefits are inversely related to past wages while past wages are positively correlated to the decision to retire, and (2) the fact that the literature "generally focuses on only one of the two key social security benefits variables, including social security benefits or wealth but ignoring the social security tax/subsidy rate").

148. For a discussion of empirical studies on the role of health on the retirement decision, see Frank J. Sammartino, *The Effect of Health on Retirement*, 50 SOC. SECURITY BULL., Feb. 1987, at 38-40; see also Christopher J. Ruhm, *Historical Trends in the Employment and Labor Force Participation of Older Americans*, in HANDBOOK ON EMPLOYMENT, *supra* note 133, at 80, 88-90 (discussing studies regarding the effect of health on the retirement decision).

individual at retirement.¹⁴⁹ Thus, the degree to which a worker's behavior is affected by changes in Social Security depends on other factors including whether the worker has other sources of income at retirement, such as an employer-provided pension plan.¹⁵⁰ Indeed, for workers with a private pension plan, the provisions of the private pension are typically a bigger factor in the retirement decision than are Social Security benefits.¹⁵¹

It is more difficult to determine how raising the EEA would likely affect the retirement behavior of older workers.¹⁵² On the one hand, raising the

149. For a recent discussion of factors influencing the retirement decision, see, for example, UCCELLO, *supra* note 139. See also THOMPSON, *supra* note 143, at 78.

Among the factors that fairly consistently appear to be important influences on labor force decisions are: (1) the age of the individual, (2) the availability of retirement benefits, (3) the individual's health, (4) the level of retirement benefits to which the individual is entitled, (5) other sources of income, and (6) any earnings limitations imposed as a condition for receiving benefits.

Id.; PATRICIA M. ANDERSON ET AL., TRENDS IN MALE LABOR FORCE PARTICIPATION AND RETIREMENT: SOME EVIDENCE ON THE ROLE OF PENSIONS AND SOCIAL SECURITY IN THE 1970'S AND 1980'S, at 1-4 (Nat'l Bureau of Econ. Research, Working Paper No. 6208, 1997) available at <http://www.nber.org/papers/w6208> (contending that factors other than social security and pensions account for at least seventy-five percent of the trend toward earlier retirement of workers in their early sixties during the 1970's and 1980's and identifying increased real wages, changes in disability insurance, increased preferences for earlier retirement, and changes in the structure of jobs as factors that led to earlier retirement).

150. Michael J. Boskin & Michael D. Hurd, *The Effect of Social Security on Early Retirement*, 10 J. PUB. ECON. 361, 373 (1978) ("[T]he introduction of social security benefits will have a smaller effect on the retirement behavior of people with high nonlabor income than on the behavior of people with low nonlabor income.").

151. See Lumsdaine et al., *supra* note 144, at 262 (contending that for employees who have employer-provided pension benefits, the effect of employer pension plan provisions is typically much more powerful than the effect of Social Security provisions in predicting retirement behavior); Robin L. Lumsdaine et al., *Pension Plan Provisions and Retirement: Men and Women, Medicare and Models*, in STUDIES IN THE ECONOMICS OF AGING 183, 183 (David A. Wise, ed., 1994) (contending that for employees who have employer-provided pension benefits, the effect of employer pension plan provisions is typically much more powerful than the "effect of Social Security provisions" in predicting retirement behavior).

152. Burtless & Quinn, *supra* note 110, at 406.

It is harder to predict the effects of an increase in the early retirement age [EEA] because we do not have good enough historical evidence to evaluate the impact of this kind of change. When the earliest age of eligibility for Social Security retirement benefits was decreased from 65 to 62 (in 1956 for women and in 1961 for men), labor force participation rates fell significantly and much faster than they had previously. The reversal of this policy would likely have a larger impact than the change in the normal retirement age [NRA], especially for low wage workers who have no other sources of retirement income except Social Security. The magnitude of the increased labor force participation would depend, in part, on how employer pensions responded to the change in Social Security rules and the extent to which eligibility criteria for DI [Disability Insurance] benefits were loosened.

EEA could have less effect on the average retirement age than raising the NRA because raising the EEA does not decrease total Social Security wealth¹⁵³ and thus may not create the same financial incentive to retire as does raising the NRA. In theory, workers who want to retire before the EEA can do so and temporarily support themselves by borrowing against the future.¹⁵⁴ On the other hand, lenders typically do not permit workers to borrow against accumulated Social Security wealth; thus, "liquidity constraints" may prevent many people from retiring before the EEA.¹⁵⁵

Casual empirical evidence suggests that the availability of Social Security benefits plays an important role in the retirement decision,¹⁵⁶ particularly for

Id.; see also *Living Longer, Retiring Earlier: Rethinking the Social Security Retirement Age: Hearing Before the Senate Special Comm. on Aging*, 105th Cong. 43 (1998) (testimony of Gary Burtless, Senior Fellow, Economic Studies) at <http://www.brookings.edu/views/testimony/burtless/1998.715.htm>.

It is harder to predict the effects of an increase in the early retirement age because we do not have good enough historical evidence to evaluate the impact of this kind of change. It is conceivable that elimination of early retirement pensions would make early retirement impossible for low wage workers who have no other sources of retirement income except Social Security. In that case, increasing the early eligibility age might cause labor force participation and employment rates at age 62 to rise by 5 percentage points or more.

Id. at 9.

153. See *supra* notes 115–119 and accompanying text.

154. Cf. STEUERLE & BAKUA, *supra* note 95, at 199 ("If one increased the early retirement age in a way that left individuals with the same amount of Social Security wealth, for example, they could always compensate temporarily by borrowing against the future (for example, by remortgaging their houses)."); THOMPSON, *supra* note 143, at 78 ("In principle, individuals who know that they will eventually become entitled to retirement benefits could retire before they are actually able to receive those benefits, supporting themselves for a time by drawing down their personal financial assets or borrowing against their future benefit entitlement.").

155. STEUERLE & BAKUA, *supra* note 95, at 199 ("Because people cannot borrow against accumulated Social Security wealth, however, many are 'liquidity constrained' and must rely heavily on current income for their consumption."); Burtless & Moffitt, *supra* note 141, at 225 ("Our favored explanation for this clustering [of retirement at age 62] is rather the existence of liquidity constraints."); Leonasio, *Social Security and Older Workers*, *supra* note 123, at 48 ("Most individuals with small amounts of liquid assets cannot afford to retire before age 62, when they first have access to their Social Security wealth.").

156. Whether the availability of Social Security benefits actually encourages earlier or later retirement is subject to debate. See Diamond & Gruber, *supra* note 125, at 466 ("[T]he existence of this peak [at age 62] does not prove that social security is lowering participation rates among all older workers; in fact, it may be inducing longer work among those aged sixty and sixty-one in order to qualify for early retirement at age sixty-two."); Christopher J. Ruhn, *Secular Changes in the Work and Retirement Patterns of Older Men*, 30 J. HUM. RESOURCES 362, 381 n.36 (1995) ("[S]ome persons who would otherwise leave the labor force at age sixty or sixty-one may delay retirement until becoming eligible for Social Security benefits."). Cf. COILE & GRUBER, *supra* note 118, at 1–2 (noting that the spike in retirement "at age 62 . . . is consistent with . . . three alternative hypotheses:" (1) that the system is actuarially unfair and penalizes work past age sixty-two; (2) that workers face liquidity constraints and thus leave the workforce as soon as benefits are

workers with little retirement wealth other than Social Security.¹⁵⁷ Currently, more than half of all workers elect to retire at the Social Security EEA,¹⁵⁸ and the peak in departures from the labor force at age sixty-two did not begin until after Social Security was amended to extend the EEA of sixty-two to men.¹⁵⁹

Unfortunately, economists have not yet specifically addressed the question of how raising the EEA would likely affect the average retirement age.¹⁶⁰ One study though suggests that raising the EEA would likely result in an increase in the average retirement age, and that the increase may even be more substantial than an increase caused by raising the NRA. Specifically, Robin Lumsdaine, James Stock, and David Wise found that eliminating the Social Security EEA would substantially reduce the number of workers between the ages of sixty-two and sixty-four who depart from a firm that also provides private employer pension benefits and that the effect would be more substantial than the effect of raising Social Security NRA to sixty-seven even when actuarially fair adjustments are made to post age sixty-seven benefits.¹⁶¹

first available; and (3) "that workers are myopic or information constrained; they either do not understand or do not appreciate the actuarial incentives for additional work past age 62, so they retire as soon as benefits become available").

157. Wise, *supra* note 143, at 93.

For this group of employees [who are not covered by employer-provided pension plans] . . . an increase in the Social Security retirement age would have an enormous effect on retirement. It seems clear that most who now retire at age 62 would have to remain in the labor force to the new early retirement age.

Id.; James A. Kahn, *Social Security, Liquidity, and Early Retirement*, 35 J. PUB. ECON. 97, 110 (1988) (finding peak in retirement at age sixty-three for workers with low wealth (and no pension coverage) but not for workers with high wealth (and no pension coverage)).

158. See 1998 GREEN BOOK, *supra* note 132, at 21 tbl.1-12.

159. COSTA, *supra* note 17, at 14 ("A spike in age-sixty-two retirements first becomes evident after 1960."); Leonasio, *Social Security and Older Workers*, *supra* note 123, at 48 ("Unlike the 1960 profile, however, the 1970, 1980, and 1990 graphs show a second peak at age 62. This is probably the result of the 1961 introduction of early retirement, permitting receipt of reduced retirement benefits at age 62."); see generally STEUERLE & SPIRO, *supra* note 131 (suggesting that rapid decline in labor force participation rates in 1962 attributable to Social Security's extension of early retirement benefits to men in 1961).

160. E-mail correspondence from Joseph Quinn, Dean, College of Arts and Sciences, Boston College, to Kathryn Moore, Associate Professor of Law, University of Kentucky College of Law (May 26, 2000) (on file with author); E-mail from Courtney Coile, National Bureau of Economic Research, to Kathryn Moore, Associate Professor of Law, University of Kentucky College of Law (June 13, 2000) (on file with author) (noting that the Social Security Administration just issued a contract to the RAND Corporation to study this issue).

161. Lumsdaine et al., *supra* note 144, at 279-85; see also Atsushi Seike, *Labor Market Implications of Social Security: Company Pension Plans and Retirement Behavior of the Elderly in Japan*, in *THE ECONOMIC EFFECTS OF AGING IN THE UNITED STATES AND JAPAN* 295, 308 (Michael D. Hurd & Naohiro Yashiro eds., 1997) (finding that becoming eligible for a public

Accordingly, it appears that, as proponents contend, raising the NRA would likely encourage older workers to delay retirement, and such a change might have an even greater impact if it were accompanied by an increase in the EEA. This analysis presumes that the decision to retire is principally a voluntary decision made by the employee. The decision to cease working, however, is not always entirely within an employee's hands. First, employees with health problems may be unable to extend their working lives. In addition, an employee may have little choice but to terminate employment with her current employer. For example, if an employer is downsizing and offers an early retirement incentive program,¹⁶² an older employee may have little choice but to accept that early retirement incentive program and terminate employment with that employer. An employee who is forced to terminate employment with her current employer can only extend her working life if she is able to find new employment with another employer. Thus, the next two sections consider whether older workers would be physically able to extend their working lives and whether jobs would be available for them.

2. Physical Ability to Extend Working Lives

Life expectancy has increased significantly since the Social Security system was originally enacted. When the Social Security program began paying monthly benefits in 1940, sixty-five year old males had a remaining life expectancy of twelve years while sixty-five year old females had a remaining life expectancy of thirteen years.¹⁶³ Life expectancy has steadily increased so that by 1998 life expectancy for sixty-five year old males was well over fifteen years while life expectancy for sixty-five year old females was just over nineteen years.¹⁶⁴ Moreover, the Board of Trustees of the Social Security Trust Funds predicts that life expectancy will continue to increase over the next seventy-five years, and that by 2075, a sixty-five year old man will have a life expectancy of just under nineteen years while a

pension reduces labor force participation of Japanese men by fifteen percent; noting that this effect on labor supply includes effect of earnings test as well as income effect of benefits).

162. For a brief discussion of the role of early retirement incentives in economic downturns and how they relate to cash balance plans and phased retirement, see *Employers Easing Limits in Downturn; Issues Different Than Past*, Sources Say, Pens. & Bene. Rep. (BNA) No. 28, at 632 (Feb. 13, 2001).

163. AM. ACAD. OF ACTUARIES, *supra* note 121, at 2.

164. SOC. SEC. ADMIN., 1999 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND DISABILITY INSURANCE TRUST FUNDS 62 tbl.II.D.2 (1999) (15.7 years for males and 19.2 for females), available at <ftp://ftp.ssa.gov/pub/oact/tr99.pdf>.

sixty-five year old woman will have a life expectancy of just over twenty-two years.¹⁶⁵

Increases in life expectancy, however, do not guarantee that older workers would be physically able to remain at work beyond the age at which they currently retire if the Social Security retirement ages were increased.¹⁶⁶ Rather, whether older workers would be able to extend their working lives depends principally on two factors (a) their health status, and (b) the physical demands of jobs available to them.¹⁶⁷

a. Health Status

It is of course impossible to know with absolute certainty whether the health of future older Americans will permit them, as a group, to work longer than older Americans do today. Nevertheless, there is reason to believe that most older Americans will be healthy enough to extend their working lives in the future.

First, the overwhelming majority of older Americans currently report¹⁶⁸ that they are in good health. Over eighty percent of noninstitutionalized Americans between the ages of forty-five and sixty-four identified their health as good, very good, or excellent in 1996,¹⁶⁹ and over seventy percent

165. *Id.* (using intermediate assumptions: 18.9 years for males and 22.1 years for females). Moreover, a recent Social Security Advisory Board report recommends that the Social Security trustees increase their intermediate assumptions to equal their current high-cost assumptions. *Social Security Solvency Threatened by Longer Life Expectancy, Panel Says*, 26 Pens. & Ben. Rep. (BNA) No. 25, at 2883 (Dec. 13, 1999).

166. For a discussion of the reasons why health could be deteriorating while life expectancy is increasing, see Eileen M. Crimmins & Dominique G. Ingegneri, *Trends in Health Among the American Population*, in DEMOGRAPHY AND RETIREMENT: THE TWENTY-FIRST CENTURY 225, 226 (Anna M. Rappaport & Sylvester J. Schieber eds., 1993).

167. "Other employment-related characteristics, such as industry, job tenure, self-employed status, and union membership can also affect whether individuals can continue working at their current jobs. In addition, a worker's level of educational attainment may affect employment prospects at any job." UCCELLO, *supra* note 139, at 7. For a discussion of these issues, see *id.* at 13-18.

168. Although the reliability of self-reported health status is subject to some criticism, public health studies show it to be a valid and reliable indicator of an individual's health status. Sammartino, *supra* note 148, at 41-42.

169. CTRS. FOR DISEASE CONTROL AND PREVENTION/NAT'L CTR. FOR HEALTH STATISTICS, U.S. DEP'T OF HEALTH AND HUMAN SERVS., VITAL AND HEALTH STATISTICS: CURRENT ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, 1996, at 111 tbl.70 (1999) [hereinafter VITAL AND HEALTH STATISTICS: CURRENT ESTIMATES].

of noninstitutionalized Americans aged sixty-five and over reported that their health was good, very good, or excellent that year.¹⁷⁰

Indeed, three recent studies show that the majority of early retirees in recent years were healthy enough to continue working.¹⁷¹ Specifically, based on data from the 1990, 1991, 1992, 1993 panels of the Census Bureau's Survey of Income and Program Participation ("SIPP"), Ralph Smith of the Congressional Budget Office found that only twenty-four percent of sixty-two and sixty-three-year-old men receiving retired worker Social Security benefits reported that they had a work-limiting disability and only six percent reported that they had left their last job for health-related reasons.¹⁷² Similarly, only twenty-three percent of sixty-two- and sixty-three-year-old women receiving Social Security benefits as retired workers or as the wives or widows of workers reported that they had a work-limiting disability and only seven percent reported that they had left their last job for health-related reasons.¹⁷³

Based on data from Wave 1 and the early version of Wave 2 of the Health and Retirement Survey ("HRS"), Richard Burkhauser, Kenneth Couch, and John Phillips found that the vast majority of individuals who elected to receive Social Security retirement benefits at age sixty-two were in good health.¹⁷⁴ Specifically, only twenty percent of men who elected to receive

170. *Id.*; see also Harvey L. Sterns & Anthony A. Sterns, *Health and Employment Capability of Older Americans*, in *OLDER AND ACTIVE*, *supra* note 133, at 10, 18. Sterns and Sterns note that:

"Healthy People 2000" (a comprehensive national effort that involved 22 expert working groups, a consortium of almost 300 national organizations, all state health departments, the National Academy of Sciences, and the U.S. Public Health Service) . . . found that 84 percent of Americans 45 and over (86 percent of the 55- to 61-year-olds, 84 percent of the sixty-two- to 64-year-olds, 80 percent of the 65- to 68-year-olds, and 78 percent of the 69- to 74-year-olds) indicated that they were not limited in the amount or kind of major activities they could perform.

Id. (citing U.S. DEP'T OF HEALTH AND HUMAN SERVS., *HEALTHY PEOPLE 2000*, DHHS Pub. No. (PHS) 91-50213)).

171. For a fourth study using similar data and reaching similar results, see LEONESIO, ET AL., *supra* note 112, at 5 (using data from the 1990 Survey of Income and Program Participation to find that "most early OASI beneficiaries do not have a severe health problem . . . [but that] almost half of early beneficiaries have a health problem and that 22% report impairments that are sufficiently serious that they appear to limit or prevent work").

172. CBO, PAPER, *supra* note 12, at 23 tbl.6. As discussed *infra* note 312 and accompanying text, however, beneficiaries were more likely to report that they had a working limiting disability or that they had left their last job for health-related reasons if their non-social security income was below the poverty threshold than if it was above the poverty threshold.

173. CBO, PAPER, *supra* note 12, at 24 tbl.7.

174. Burkhauser et al., *supra* note 131, at 791 tbl.2 (measuring poor health as whether a person has a limit on the type or amount of work performed).

Social Security retirement benefits at age sixty-two reported health limitations in 1994,¹⁷⁵ and only thirty-one percent of women who elected to receive Social Security retirement benefits at age sixty-two reported health limitations that year.¹⁷⁶

Finally, defining retirees as individuals who had left the workforce¹⁷⁷ rather than as individuals who were collecting Social Security benefits other than disability benefits,¹⁷⁸ Cori Uccello of the Urban Institute found somewhat higher rates of disability, but still found that a majority of early retirees were physically able to extend their working lives. Specifically, thirty-six percent of retirees between the ages of sixty-two and sixty-four reported a physical, mental, or health condition that limits work at a job based on data from the SIPP,¹⁷⁹ and forty-three percent of retirees ages sixty-two to sixty-three reported a condition that limits work at a job based on data from the HRS.¹⁸⁰

Not only does this evidence suggest that a majority of older Americans are currently healthy enough to extend their working lives, but the health of older Americans appears to be improving. Although data limitations make it difficult to compare the health of Americans over time,¹⁸¹ a number of recent studies¹⁸² suggest that the health of older Americans has been improving.¹⁸³

175. *Id.* They found that roughly the same percentage (twenty-one percent) of men who chose to postpone receiving Social Security benefits also reported work limitations. *Id.*

176. *Id.* at 792 tbl. 3. They found that a smaller percentage (twenty-five percent) of women who chose to postpone receiving Social Security benefits also reported work limitations. *Id.*

177. *See* UCCELLO, *supra* note 139, at 6 (treating “as retired only persons who are not working”). Uccello’s data sample includes individuals receiving Social Security Disability Insurance (SSDI) benefits. *Id.* at 11 tbl.1b (noting that 10.7% of retirees from sixty-two to sixty-three in the HRS sample were receiving SSDI benefits).

178. *Cf.* CBO, PAPER, *supra* note 12, at 14, 16 tbl.2.

179. UCCELLO, *supra* note 139, at 8 tbl.1a.

180. *Id.* at 10 tbl.1b; *see also* GAO, SOCIAL SECURITY REFORM, *supra* note 22, at 4 (noting that data from the SIPP “shows that approximately 22 to 31 percent of men aged 62 to 67 report that they have a disability that limits their ability to work”).

181. For a discussion of the data limitations that make it difficult to compare long-term disability trends over time, *see* Kenneth G. Manton et al., *Chronic disability trends in elderly United States Populations: 1982–1994*, at 2593, 2596 (Proceedings of the Nat’l Acad. of Scis., Mar. 1997) and authorities cited therein (“Multiple changes in the questionnaires and samples used in the National Health Interview Surveys over time make long-term disability trends difficult to estimate and comparisons with other surveys problematic.”) (citations omitted).

182. Not all recent research shows positive trends in the health of older Americans. One recent study found mixed trends. Eileen M. Crimmins et al., *Further Evidence on Recent Trends in the Prevalence and Incidence of Disability Among Older Americans From Two Sources: The LSOA and the NHIS*, 52B J. GERONTOLOGY S59 (1997); *see also* Burkhauser et al., *supra* note 131, 798 n.3 (“The evidence with respect to whether longer life is increasingly associated with better rather than worse health is less powerful but tends to support the view that health has also improved.”); 1994–1996 REPORT OF THE ADVISORY COUNCIL, *supra* note 97, vol.2, at 76.

Using two different measures, prevalence of chronic conditions and body mass index, Dora Costa compared the health of Union Army veterans aged sixty-five or older in 1910 with older men today.¹⁸⁴ On both measures, she found the health of older men today to be significantly better than that of the veterans early this century.¹⁸⁵ Three researchers from Duke University found that the chronic disability rates of Americans sixty-five and older decreased from twenty-five percent to twenty-one percent from 1982 to 1994.¹⁸⁶ Three other researchers found that the percent of the noninstitutionalized population aged sixty to sixty-nine that was disabled

In summary, although the jury is still out on these issues, the latest available evidence suggests that the health of the middle-aged and older Americans has increased during the 1990s, and probably more so at the upper socioeconomic levels. These gains are likely to continue, as medical technology is refocused from reducing mortality from chronic diseases (the primary initial focus) to increasing the age of onset of chronic disease.

Id.

183. Contrary to the more recent studies reporting improved health, a number of empirical studies in the 1980s and early 1990s reported that the health of older Americans was deteriorating in the 1970s. Crimmins & Ingegneri, *supra* note 166, at 229 (citing and discussing 7 empirical studies); Kingson, *supra* note 133, at 57, 77-79 (citing and discussing same and similar studies); Jacob J. Feldman, *Life Expectancy and Work Capacity*, in RETIREMENT AND PUBLIC POLICY, *supra* note 10, at 150, 153 ("The disability rates for the population aged 55 to 70 show no evidence of a decline in work incapacity during the period of decreasing mortality."); Martynas A. Ycas, *Recent Trends in Health Near the Age of Retirement: New Findings From the Health Interview Survey*, 50 SOC. SECURITY BULL., Feb. 1987, at 19-28 (showing decline in health between 1969 and 1981 but showing most of decline occurred in earlier period and leveling off or beginning of improvement in later part of period).

A couple of studies suggest that these findings of deteriorating health may be more attributable to changes in survey design and measurement difficulties than to actual changes in health. See Martin Neil Bailey, *Aging and the Ability to Work: Policy Issues and Recent Trends*, in WORK, HEALTH, AND INCOME AMONG THE ELDERLY 59, 75-79 (Gary Burtless ed., 1987) [hereinafter WORK, HEALTH, AND INCOME] (using Health Interview Survey data from 1960 to 1980 finding decline in health of men aged forty-five and older and women aged forty-five to sixty-four and decrease in disability of women aged sixty-five and over but attributing much of decline to changed survey design); see also Jacob J. Feldman, *Life Expectancy and Work Capacity*, in RETIREMENT AND PUBLIC POLICY, *supra* note 10, at 150, 153 (noting that in interpreting the data "it is necessary to take into account the elusiveness of the concept and measurement of work incapacity"); Timothy Waidmann et al., *The Illusion of Failure: Trends in the Self-Reported Health of the U.S. Elderly*, 73 MILBANK Q. 253 (1995), available at 1995 WL 12381767 (contending that decline in self-reported health in the 1970s due to changes in social and economic forces and earlier diagnosis of preexisting conditions).

184. COSTA, *supra* note 17, at 61-71. Dr. Costa focused her study on Union army veterans because Union army records provide one of the few sources of detailed information on chronic conditions that is comparable to recent data. *Id.* at 61.

185. *Id.* at 61-71.

186. Manton et al., *supra* note 181, at 2594-95 (relying on data from the 1982 and 1994 National Long Term Care Surveys).

(unable to perform the normal activities of life)¹⁸⁷ declined about four percent from 1980 to 1990.¹⁸⁸ Finally, two other researchers found that the percent of Americans over age fifty with functional limitations (defined as difficulty in seeing, lifting and carrying, climbing, and walking)¹⁸⁹ declined on average about three to four percent from 1984 to 1993.¹⁹⁰

Thus, based on both current health status and trends in improving health, it appears that most older Americans should be healthy enough to extend their working lives if the Social Security retirement ages were increased in the future. The physical demands of future employment, however, are also relevant in determining whether most older Americans would be able to continue working.

187. Eileen M. Crimmins et al., *Trends in Disability-Free Life Expectancy in the United States, 1970-90*, 23 POPULATION & DEV. REV. 555, 557 (1997) ("normal activities of life includ[e] both major . . . activities" such as going to work and "keeping house" and "[s]econdary activities . . . the other things that people do" in normal life).

188. *Id.* at 559-60 tbl.2 (using data from the National Health Interview; finding that from 1980 to 1990, percent of disabled men aged sixty to sixty-four declined from 36.07% to 32.88%; percent of disabled men aged sixty-five to sixty-nine declined from 43.68% to 39.39%; percent of disabled women aged sixty to sixty-four declined from 30.80% to 26.17%; percent of disabled women aged sixty-five to sixty-nine declined from 36.20% to 30.56%).

For similar studies by this group of researchers, see, for example, Crimmins & Ingegneri, *supra* note 166, at 230, 233 (finding that health, as measured by limitation of activity, of those aged forty-five to seventy-four declined from 1969 through mid 1970s, followed by six to eight year period of stability, followed by hint of beginning of downturn in most recent years; similar finding regarding restricted activity days); Eileen M. Crimmins & Dominique G. Ingegneri, *Trends in Health of the US Population: 1957-89*, in THE STATE OF HUMANITY 72, 74 (Julian L. Simon ed., 1995). Crimmins and Ingegneri find:

There is some decline in activity limitation . . . in health during the 1960s, especially for the oldest age group. Beginning at the end of the 1960s there is a consistent and marked rise in activity limitation for all age groups through the late 1970s . . . there is some improvement in health above age 44 beginning in the early 1980s.

Id.

As discussed in *supra* note 166, one recent study by Eileen Crimmins and colleagues found mixed trends regarding the health of older Americans.

189. Vicki A. Freedman & Linda G. Martin, *Understanding Trends in Functional Limitations Among Older Americans*, 88 AM. J. PUB. HEALTH 1457, 1458 (1998) (defining functional limitations as difficulty seeing the words and letters in a newspaper, difficulty lifting and carrying a 10-pound weight, difficulty climbing a flight of stairs, and difficulty walking a quarter of a mile).

190. *Id.* at 1459 tbl.1 (using data from the SIPP). "The extent of improvement varied with age, with smallest absolute gains for those aged 50 to 64 and largest gains for those aged 80 and older." *Id.* at 1460; see also Jack M. Guralnik, *Comments*, in RETIREMENT AND PUBLIC POLICY, *supra* note 10, at 173, 175 (noting that "[w]hile the future morbidity level for the total older population is much in doubt, it does seem likely that for the age group 55 to 74, many of the factors that have led to a decrease in mortality will eventually have an advantageous impact on disability as well").

b. Physical Demands of Jobs

Not surprisingly, individuals with physically demanding jobs are generally more likely to retire than are individuals with less physically demanding jobs,¹⁹¹ and workers with physically demanding jobs are more likely to become disabled than are workers with less physically demanding jobs.¹⁹² Thus, the nature of jobs likely to be available to older workers plays an important role in determining whether they would likely be able to extend their working lives.¹⁹³

191. CBO, PAPER, *supra* note 12, at 14, 16 (using data from the SIPP, men aged sixty-two and sixty-three who elect not to receive early Social Security retirement benefits much more likely to be white collar workers than blue collar workers); UCCELLO, *supra* note 139, at 13-14 (showing that "retirees from more physically demanding occupations, especially operators/laborers, make up a disproportionate share of retirees"); Mark D. Hayward et al., *Career Trajectories and Older Men's Retirement*, 53B J. GERONTOLOGY S91, S98 (1998) [hereinafter Hayward et al., *Career Trajectories*] ("Men approaching retirement in jobs allowing little autonomy, whose tasks are relatively boring . . . and who work in physically demanding jobs have elevated risks of retirement."); Mark D. Hayward et al., *Occupational Influences on Retirement, Disability, and Death*, 26 DEMOGRAPHY 393, 400 (1989) (using data from the National Longitudinal Survey of Older Men, finding that "[w]orkers in more substantively complex and less physically demanding occupations delay retirement"); Olivia S. Mitchell et al., *Retirement Differences by Industry and Occupation*, 28 GERONTOLOGIST 545, 547 (1988) (describing variety of studies that show that "[b]lue-collar workers retired earlier than did white-collar employees, with service workers falling in between"). But see MICHAEL D. HURD & KATHLEEN MCGARRY, THE RELATIONSHIP BETWEEN JOB CHARACTERISTICS AND RETIREMENT 1, 2, 20, 21, 25 (Nat'l Bureau of Econ. Research Working Paper No. 4558, 1993) (noting that "[i]t is often but not universally found that more physically demanding occupations are associated with early retirement" but finding, based on HRS data, that physical and mental job requirements have little effect on workers' intention to work beyond ages sixty-two and sixty-five); Karen C. Holden, *Physically Demanding Occupations, Health, and Work After Retirement: Findings from the New Beneficiary Survey*, 51 SOC. SECURITY BULL., Nov. 1988, at 3, 14 (finding that once retired (that is, beginning to receive Social Security benefits) men (but not women) with physically demanding jobs are less likely to work than those with less physically demanding jobs; although effect is statistically significant it is relatively small and no effect for women found).

192. Gary Burtless, *Occupational Effects on the Health and Work Capacity of Older Men*, in WORK, HEALTH, AND INCOME, *supra* note 183, at 103, 114 (finding that mining and construction workers tend to retire earlier and have poorer reported health and higher mortality rates than workers in less physically demanding jobs); Hayward et al., *Career Trajectories*, *supra* note 191, at S98 (finding that disability rates are higher for blue collar workers than for white-collar workers and that disability rates are highest for laborers, followed by farm laborers and service workers); Pamela Loprest et al., *Gender, Disabilities, and Employment in the Health and Retirement Study*, 30 J. HUM. RESOURCES S293, S304-05 (1995) (noting that "[i]n the physical occupations 23 percent of men and 26 percent of women report a work limitation. In the nonphysical occupations the percentages are substantially lower, 14 percent for men and women.").

193. Cf. *Social Security: Gore, Bradley Adhere to Stance Against Raising Benefits Eligibility Age*, PENS. & BEN. REP. (BNA) No. 27, at 17 (Jan. 4, 2000).

Using projections of increased life expectancy to justify raising the retirement age is problematic because those who work in hard physical jobs will not be able to work longer, Gore said [on NBC's Meet the Press].

Employment in the United States has been shifting from blue collar or agricultural work to professional or white collar employment. In 1969, sixty percent of men between the ages of fifty-eight and sixty-three had their longest job in blue collar or agricultural employment; by 1989 that figure had dropped to forty-one percent.¹⁹⁴ Meanwhile, thirty-eight percent of men between the ages of fifty-eight and sixty-three in 1969 had their longest job in a professional or white collar job; by 1989, that figure had increased to fifty-eight percent.¹⁹⁵

As employment shifts from blue collar and agricultural employment to professional and white collar employment, jobs are becoming less physically demanding.¹⁹⁶ In 1950, forty-five percent of jobs in this country required little or light physical effort; by 1980 that figure increased to sixty percent. Meanwhile jobs requiring heavy or very heavy physical effort declined from twenty-one percent to nine percent during the same time period.¹⁹⁷ Moreover, the percentage of workers in jobs "requiring frequent lifting or carrying of objects weighing more than 25 pounds" further declined to about eight percent in 1996.¹⁹⁸

"If you've got a waitress carrying trays at the age of 65, if you've got somebody on a jackhammer, if you've got somebody who's a steelworker who is in hard physical labor, I am not going to tell that person that he or she has to wait another five years to get Medicare and Social Security," he said.

Id.

194. Christopher J. Ruhm, *Secular Changes in the Work and Retirement Patterns of Older Men*, 30 J. HUM. RESOURCES 362, 365-66 (1995).

195. *Id.*; see also Ronald E. Kutscher, *New BLS Projections: Findings and Implications*, MONTHLY LAB. REV. tbl.2 (Nov. 1991) (projecting greater growth in employment in services (2.3%) and retail trade (1.6%) than in construction (1.1%) and projecting decrease in manufacturing (-.2%) employment between 1990 and 2005).

196. Cf. Loprest et al., *supra* note 192, at S304 (using evidence from the HRS and developing an index to reflect physical demands across occupations, finding that workers in managerial/professional, sales, and clerical positions have the least physical demands at work while occupations with high levels of physical demands include farm/fishing/forestry, mechanical/construction/production, and operators/laborers.).

197. Baily, *supra* note 183, at 59, 90-92 (study based on data from the U.S. Department of Labor's Dictionary of Occupational Titles).

198. EUGENE STEUERLE ET AL., CAN AMERICANS WORK LONGER (Urban Inst., Straight Talk on Social Security and Retirement Policy No. 5, Aug. 15, 1999) available at <http://www.urban.org/retirement/st/Straight5.pdf> (using data from Department of Labor); see also COMM. FOR ECON. DEV., NEW OPPORTUNITIES FOR OLDER WORKERS 17 (1999) (citing same researchers for same proposition); available at <http://www.ced.org/docs/older.pdf>; *Increasing the Social Security Retirement Age: Older Workers in Physically Demanding Occupations or Ill Health*, 49 SOC. SECURITY BULL., Oct. 1986, at 5 (predicting that number of newly retired workers in jobs with heavy strength requirements would decrease from 11.4% in 1982 to eight to ten percent by 2000 to seven to nine percent by 2027). But see GAO, IMPLICATIONS, *supra* note 12, at 27-28 (finding, based on analysis of HRS data, that "15 percent of older workers reported that they had jobs that required them to lift heavy loads all or most of the time in 1994").

The fact that employment in the United States is shifting toward less physically demanding work supports the proposition that older Americans should be physically able to extend their working lives.¹⁹⁹

c. Conclusion

In summary, based on health and employment trends, it appears likely that most older workers should be physically able to extend their working lives in the future. This is not to suggest, however, that all older Americans would be equally able to extend their working lives. Improvements in health are not shared universally, and not all Americans are or will be qualified to have white collar or professional positions in old age.²⁰⁰

3. Demand for Older Workers

Assuming older workers would like to and are physically able to extend their working lives, the final factor to consider in determining whether raising the NRA, EEA, or both would likely lead to economic gains is whether jobs would be available for older workers. In many ways, older workers fare very well in the American labor market. They generally receive higher wages,²⁰¹ have lower rates of unemployment,²⁰² and face lower

199. Phillip B. Levine & Olivia S. Mitchell, *Expected Changes in the Workforce and Implications for Labor Markets*, in DEMOGRAPHY AND RETIREMENT: THE TWENTY-FIRST CENTURY 73, 93-94 (Anna M. Rappaport & Sylvester J. Schieber eds., 1993).

[T]he movement away from manufacturing towards the service sector will lead to a smaller share of blue collar jobs in the economy. Hence, diminished productivity should be less of a problem for older workers and they may be expected to remain in the workforce longer as we move into the 21st century.

Id.

200. For a detailed discussion of the differential impact of raising the retirement ages, see *infra* Part III.E.

201. See, e.g., Frank Levy & Richard J. Murnane, *U.S. Earnings Levels and Earnings Inequality: A Review of Recent Trends and Proposed Explanations*, 30 J. ECON. LITERATURE 1333, 1355 tbl.5, pt.1 (1992) (showing that in 1987 within gender and educational groups, median earnings increase with age; differences are substantial for men, less pronounced but still evident for women).

202. Barry T. Hirsch et al., *Occupational Age Structure and Access for Older Workers*, 53 INDUS. & LAB. REL. REV. 401, 402 (2000) ("In 1998, when the annual rate of unemployment among all men was 4.4% and that among men ages 25-54 was 3.3%, rates for men 55-64 and 65+ were 2.8% and 3.1%, respectively. Corresponding rates among women were 4.6%, 3.8%, 2.4%, and 3.3%.") (citation omitted).

When discouraged workers are included in the unemployment rate, however, older workers have levels of unemployment similar to those of younger workers. Thomas Leavitt, *Labor Force Characteristics of Older Americans*, in HANDBOOK ON EMPLOYMENT, *supra* note 133, at 22-23.

risks of job displacement than do younger workers.²⁰³ On the other hand, even though the Age Discrimination in Employment Act of 1967 ("ADEA")²⁰⁴ makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age,"²⁰⁵ older workers generally have greater difficulty finding new employment than do younger workers. Older workers typically take much longer to find new jobs than do younger workers,²⁰⁶ and fewer types of positions are available to older workers than are available to younger workers.²⁰⁷

Estimates by the U.S. Department of Labor . . . indicate that when discouraged male workers are added to the official male unemployment rate, the "total" unemployment rate is similar for all age groups. Moreover, for females, it is estimated that the total unemployment rate for age 65+ is actually higher than for the age 25-54 group.

Id.

203. See Hirsch et al., *supra* note 202, at 402 ("Older workers' risk of job displacement is, if anything, lower than that for middle-age workers, and substantially lower than that for young workers.") (citation omitted); BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, WORKER DISPLACEMENT 1995-1997 tbl.1 (1998) available at <ftp://146.142.4.23/pub/news.release/History/disp.081998.news> (showing that from 1995 through 1997, 3.5 million workers were displaced and that the overwhelming majority of those displaced were ages twenty-five to fifty-four); CONG. BUDGET OFFICE, DISPLACED WORKERS: TRENDS IN THE 1980S AND IMPLICATIONS FOR THE FUTURE 9, 10 fig.3 (1993) (showing that from 1981 through 1990, about half of all displaced workers were aged eighteen to thirty-four and only twenty percent of displaced workers were aged forty-five and older). But see Jennifer M. Gardner, *Worker Displacement: A Decade of Change*, 118 MONTHLY LAB. REV. 45, 47 tbl.2 (1995) (finding that from 1981-1982 to 1991-1992, rate of job displacement among workers aged fifty-five to sixty-four shifted from being among the lowest of any age cohort to being the highest).

204. 29 U.S.C. §§ 621-634 (1994 & Supp. IV 1998).

205. § 623(a)(1). For critiques of the ADEA, see, for example, Michael C. Harper, *ADEA Doctrinal Impediments to the Fulfillment of the Wirtz Report Agenda*, 31 U. OF RICH. L. REV. 757 (1997) (contending that ADEA has been successful in eliminating formal age limits for hiring and formal age-based mandatory retirement but has been less successful in eliminating more subtle forms of age discrimination); Samuel Issacharoff & Erica Worth Harris, *Is Age Discrimination Really Age Discrimination?: The ADEA's Unnatural Solution*, 72 N.Y.U. L. REV. 780 (1997) (objecting to ADEA on economic grounds); Christine Jolls, *Hands-Tying and the Age Discrimination in Employment Act*, 74 TEX. L. REV. 1813 (1996) (offering efficiency-based argument in favor of ADEA). For an empirical study of litigation under the ADEA, see generally George Rutherglen, *From Race to Age: The Expanding Scope of Employment Discrimination Law*, 24 J. LEGAL STUD. 491 (1995).

206. Hirsch et al., *supra* note 202, at 402 ("Although older workers have relatively few unemployment spells, the duration of spells increases with age. Among those displaced, older workers have the lowest reemployment probabilities, the longest time to reemployment, high probabilities of part-time employment, and the largest wage losses."); see also CONG. BUDGET OFFICE, *supra* note 203, at 14 tbl.3 (showing that from 1981 through 1990 average number of weeks of joblessness following job loss increased with age of worker); Christopher J. Ruhm,

There are a number of possible explanations for the apparent limited demand for older workers. First, because wages tend to rise with age²⁰⁸ and

Historical Trends in the Employment and Labor Force Participation of Older Americans, in HANDBOOK ON EMPLOYMENT, *supra* note 133, at 81, 97. Ruhm states:

Adults approaching the end of their working lives have greater difficulty than their younger peers in obtaining new positions following the loss of jobs. For instance, in January 1988, 36 percent of 55-59-year-olds were jobless one to four years after a permanent layoff as compared to 22 percent of 40-44-year-olds.

Id. (citations omitted).

207. See Hirsch et al., *supra* note 202, at 414 (using data from various CPS files, finding that "[o]ccupational segregation is substantially greater for older new hires than for either young new hires or for all older workers."); see also Robert M. Hutchens, *Do Job Opportunities Decline With Age*, 42 INDUS. & LAB. REL. REV. 89, 92, 98 (1988) (relying on data from the January 1983 Current Population Survey and defining older workers as those over fifty-five, finding that—"recently hired old workers are less equally distributed across industries and occupations than both recently hired young workers and all old workers").

208. Jolls, *supra* note 205, at 1818 ("Empirical evidence shows that wages tend to rise with age, sometimes dramatically."); Roger L. Ransom et al., *Retirement: Past and Present*, in RETIREMENT AND PUBLIC POLICY, *supra* note 10, at 23, 33 ("Today, as is well-known, the age-earnings profiles for workers generally rise with age.").

The life-cycle model posits that these lifetime wage patterns are a result of "life-cycle employment contracts" between employees and employers in which employees accept lower wages than their productivity merits during the middle stages of their career in exchange for receiving higher wages than their productivity merits during the training stages of employment and at the end of their careers. For a more detailed discussion of this theory, see, for example, JOHN W. STRAKA, U.S. DEP'T OF HEALTH AND HUMAN SERVS., STUDIES IN INCOME DISTRIBUTION, THE DEMAND FOR OLDER WORKERS: THE NEGLECTED SIDE OF A LABOR MARKET (Soc. Sec. Admin. Pub. No. 13-11776 (15), 1992) and authorities cited therein; Issacharoff & Worth, *supra* note 205, at 787-92.

Once older workers leave their career jobs or long-term employment, however, they are often paid substantially less in subsequent employment. See CONG. BUDGET OFFICE, *supra* note 203, at 19 tbl.5 (showing that forty-three percent of reemployed displaced workers aged fifty-five to fifty-nine and fifty-two percent of reemployed displaced workers aged sixty and older received earnings in new employment equal to less than eighty percent of old earnings); Sewin Chan & Ann Huff Stevens, *Employment and Retirement Following a Late-Career Job Loss*, 89 AM. ECON. ASS'N PAPERS & PROCEEDINGS 211, 212 (1999) (using data from three waves of the HRS, finding that upon reemployment half of displaced workers aged fifty or older in 1992 "receive wages at least 19-percent below their pre-displacement wages, and almost a quarter see their wages halved" compared to median earnings growth of about five percent for workers who do not suffer a job loss); Kenneth A. Couch, *Late Life Job Displacement*, 38 GERONTOLOGIST 7, 12-13 & tbl.5 (1998) (using data from the HRS of workers in their fifties in 1992 finding that average displaced worker who is reemployed experiences a decline of 30% in earnings); Howard M. Iams, *Jobs of Persons Working After Receiving Retired-Worker Benefits*, 50 SOC. SECURITY BULL., Nov. 1987, at 4, 14 (using data from Social Security Administration's New Beneficiary Survey finding that, of new Social Security retired-worker beneficiaries who were employed about two years after they received their first monthly benefit check, "men had median hourly wage levels that were about one-half of the level on their longest previous job [and] . . . women had median hourly wage levels that were two-thirds to three-fourths of the level on their longest previous job").

the cost of certain employee benefits, such as defined benefit pension plans²⁰⁹ and health insurance²¹⁰ also tend to increase with age, older workers are typically more expensive to employ than younger workers, and thus employers may be reluctant to hire older workers.²¹¹ In addition, employers may believe that older workers are less productive than are younger workers,²¹² and employers may be reluctant to hire older workers because of the fear of lawsuits under the ADEA.²¹³

209. See *infra* note 232 for an explanation of why costs of defined benefit plans increase dramatically with age.

210. Health care expenses also increase with age, and this increase is reflected in employers' costs for health insurance. Although individual employee premiums and employer contributions per employee do not vary with the age of the worker, an employer's total cost for health insurance is directly affected by the age composition of its work force. Large employers that self-insure can see the evidence directly, and smaller employers that insure through one of the major carriers are made acutely aware of the influence of age on costs when they receive their experience-rated premium increases. Burtless & Munnell, *supra* note 135, at 76-77.

211. See Hirsch et al., *supra* note 202, 415. Using data from various Current Population Survey files,

Among the more important findings are that steep wage-experience profiles are associated with fewer older male and female workers, fewer older hires, and a lower ratio of older hires to incumbent hires. Pension benefits are more prevalent in jobs with older workers, but such jobs limit access to older hires.

Id.; see also Robert Hutchens, *Delayed Payment Contracts and a Firm's Propensity to Hire Older Workers*, 4 J. LAB. ECON. 439, 453-56 (1986) (using data from the National Longitudinal Survey of Men 45-59, finding that older workers tend to be employed by, but not hired by, firms that pay higher wages and pensions); Frank A. Scott et al., *Do Health Insurance and Pension Costs Reduce the Job Opportunities of Older Workers?*, 48 INDUS. & LAB. REL. REV. 775, 775 (1995) (using 1991 nationwide survey of employers and 1979, 1983, 1988, and 1993 data from the Employee Benefits Supplement of the Current Population Survey, finding that "higher health insurance costs, in the presence of prohibitions against age discrimination and discrimination in the provision of fringe benefits, adversely affected older workers' employment opportunities").

212. See, e.g., F. Peter Libassi, *Mobilize the Private Sector's Economic Self-Interest*, in RETIREMENT AND PUBLIC POLICY, *supra* note 10, at 185, 187 (noting that "[a]t first, managers . . . believed all the common myths—older workers would be too slow, could not learn, were too infirm, would have attendance problems, and the like"); Sterns & Sterns, *supra* note 170, at 15 ("In the past, many employers have had negative impressions about older workers, believing them to be slow, undependable, unadaptive, accident-prone, costly, and unable to meet the physical and mental demands of work."); Stacey Crawshaw-Lewis, Comment, "Overpaid" Older Workers and the Age Discrimination in Employment Act, 71 WASH. L. REV. 769, 769 (1996) ("Persistent stereotypes discount the productivity and competence of older workers."); Barry Bennett Kaufman, Note, *Preferential Hiring Policies for Older Workers Under the Age Discrimination in Employment Act*, 56 S. CAL. L. REV. 825, 827 (1983) ("Surveys indicate that older workers are viewed less favorably by a majority of employers largely because of alleged organic deficits that decrease productive capacities and increase costs.") (footnote omitted).

Whether older workers are in fact less productive than younger workers is subject to debate. See GAO, IMPLICATIONS, *supra* note 12, at 21 (noting that "surveys have found that managers have both positive perceptions about the productivity of older workers . . . and negative perceptions . . . [but that] these studies conclude that most managers believe that the so-called negative aspects of older workers outweigh the positive aspects, suggesting that they may be less likely to hire, or

Regardless of the reason for the apparent limited demand for older workers today, there is reason to believe that the demand for older workers may increase in the twenty-first century.²¹⁴ First, demographic trends bode well for the future older worker. Principally because of the aging of the baby boom generation, the population aged sixty-five and over is expected to grow very rapidly over the next fifty years—in both absolute numbers and as a percentage of the total population.²¹⁵ Using its “middle series,” the U.S. Census Bureau predicts that there will be about 53.7 million people sixty-five years old and over (16.5% of the population) in 2020²¹⁶ and about eighty-two million (20.3% of the population) in 2050²¹⁷ compared to 34.8 million (12.7% of the population) in 2000.²¹⁸ Meanwhile the population aged eighteen to sixty-four is expected to grow at a much slower rate and actually decline as a percentage of the population over this same time period. Again, using the middle series, the U.S. Census Bureau predicts that there will be about 202.5 million people aged eighteen to sixty-four (62.3% of the

retain older workers when given the opportunity.”); *see also* Crawshaw-Lewis, *supra* 769 n.4 (citing studies that show that older workers are “at least as productive as younger workers”); Libassi, *supra*, at 187 (describing the positive experience of Travelers hiring back older workers); Note, *The Cost of Growing Old: Business Necessity and the Age Discrimination in Employment Act*, 88 YALE L. J. 565, 576 n.52 (1979) (citing studies that show “an absence of meaningful connection between advancing age and declining levels of job performance” in most industries).

213. Gary S. Becker, *What Keeps Older Workers off the Job Rolls?*, BUS. WK., Mar. 19, 1990, at 18, 18 (contending that companies protect against age discrimination lawsuits by not hiring older workers in the first place).

214. *But see* Hirsch et al., *supra* note 202, at 416 (concluding that “[t]he current structure of the labor market does not appear well suited for later retirement” but acknowledging that labor market and jobs could change in response to such things as increase in social security retirement age).

215. JENNIFER CHEESEMAN DAY, U.S. DEP’T OF COMMERCE, CURRENT POPULATION REPORTS, POPULATION PROJECTIONS OF THE UNITED STATES, BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1993 TO 2050, at xvi (Bureau of the Census P25-1104, 1993) (“After 2010, when the survivors of the Baby Boom start to enter this age group, the proportion of the population 65 and over would increase dramatically . . .”).

216. BUREAU OF THE CENSUS, PROJECTIONS OF THE TOTAL RESIDENT POPULATION BY 5-YEAR AGE GROUPS, AND SEX WITH SPECIAL AGE CATEGORIES: MIDDLE SERIES, 2016 TO 2020 (2000) *available at* <http://www.census.gov/population/www/projections/natsum-T3.html> [hereinafter 2020 PROJECTIONS] (author’s calculations).

217. BUREAU OF THE CENSUS, PROJECTIONS OF THE TOTAL RESIDENT POPULATION BY 5-YEAR AGE GROUPS, AND SEX WITH SPECIAL AGE CATEGORIES: MIDDLE SERIES, 2050 TO 2700 (2000) *available at* <http://www.census.gov/population/www/projections/natsum-T3.html> [hereinafter 2050 PROJECTIONS] (author’s calculations).

218. BUREAU OF THE CENSUS, PROJECTIONS OF THE TOTAL RESIDENT POPULATION BY 5-YEAR AGE GROUPS, AND SEX WITH SPECIAL AGE CATEGORIES: MIDDLE SERIES, 1999 TO 2000 (1999) *available at* <http://www.census.gov/population/www/projections/natsum-T3.html> [hereinafter 2000 PROJECTIONS] (author’s calculations).

population) in 2020²¹⁹ and about 236.6 million (58.6% of the population) in 2050²²⁰ compared to 177.9 million (64.6% of the population) in 2000.²²¹

More importantly, over the next twenty years, the population aged fifty-five to sixty-nine is projected to grow relative to the population aged twenty to fifty-four. Again, using the middle series, the population aged fifty-five to sixty-nine is expected to grow from 33.4 million (12.1% of the population) in 2000²²² to 59.7 million (18.4% of the population) in 2020.²²³ In contrast, the population aged twenty to fifty-four is projected to be 143.4 million (44.1% of the population) in 2020²²⁴ compared to 137 million (49.7% of the population) in 2000.²²⁵ These demographic trends may make it harder for employers to find younger workers and thus increase the demand for older workers—at least over the next twenty years.²²⁶ Between the years 2020 and 2050, the percentage of both the population aged twenty to fifty-four and the population aged fifty-five to sixty-nine are projected to shrink,²²⁷ and thus it

219. 2020 PROJECTIONS, *supra* note 216 (author's calculations).

220. 2050 PROJECTIONS, *supra* note 217 (author's calculations).

221. 2000 PROJECTIONS, *supra* note 218 (author's calculations). For additional discussion of these demographic changes, see, for example, DEP'T OF LABOR, HANDBOOK OF U.S. LABOR STATISTICS: EMPLOYMENT, EARNINGS, PRICES, PRODUCTIVITY, AND OTHER LABOR DATA 218 tbl.4-1 (1998) (showing that between the years 1998 and 2008, the civilian labor force of individuals aged forty-five to fifty-four and aged fifty-five to sixty-four is projected to grow at an annual rate of 2.6% and 4.5% respectively while the civilian labor force of all younger age cohorts is projected to decline or grow at much slower rates); Kingson, *supra* note 133, at 59–69; Steven H. Sandell, *Prospects for Older Workers: The Demographic and Economic Context*, in *THE PROBLEM ISN'T AGE: WORK AND OLDER AMERICANS* 3, 3–8 (Steven H. Sandell ed., 1987).

222. 2000 PROJECTIONS, *supra* note 218 (author's calculations).

223. 2020 PROJECTIONS, *supra* note 216 (author's calculations). Specifically, the population aged fifty-five to fifty-nine is expected to grow from 13.3 million (4.8% of the population) in 2000 to 21.4 million (6.6% of the population) in 2020 while the population aged sixty to sixty-four is projected to grow from 10.7 million (3.9% of the population) in 2000 to 20.7 million (6.4% of the population) in 2020, and the population aged sixty-five to sixty-nine is projected to grow from 9.4 million (3.4% of the population) in 2000 to 17.6 million (5.4% of the population) in 2020. 2000 PROJECTIONS, *supra* note 218 (author's calculations) and 2020 PROJECTIONS, *supra* note 216 (author's calculations).

224. 2020 PROJECTIONS, *supra* note 216 (author's calculations).

225. 2000 PROJECTIONS, *supra* note 218 (author's calculations).

226. Cf. COUNCIL OF ECON. ADVISORS, *supra* note 119, at 141 ("Employers may be becoming more willing to hire older workers, as the 'baby bust' that followed the baby boom leads to labor shortages."); Levine & Mitchell, *supra* note 199, at 95 (contending that employment prospects for older displaced workers may improve due to demographic shift that will make it harder for employers to find younger workers).

227. The population aged fifty-five to sixty-nine is projected to be 18.4% of the total population in 2020 compared to 15.7% of the population in 2050. Meanwhile the population aged twenty to fifty-four is projected to shrink from 44.1% of the population in 2020 to 42.5% of the population in 2050. 2020 PROJECTIONS, *supra* note 216 (author's calculations); 2050 PROJECTIONS, *supra* note 218 (author's calculations).

is more difficult to gauge the effect of population growth on the demand for older workers beyond the year 2020.

Second, in recent years, there has been a dramatic shift in the structure of pension benefits offered to employees.²²⁸ In the early 1980's, eighty percent of all workers with an employer-sponsored pension were covered by a defined benefit plan.²²⁹ By 1999, in contrast, the majority of workers with an employer-provided pension were covered by a defined contribution plan,²³⁰ only about forty percent of workers with an employer-sponsored pension were covered by a defined benefit plan that year.²³¹ Because the cost of funding a defined benefit plan usually increases dramatically as an employee ages²³² while the cost of funding a defined contribution plan

228. "By almost any measure, the U.S. pension system has shifted toward defined contribution plans over the past twenty years." William G. Gale & Joseph M. Milano, *Implications of the Shift to Defined Contribution Plans for Retirement Wealth Accumulation*, in LIVING WITH DEFINED CONTRIBUTION PENSIONS: REMAKING RESPONSIBILITY FOR RETIREMENT 115, 116 (Olivia S. Mitchell & Sylvester J. Schieber eds., 1998) [hereinafter LIVING WITH DEFINED CONTRIBUTION PENSIONS]. But see EMPLOYEE BENEFIT RESEARCH INST., PENSION EVOLUTION IN A CHANGING ECONOMY 3 (EBRI Issue Brief No. 141, 1993) (questioning whether there has really been a shift from defined benefit to defined contribution plans: "While the net number of private defined benefit plans has declined and the net number of defined contribution plans has increased significantly, there is little evidence of a shift from defined benefit to defined contribution plans.").

229. Richard A. Ippolito, *The New Pension Economics: Defined Contribution Plans and Sorting in The Future of Private Retirement Plans* 77 (Dallas L. Salsburg, ed. 2000).

In a defined benefit plan, the plan sponsor promises the participant a certain amount to be paid at the participant's retirement. Typically, the plan provides for a fixed amount to be paid for the life of the participant and spouse, and the fixed amount is based on a formula that takes into account the participant's years of service and salary. Moore, *supra* note 1, at 137 n.42.

230. In a defined contribution plan, in contrast, the plan sponsor does not promise a participant a certain amount upon retirement. Instead, benefits are based on contributions to the plan and any earnings and losses on those contributions. Typically, the plan sponsor contributes a fixed amount to each individual account established on behalf of each employee, and the individual account is credited with any earnings or losses on those contributions. *Id.*

231. Ippolito, *supra* note 229, at 3 (Workers are considered covered by a defined benefit plan if they are covered by both a defined contribution and a defined benefit plan. A worker is only considered covered by a defined contribution plan if the worker is only covered by a defined contribution plan. *Id.*

For a discussion of the reasons for the growth in DC plans, see, for example, Olivia S. Mitchell & Sylvester J. Schieber, *Defined Contribution Pensions: New Opportunities, New Risks*, in LIVING WITH DEFINED CONTRIBUTION PENSIONS, *supra* note 228, at 1, 4-10 (contending that growth in defined contribution plans due to facts that (1) both employers and employees view them as "flexible," (2) employers can "target their matching contributions to reward specific behaviors and types of employees," (3) they are "perceived as less expensive than defined benefit plans," and (4) proponents contend that they are "less risky than defined benefit plans").

232. Burtless & Munnell, *supra* note 135, at 76.

Cost methods based on projected benefits assume that the cost of the pension for a given year is equal to the present discounted value of benefits attributable to service during that year. The closer the worker is to retirement, the larger the required contribution since the amount will be discounted over fewer years.

remains constant over an employee's lifetime,²³³ the shift from defined benefit to defined contribution plans should reduce the cost differential between older and younger workers and thus may increase the demand for older workers.²³⁴

Finally, the shift in employment in the United States from blue collar or agricultural work to professional or white collar employment²³⁵ may increase the demand for older workers.²³⁶ Professional and white collar employers are more likely to value experience, knowledge, and judgment than physical ability, and the former are attributes in which older workers generally excel.²³⁷

Of course, there is no guarantee that the demand for older workers will increase as the baby boom generation ages. For example, if there is an

Id.

233. *Id.* (finding "the cost to an employer of funding a defined contribution remains constant, generally as a percent of earnings, over the life of the employee").

234. *Cf.* William H. Crown et al., *The Growing Interest in Older Worker Employment Policy*, in HANDBOOK ON EMPLOYMENT, *supra* note 133, at 1, 12.

It is interesting to speculate about how employer perceptions of older workers may affect the future demand for this group—particularly in light of the changes that have been taking place in the structure of private pensions in recent years. As described in Chapter 9, defined benefit plans have a strong influence on the timing of retirement through the effect of plan provisions on pension wealth. However, employers have been shifting from defined benefit plans to defined contribution plans, which have no such effects on the time of the retirement decision. This suggests that employers may not be as concerned about holding onto younger workers and encouraging older ones to leave as they have been historically.

Id.; see also John Garen et al., *Pensions, Non-Discrimination Policies, and the Employment of Older Workers*, 36 Q. REV. ECON. & FIN. 417, 427 (1996) (using data from nationwide survey of employers in the summer of 1991, concluding that "[e]mployers offering defined contribution pension plans do not differentiate between workers on the basis of age when hiring" while "employers offering defined pension benefit plans employ older workers, but tend not to hire them into entry level jobs").

235. See *supra* note 194–195 and accompanying text.

236. *Cf.* COUNCIL OF ECON. ADVISORS, *supra* note 119, at 141 ("The growth of the service sector, where jobs are less physically demanding and schedules more flexible than in manufacturing, makes work at older ages more attractive than in the past.").

237. See GAO, IMPLICATIONS, *supra* note 12, at 21 (noting that "surveys have found that managers [believe] that [older workers] have superior judgment and commitment to quality, have better work habits, and are very reliable"); see also Michael C. Barth et al., *Older Americans as Workers*, in OLDER AND ACTIVE, *supra* note 133, at 59–60 ("The job-performance attributes on which older people are highly rated—such as commitment to quality, reliability, and customer service—are those that employers cite as the most important to staying competitive in the global economy, in particular in service industries."); Libassi, *supra* note 212, at 187 (noting that older workers hired by The Travelers "consistently received high performance ratings by supervisors"); Sterns & Sterns, *supra* note 170, at 16 (discussing studies that show that older workers are more skilled in promoting customer satisfaction and relations, which are increasingly important in this "new global economy").

economic downturn and the labor market contracts, demand for older workers may decrease.²³⁸ Indeed, the Social Security system was originally enacted when the country was in the midst of the Great Depression and unemployment exceeded twenty percent.²³⁹ In addition, employers may remain reluctant to hire older workers for jobs that require substantial job training because older workers typically have shorter remaining work lives than do younger workers, and employers may remain reluctant to hire or retain older workers because their health insurance costs are much higher than those of younger workers.²⁴⁰ Nevertheless, despite these uncertainties, it appears that the demand for older workers will likely increase in the future.

4. Conclusion

Needless to say, predicting the future is fraught with difficulties,²⁴¹ and there is no way to know with certainty whether raising the NRA, EEA, or both would result in general economic gains.²⁴² Nevertheless, the weight of the evidence appears to support the proposition that raising the NRA, particularly if accompanied by an increase in the EEA, should promote general economic gains. First, raising the NRA, especially in conjunction with an increase in the EEA, should encourage workers to extend their working lives and thus increase the supply of older workers. Second, the

238. Cf. Barth et al., *supra* note 237, at 59 (contending that there must be strong economic growth as well as a small number of first-time entrants to the labor force for there to be increased demand for older workers).

239. See Moore, *supra* note 1, at 133 nn.6-7 and authorities cited therein.

240. Cf. John S. Heywood et al., *The Determinants of Hiring Older Workers: Evidence from Hong Kong*, 52 INDUS. & LAB. REL. REV. 444, 444 (1999) (using firm level data from Hong Kong employers finding that employers less likely to hire older workers (defined as those over thirty-five) for jobs requiring greater skills than for jobs requiring fewer skills); Hirsch et al., *supra* note 202, at 410 (finding that "[o]ccupations with firm-provided training . . . have fewer older male workers"); Hutchens, *supra* note 207, at 89-90, 98 (noting that, among other things, fact that older workers have shorter remaining work lives could lead their facing small choice set of new jobs than younger workers, and confirming that, based on segregation curves, older workers face smaller set of alternative job opportunities than do younger workers); see also GAO, IMPLICATIONS, *supra* note 12, at 20-21 ("The shorter potential length of time an older worker may remain with an employer is another obstacle to hiring older workers, because some employers are less likely to recoup recruitment and training costs for them than for younger workers."). For discussion of older workers health insurance costs, see *supra* note 210.

241. Levine & Mitchell, *supra* note 199, at 78-87 (noting that "[h]istorically, labor market projections seldom resemble observed behavior" and explaining that much of the inaccuracy is due to the use of "linear extrapolation with only minor modifications").

242. Kingson, *supra* note 133, at 57, 58 ("there is much uncertainty associated with economic, institutional, and demographic change").

health status of older workers and the physical demands of jobs available to them should permit most, though likely not all, older workers to extend their working lives. Finally, there is likely to be an increased demand for older workers in the future as the baby boom generation ages.

Of course, this argument assumes that economic gains are defined as wage-producing labor and monetary income. If economic gains are defined more broadly to include other goods, such as leisure,²⁴³ then raising the retirement ages does not necessarily promote economic gains. It simply promotes longer working lives.

C. Reduction in Benefits

The most obvious cost of increasing the Social Security retirement ages is that such a change would constitute a reduction in benefits. Increasing the NRA, without a change in the EEA, would be almost identical to an across-the-board reduction in benefits.²⁴⁴ That is the very reason why increasing the NRA would help reduce Social Security's long-term funding deficit.²⁴⁵ Increasing the EEA, without a change in the NRA, would not, on average, constitute a reduction in the total benefits a participant is entitled to receive.²⁴⁶ Nevertheless, it might still be viewed as a benefit reduction because it would take away a right workers currently have.²⁴⁷

There is no simple way to eliminate that cost. Most workers, however, should be able to adjust to that cost by extending their working lives. Not only has life expectancy increased since the Social Security system was originally enacted,²⁴⁸ but the increase in life expectancy has been accompanied by improvements in health.²⁴⁹ Moreover, jobs have become less physically demanding,²⁵⁰ and the demand for older workers is likely to increase as the baby boom generation ages.²⁵¹ Thus, most, though not all, workers should be able to adjust to an increase in the retirement ages by

243. See *supra* text accompanying note 135.

244. See *supra* notes 110–112 and accompanying text.

245. *Id.*

246. For workers with a shorter than average life expectancy, however, increasing the EEA might constitute a reduction in benefits. See *infra* note 330 and accompanying text.

247. Cf. 26 U.S.C. § 411(d)(6) (1994); 29 U.S.C. § 1054(g) (1994) (providing that amendment to employee benefit plan that has the effect of eliminating or reducing an early retirement benefit shall be treated as reducing an accrued benefit).

248. See *supra* notes 163–164 and accompanying text.

249. See *supra* notes 181–190 and accompanying text.

250. See *supra* notes 194–199 and accompanying text.

251. See *supra* notes 214–237 and accompanying text.

extending their working lives.²⁵² This is not to suggest that it does not constitute a cost. It simply means that it is a cost that most workers should be able to bear.

D. Increased Risk of Poverty in Old Age

Increasing the Social Security retirement ages could also impose a second cost: it could increase the risk that older workers—and their dependents—end their lives in poverty. Currently, Social Security is arguably the nation's most successful anti-poverty program. Thirty years ago, almost thirty percent of the nation's elderly lived in poverty.²⁵³ Today, in contrast, only about twelve percent of the elderly live in poverty,²⁵⁴ and only ten percent of aged Social Security beneficiaries receive total income that falls below the poverty line.²⁵⁵ Without Social Security, however, forty-nine percent of aged Social Security beneficiaries would have total income that falls below the poverty line.²⁵⁶ Indeed, Social Security benefits represent, on average, seventy-seven to eighty-one percent of the income of the aged in the two lowest quintiles of income.²⁵⁷

Raising the NRA without a concurrent increase in the EEA could dramatically increase the risk of poverty if most workers were to continue to retire at the EEA.²⁵⁸ Under current law, workers who choose to receive benefits before the NRA receive actuarially reduced retirement benefits.²⁵⁹ Specifically, retirement benefits are reduced by 5/9 of one percent for each month that a worker retires before the NRA,²⁶⁰ or 6.67% for each year of early retirement.²⁶¹ Thus, a worker who retires at age sixty-two, while the NRA is sixty-five, will receive a twenty percent reduction in monthly benefit payments.²⁶² Once the NRA reaches age sixty-seven, a worker who retires at

252. For a discussion of the effect of raising the Social Security retirement ages on workers who are unable to extend their working lives, see *supra* notes 268–294 and accompanying text.

253. See Moore, *supra* note 8, at 956 and authorities cited therein.

254. *Id.*; see also Rebecca M. Blank, *Trends in Poverty in the United States*, in THE STATE OF HUMANITY 231, 234 (Julian L. Simon ed., 1995) (noting that largely due to Social Security and Medicare, poverty rates for the elderly are now lower than for the non-elderly).

255. SOC. SEC. ADMIN., INCOME OF THE POPULATION 55 OR OLDER, 1998, at 133 (2000), available at <http://199.173.224.108/statistics/incpop55/1998/IncPop55.pdf>.

256. *Id.*

257. *Id.* at 97 tbl.VI.A.2.

258. Currently, more than half of all workers elect to receive actuarially reduced benefits at the EEA. See *supra* note 132 and accompanying text.

259. See *supra* notes 115–119 and accompanying text.

260. 42 U.S.C. § 402(q)(1)(A) (1994).

261. $5/9 \times 12 = 6.67$.

262. $5/9 \times 12 \times 3 = 20$.

age sixty-two will receive a thirty percent reduction in monthly benefit payments.²⁶³

If the NRA were increased to sixty-eight, and benefits continued to be actuarially reduced as they are under the current schedule, and there were no change in the EEA, a worker who retired at sixty-two would receive a thirty-five percent reduction in monthly benefit payments.²⁶⁴ If the NRA were increased to seventy under similar circumstances, a worker who retired at sixty-two would receive a forty-five percent reduction in monthly benefit payments.²⁶⁵ Such enormous reductions in benefits could greatly increase the risk that older workers—and their dependents—end their lives in poverty.

Of course, if workers were able to and chose to extend their working lives in conjunction with increases in the NRA, there would be no increased risk of poverty. Indeed, increasing the NRA, without an adjustment in the EEA, is likely to encourage older workers to extend their working lives.²⁶⁶ Moreover, the increased risk of poverty created by raising the NRA could be substantially reduced if the EEA were increased in tandem with the NRA because it would prevent workers from choosing to accept such dramatically reduced benefits.²⁶⁷ Increasing the EEA would not, however, eliminate all increased risk of poverty in old age. Increasing the EEA could exacerbate the risk of poverty faced by individuals who are unable to work until the higher EEA—at least until they reach the new, higher EEA—unless another source of income were available to them.²⁶⁸

263. For workers who reach age sixty-two after 1999, the 5/9 of one percent reduction factor applies for the first thirty-six months of the reduction period, and a reduction factor of 5/12 of one percent applies to any additional months in the reduction period. § 402(q)(9)(A).

Thus, the actuarial reduction for workers who retire at age sixty-two when the NRA is sixty-seven equals $(5/9 \times 12 \times 3) + (5/12 \times 12 \times 2)$ or 30.

264. $(5/9 \times 12 \times 3) + (5/12 \times 12 \times 3) = 35$.

265. $(5/9 \times 12 \times 3) + (5/12 \times 12 \times 5) = 45$.

266. See *supra* notes 139–151 and accompanying text.

267. Cf. Burtless & Quinn, *supra* note 110, at 404–05.

The existence of the early entitlement age prevents short-sighted workers from applying for pensions that will be too small to support them throughout a long retirement.

... If the NRA is increased above 67, it seems sensible to increase the early eligibility age as well. Since Social Security is intended to assure a basic floor of support for retired Americans, it seems perverse to allow full-career workers to claim benefits so early that their monthly benefit will be too low to live on.

Id.; Myers, *supra* note 10, at 229 (contending that EEA should be increased in tandem with NRA because “significantly reducing benefits for retirement at age 62 may well cause financial problems for the beneficiaries as they become older”).

268. Cf. *Impacts of Current Social Security System: Hearings Before the Subcomm. on Social Security of the House Comm. on Ways and Means*, 106th Cong. 267–84 (1999) (statement of

Currently the Social Security system provides income protection to eligible disabled workers through its Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") programs.²⁶⁹ The Social Security Act defines disability, other than in the case of blindness,²⁷⁰ as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."²⁷¹ The Act further provides that:

An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy²⁷²

Richard V. Burkhauser, Ph.D., Chair, Department of Policy Analysis and Management, Cornell University), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_house_hearings&docid=f:57366.pdf.

SSDI and SSI-disability already provide benefits to workers under age 65 who are not capable of substantial gainful activity. Age is and should be a factor in determining disability status from those unable to work. Such a criteria ensures those older persons of working age who are covered by SSDI that these benefits are available if they are unable to work.

Id. at 271.

269. The tests for determining disability for purposes of SSDI and SSI are essentially the same except for children under the age of eighteen. Compare 42 U.S.C. § 423(d)(1)(A) (1994) with § 1382c(a)(3)(A), (C).

The programs differ significantly, however, in terms of eligibility. In order to be eligible for SSDI disability benefits, a worker must not only be disabled, but must also be "fully insured" and "disability insured," that is, the worker must have worked in covered employment long enough and recently enough. See §§ 423(a)(1)(A), (C), 414(a). For a detailed discussion of the "fully insured" requirement, see, for example, AVRAM SACKS, J.D., 2000 SOCIAL SECURITY EXPLAINED (CCH) ¶¶ 504-05; Myers, *supra* note 95, at 47-49. For a detailed discussion of the "disability insured" requirement, see MYERS, *supra* note 16, at 54-56; SACKS, *supra*, at ¶ 505.5.

The SSI program does not require that individuals have worked in covered employment, but instead requires proof of limited income and resources. See § 1382(a); 20 C.F.R. § 416.1100 (2000). For a discussion of some of the differences between the two programs, see, for example, Barbara Samuels, *Introduction to Social Security and SSI* (PLI New York Practice Skills Course, Handbook Series No. FO-006 N, 2000), available at WL 70 PLI/NY 7; see also Matthew Diller, *Entitlement and Exclusion: The Role of Disability in the Social Welfare System*, 44 UCLA L. REV. 361, 434-54 (1996) (discussing the history of the enactment of SSI and its relationship to SSDI).

270. In the case of blind individuals aged fifty-five or over, the definition of disability is somewhat loosened. § 423(d)(1)(B).

271. § 423(d)(1)(A) (for purposes of SSDI disability benefits); § 1382c(a)(3)(A) (for purposes of SSI disability benefits).

272. § 423(d)(2)(A) (for purposes of SSDI disability benefits); § 1382c(a)(3)(B) (for purposes of SSI disability benefits).

The Social Security Administration uses a five step sequential process for determining whether a worker qualifies as disabled²⁷³ and expressly takes age into account in the final step of that process.²⁷⁴ Thus, it is easier for an older worker to qualify for disability benefits than it is for a younger worker.²⁷⁵

Not all disabled older workers, however, necessarily collect Social Security disability benefits. Currently, twenty to twenty-five percent of workers who elect to receive Social Security retirement benefits report work-limiting disabilities but do not collect Social Security disability benefits.²⁷⁶ Some of these disabled early retirees may be eligible for Social Security disability benefits but elect not to collect them. By imposing a five month waiting period²⁷⁷ and a complex and lengthy application process,²⁷⁸ among

273. See 20 C.F.R. § 404.1520 (2000) for the evaluation process used to determine disability for purposes of SSDI disability benefits and 20 C.F.R. § 416.920 (2000) for SSI disability benefits; see also 20 C.F.R. § 416.924 (2000) for the modified process for SSI disability benefits for children. For discussion of the five step process, see, for example, SACKS, *supra* note 269, at ¶ 520.1; Robert E. Rains, *Debating Disability Design: A Response*, 47 FED. LAW. 39, 41–44 (2000). See also *Bowen v. Yuckert*, 482 U.S. 137, 154 (1987) (upholding the five step administrative process). For the most recent amendment to these guidelines, see 65 Fed. Reg. 17994, 17994–18001 (Apr. 6, 2000) (to be codified at 20 C.F.R. pts. 404, 416).

274. See 20 C.F.R. § 404.1520(f) (2000) (“we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work”); 20 C.F.R. § 416.920(f) (2000) (“we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work”); see also *id.* ch. III, pt. 404, subpt. P, app. 2 (Medical-Vocational Guidelines applied in the fifth step of the process). For an argument that older workers should receive less preferential treatment than they do under the current guidelines, see Hon. John Marshall Meisburg, Jr., *Ten Ways to Improve the Social Security Disability Law and Save Billions of Dollars*, 47 FED. LAW. 38, 40 (2000). For a defense of the current guidelines, see Robert E. Rains, *Debating Disability Designs: A Response*, 47 FED. LAW. 39, 44–45 (2000).

275. Cf. Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness; Clarification of “Age” as a Vocational Factor, 65 Fed. Reg. 17, 994, 17,995 (Apr. 6, 2000) (to be codified at 20 C.F.R. pts. 404, 416) (“The third sentence of paragraph (a) of final §§ 404.1563 and 416.963 explains that, when we consider the vocational factor of ‘age’ in determining an individual’s ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the ability to make such an adjustment.”).

276. See CBO, PAPER, *supra* note 12, at 23–24 tbls.6–7 (using data from the SIPP in the early 1990s, showing that twenty-four percent of men and twenty-three percent of women receiving Social Security retirement benefits before the age of sixty-five reported a work-limiting disability); Burkhauser et al., *supra* note 131, at 791 (using data from the HRS, finding that twenty percent of men who elected to take Social Security benefits at age sixty-two reported limits on the type or amount of work they could perform in 1994 when they were age sixty-two or sixty-three).

277. See 42 U.S.C. § 423(c)(2) (1994).

278. For a discussion of the SSDI application process, see ERIC R. KINGSON & EDWARD D. BERKOWITZ, *SOCIAL SECURITY AND MEDICARE: A POLICY PRIMER* 141–43 (1993). Unlike the SSDI application process, “the application process for Social Security retirement benefits is much more straightforward [and workers need only meet] the coverage requirements. GAO, *SOCIAL SECURITY REFORM*, *supra* note 22, at 11.

other things,²⁷⁹ the current Social Security system discourages some older individuals who would otherwise be eligible for disability benefits from applying for such benefits,²⁸⁰ and instead encourages them to apply for early Social Security retirement benefits.²⁸¹ Raising the NRA, and particularly the EEA, could remove or at least delay until the new, higher EEA some of these disincentives and thus encourage more older disabled workers to apply for disability benefits. The General Accounting Office estimates that if the EEA were increased from age sixty-two to age sixty-five, participation in the SSDI program among individuals aged sixty-two to sixty-four would increase approximately 2.5%.²⁸²

Not all older disabled workers, however, would necessarily qualify for Social Security disability benefits. In order to be eligible for Social Security disability benefits, a worker must not only satisfy a stringent disability test, but the worker must also have worked "recently enough" and "long enough." "Recently enough" means that the worker must have worked at least twenty quarters (or five years) in the forty-quarter (or ten year) period ending with the period of disablement.²⁸³ "Long enough" means that the worker must have worked for at least forty quarters or ten years.²⁸⁴

According to a study by the Social Security Administration, more than one-third of "Simulated SSA Disabled" individuals aged sixty-two to sixty-four collect Social Security retirement benefits rather than Social Security disability benefits.²⁸⁵ For these purposes, "Simulated SSA Disabled" individuals are defined as individuals who report activity limitations that are

279. "Disability benefits are generally subject to a greater reduction" for additional earnings than are retirement benefits, and disability benefits, but not retirement benefits, "are offset by worker's compensation benefits." GAO, SOCIAL SECURITY REFORM, *supra* note 22, at 11.

280. The rate of new disability awards "stead[ily] increase[s] . . . from ages 53 to 61 [and] then drops substantially at age 62 and [decreases] further through age 64." *Id.*

281. *But see* LEONESIO ET AL., *supra* note 112, at 15 (noting that an individual entitled to benefits under two programs is awarded the highest benefits she is eligible to receive and thus an individual aged sixty-two to sixty-four with a "serious impairment would typically file two applications—one for early retirement benefits and the other for DI benefits. The applicant would begin receiving (actuarially reduced) retirement benefits immediately, and if DI benefits were allowed several months later, the applicant would switch to (unreduced) DI benefits.").

282. *Id.* This increased participation in the SSDI program is likely to decrease the savings attributable to increasing the NRA. Such increased disability claims, however, are not expected to offset the gains from increasing the NRA—at least up to age seventy. *See supra* note 107 and accompanying text.

283. *See* 42 U.S.C. § 423(c)(1)(B)(i) (1994); MYERS, *supra* note 16, at 50; SACKS, *supra* note 269, at ¶ 505.5.

284. *See* 42 U.S.C. §§ 423(c)(1)(A), 414(a)(2); MYERS, *supra* note 16, at 49; SACKS, *supra* note 269, at ¶ 505.

285. *See* LEONESIO ET AL., *supra* note 112, at 8 (using data from the 1990 SIPP as well as data from the SSA's records on earnings, benefits, and disability claims).

similar to the activity limitations reported by individuals who receive Social Security disability benefits.²⁸⁶ The study found that sixty-six percent of the “Simulated SSA Disabled” early retirees would not qualify for Social Security disability benefits,²⁸⁷ and that these early retirees fell into three non-mutually exclusive groups. Fifty-one percent of the “Simulated SSA Disabled” early retirees “had no employment or business ownership during the thirteen years prior to the survey” and thus had not worked recently enough to qualify for disability benefits.²⁸⁸ Thirty-one percent of the “Simulated SSA Disabled” early retirees received benefits as dependents,²⁸⁹ and a large majority of those beneficiaries had not worked long enough to qualify for Social Security disability benefits based on their own earnings records. Finally, thirty percent of the “Simulated SSA Disabled” retirees had applied for and been denied disability benefits at some point in the past or shortly after the survey.²⁹⁰

Another recent study reached similar results. Specifically, it found that approximately eighteen percent of retirees between the ages of fifty-five and sixty-one and fourteen percent of retirees between the ages of sixty-two and sixty-four in the early 1990s would have been physically unable to continue work, but would not have qualified for disability benefits.²⁹¹

These studies show that the current SSDI and SSI programs are unlikely to provide income protection against an increase in the Social Security retirement age for all older workers with health problems that would prevent them from extending their working lives beyond the current EEA. Moreover, the current SSDI and SSI programs would not provide income protection for older workers under the age of sixty-five who could not extend their working lives for non-health related reasons.²⁹²

286. *Id.* at 6-7.

287. See LEONESIO ET AL., *supra* note 112, at 14.

288. *Id.*

289. Social Security pays auxiliary or derivative benefits to certain family members of retired, disabled, and deceased workers. See § 402(b)-(h). For example, beginning at age sixty-two, the wife of a retired worker may receive benefits equal to one-half of the retiree's benefit. § 402(b)(2). The wife may begin to receive actuarially reduced benefits as early as age sixty-two. § 402(q)(1).

290. See LEONESIO ET AL., *supra* note 112, at 14.

291. UCCELLO, *supra* note 139, at 12 (using projection based on “the difference in the proportion of persons who have a condition that prevents work and the proportion that has ever received disability benefits” but noting that “this may overstate the proportion most adversely affected if retirees exaggerate their poor health status to rationalize the fact that they are not working”).

292. Cf. Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness; Clarification of “Age” as a Vocational Factor, 65 Fed. Reg. 17,994, 17,998 (Apr. 6, 2000) (“The [Social Security] Act precludes our consideration of such factors as the inability to get work, the condition of the job

Congress could reduce the risk of poverty for these older workers by making SSI benefits for the aged available at age sixty-two, rather than age sixty-five as under current law.²⁹³ In addition, a number of commentators have suggested that the SSDI and SSI disability rules be further eased for workers over age sixty-one if the EEA were increased.²⁹⁴

Such changes would eliminate some of the savings gained by increasing the Social Security retirement ages.²⁹⁵ Nevertheless, such changes should not

market, the hiring practices of employers, the existence of job vacancies, or the types of job openings.").

293. 42 U.S.C. § 1381 (1994). For a discussion of SSI benefits and qualification requirements, see generally *SOCIAL SECURITY: LAW AND PRACTICE* Chs. 18–20 (1996). See also *Impacts of the Current Social Security System: Hearing Before the Subcomm. on Soc. Sec. of the House Comm. on Ways and Means*, 106th Cong. 267–84 (1999) (statement of Richard V. Burkhauser, Ph.D., Chair, Department of Policy Analysis and Management, Cornell University), available at <http://www.house.gov/ways-means/socsec/106cong/2-10-99/2-10burk.htm>.

Supplement Security Income (SSI) was established in 1972 to provide a social safety net under the aged and disabled who did not have sufficient OASDI benefits to reach a minimum income floor. Eligibility based on age should be lowered to age 62 as the earliest age for Social Security benefits is raised to 65. This would offer a guaranteed minimum income to the small minority of older workers who could not work to age 65 and who do not have the financial means to support themselves.

Id. at 271.

294. See, e.g., Burtless & Quinn, *supra* note 110, at 405.

In order to implement this reform [of raising EEA] in a humane way, Congress might consider liberalizing eligibility requirements for Disability Insurance benefits starting at age 62. People who have worked in physically demanding occupations and are in impaired health could be given access to benefits that permit them to retire with a decent standard of living, even if they do not meet the strict standard for health impairment that is used to evaluate DI applications today.

Id.; see also HENRY J. AARON & ROBERT D. REISCHAUER, *COUNTDOWN TO REFORM: THE GREAT SOCIAL SECURITY DEBATE* 103–04 (1998).

For . . . those with physical impairments or psychological problems, [increasing the EEA] can be a significant hardship. To protect this group, any increase in the age of initial eligibility for Social Security should be accompanied by easing the test for disability insurance benefits for those age 62 to 64, which would reduce the savings [due to increasing the retirement age].

Id.; CBO, *PAPER*, *supra* note 12, at 7 ("The hardships caused by raising the eligibility age for retirement benefits could be further ameliorated by lowering the eligibility age for Supplemental Security Income (SSI) old-age benefits or relaxing the criteria under which workers qualify for DI benefits at age 62."); UCCELLO, *supra* note 139, at 60 ("[P]olicymakers considering an increase in the Social Security retirement age might wish to consider loosening (beyond the age, education, and experience step of the sequential evaluation) the DI eligibility criteria for older workers.").

295. Easing the disability rules would impose additional costs on the Social Security trust funds in two ways: (1) increased SSDI claims would have to be paid from the trust funds; and (2) the cost of lifetime Social Security retirement benefits would increase because SSDI beneficiaries do not receive the actuarial reduction in retirement benefits that early Social Security retirement beneficiaries do. In addition, there could be increased general revenue costs in the form of SSI

offset all of the savings, and would be a way to increase the Social Security retirement ages without imposing a disproportionately adverse impact on a particularly vulnerable subpopulation.²⁹⁶

E. Differential Impact

In recent years, policymakers have begun to expressly recognize the importance of considering how Social Security reform would likely affect specific subpopulations, particularly those who are most vulnerable to poverty in old age.²⁹⁷ At first blush, raising the NRA, EEA, or both might appear to affect all beneficiaries equally because such changes would apply across the board to all beneficiaries.²⁹⁸ Upon closer examination, however, it appears that raising the retirement ages may have a greater impact on certain subpopulations than upon others, and some of those subpopulations are particularly vulnerable to poverty.

Specifically, it appears that raising the Social Security retirement ages is likely to have a disproportionately adverse effect on individuals in poor health in old age, individuals with lower life expectancies, and individuals who rely disproportionately on Social Security for their retirement income. Overall, these three groups are likely to encompass the vulnerable populations of blue-collar workers, lower-income workers, blacks, and, to some extent, Hispanics. The current SSDI and SSI programs may provide disability benefits that soften the impact of an increase in the retirement ages for some members of the subpopulations. Disability benefits under the current system, however, are unlikely to eliminate all of the adverse impact.

claims as well as Medicaid costs because most SSI recipients immediately qualify for Medicaid and SSDI beneficiaries qualify after a two-year waiting period. UCCELLO, *supra* note 139, at 60.

296. *But see* Bernstein, *supra* note 143, at 237 & n.13 (recognizing that even absent a change in the SSI and SSDI rules, means-tested benefits might be available in some states, but contending that many of the needy would not obtain benefits because they do not know they are available or are too proud to accept them; also noting that “[t]o the extent that [the needy collect these benefits], taxpayers will pay more per dollar delivered because means-tested programs incur higher administrative costs than social insurance ‘entitlements,’ whose eligibility criteria are less costly to ascertain”).

297. *See* Moore, *supra* note 8, at 957–58.

298. *Cf.* ALICIA H. MUNNELL, SOCIAL INSURANCE PROGRAMS: DEFINED BENEFIT VERSUS DEFINED CONTRIBUTION 23 (Council on the Econ. Impact of Health Sys. Change, Working Paper No. 1999-05, 1999) available at http://www2.bc.edu/~munnell/wp_1999-05.pdf (stating that 1983 legislation prospectively increasing NRA “affect[ed] all people at all points in the income distribution proportionately”).

1. Health Status

Conventional wisdom suggests that raising the NRA, and particularly raising the EEA, could have a disproportionately adverse effect on older individuals in poor health if their poor health prevents them from extending their working lives.²⁹⁹ Raising the NRA could force these individuals to accept actuarially reduced retirement benefits at the EEA while individuals in better health would have the option of extending their working lives and receiving larger monthly benefits at a later retirement age. Raising the EEA (with or without an increase in the NRA) could have an even greater impact on those individuals whose health prevents them from extending their working lives. Instead of simply being required to accept actuarially reduced benefits, they would have to wait until the new, later EEA to receive any Social Security retirement benefits at all.

Of course, the current Social Security system provides disability benefits to qualified eligible disabled workers.³⁰⁰ To the extent that older workers with health problems are able to collect Social Security disability benefits, increasing the Social Security retirement ages should not have a disproportionately adverse impact on them. Such workers would not be forced to accept actuarially reduced retirement benefits at the EEA,³⁰¹ nor would they have to wait until the new, later EEA to receive Social Security benefits. Instead, they would be able to collect Social Security disability benefits.

Not all older individuals with health problems, however, are likely to satisfy the current system's stringent disability requirements.³⁰² Those who are unable to collect benefits under the current program may be disproportionately adversely affected by an increase in the Social Security retirement ages, unless the current system is amended so that the disability rules are softened for workers aged sixty-two and over.³⁰³

Health statistics suggest that the individuals who are least likely to be able to extend their working lives for health reasons are more likely to be members of certain subpopulations than others. Specifically, blue-collar³⁰⁴

299. Cf. Bernstein, *supra* note 143, at 237-39 (objects to raising NRA because it would disproportionately adversely impact lower-income workers and those in poor health).

300. See *supra* notes 269-275 for a discussion of the current system's disability benefit provisions.

301. SSDI beneficiaries do not receive the actuarial reduction in retirement benefits that early Social Security retirement beneficiaries do. See UCCELLO, *supra* note 139, at 60.

302. See *supra* notes 285-291 and accompanying text.

303. Cf. *supra* notes 292-294 and accompanying text.

304. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 25-27 (using data from the HRS and controlling for effects of "employment status, age, race, gender, alcohol consumption, and

and lower-income workers,³⁰⁵ blacks, and Hispanics,³⁰⁶ are more likely to have health problems that prevent them from extending their working lives than are white-collar and higher-income workers and non-Hispanic whites.³⁰⁷

smoking," finding that blue-collar workers have a higher rate of a wide variety of physical ailments than do white-collar workers); Hayward et al., *Career Trajectories*, *supra* note 191, at S98 (finding that disability rates are higher for blue collar workers than for white-collar workers and that disability rates are "highest for laborers followed by farm laborers and service workers"); Loprest et al., *supra* note 192, at S306 (using data from the HRS, showing that 32.3% of men in nonphysical occupations report a functional limitation compared to 43.8% of men in physical occupations, 45.7% of women in nonphysical occupations report a functional limitation compared to 58.5% of women in physical occupations, 2.7% of men in nonphysical occupations report a severe condition compared to 7.8% of men in physical occupations and 2.7% of women in nonphysical occupations report a severe condition compared to 5.8% of women in physical occupations); Jeffrey S. Petersen & Craig Zwerling, *Comparison of Health Outcomes Among Older Construction and Blue-Collar Employees in the United States*, 34 AM. J. INDUS. MED. 280, 283 tbl.II (1998) (using on data from the HRS, finding that blue-collar workers have higher incidences of almost all types of health conditions than do white-collar workers, and that construction workers have even higher incidences of almost all types of health conditions than do blue-collar workers).

305. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., HEALTH, UNITED STATES, 1998: SOCIOECONOMIC STATUS AND HEALTH CHARTBOOK 102-07 (1998) [hereinafter 1998 HEALTH CHARTBOOK] (showing that poor health and disability status inversely related to socioeconomic status); U.S. DEP'T OF HEALTH AND HUMAN SERVS., DISABILITY AMONG OLDER PEOPLE: UNITED STATES AND CANADA 22 tbl.3, 28 tbl.9, 48 tbl.29 (1995) (based on survey conducted by the National Center for Health Statistics in 1984, showing that among both male and female fifty-five to sixty-four year-old Americans, reported incidence of specific disabilities such as inability to walk for a quarter of a mile, difficulty stooping, crouching, or kneeling, and inability to read newsprint declines as income rises); VITAL AND HEALTH STATISTICS: CURRENT ESTIMATES, *supra* note 169, at 112 tbl.70, 106 tbl.67 (showing reported health improves and inability to carry on major activity due to chronic condition decreases as income increases for all age groups); Freedman & Martin, *supra* note 189, at 1459 tbl.1 (based on data from the SIPP for 1984 and 1993 and defining functional disabilities as difficulty seeing words in a newspaper, difficulty lifting and carrying ten pounds, difficulty climbing a flight of stairs, and difficulty walking a quarter of a mile or three city blocks, finding that reported functional disabilities among the population aged fifty and over declines as education increases); see also Jonathan S. Feinstein, *The Relationship between Socioeconomic Status and Health: A Review of the Literature*, 71 MILBANK Q. 279 (1993) (reviewing the literature discussing the relationship between socioeconomic status and health).

306. See U.S. DEP'T OF HEALTH AND HUMAN SERVS., HEALTH, UNITED STATES, 1999: HEALTH AND AGING CHARTBOOK 38 (1999) (noting that "[a]t every age and for both men and women, non-Hispanic black and Hispanic persons reported worse health than non-Hispanic white persons" and that "[r]acial and ethnic differences in self-reported health reflect objective differences in health status and physical functioning as well as cultural and socioeconomic differences in the assessment of health and in the interpretation of health status questions."); James S. Jackson et al., *Introduction: Health and Retirement Among Ethnic and Racial Minority Groups*, 36 GERONTOLOGIST 282, 283 (1996) ("What is clear, however, is that ethnic and racial minorities suffer poorer health status at each point of the life course and are more likely than majority group elders to develop debilitating chronic health conditions and suffer disabilities in older ages." (citing Wykle & Kaskel, 1994)); Linda Ann Wray, *The Role of Ethnicity in the Disability and Work Experience of Preretirement-Age Americans*, 36 GERONTOLOGIST 287, 290-91 (1996). Using data from the 1992 HRS of individuals aged fifty-one to sixty-one who had ever worked, finding that:

A General Accounting Office study confirms that "twice as many blue-collar workers (27 percent) as white-collar workers (13 percent) reported that poor health is a very important factor in their decision to retire" completely from work,³⁰⁸ and that "[a]lthough members of each racial group are about as likely to report themselves as retired, approximately 30 percent of older African Americans and Hispanics report that poor health is a very important factor in their decision to retire compared with 16.4 percent of older whites."³⁰⁹ In addition, a study of early Social Security retirement beneficiaries found that individuals who elect to receive Social Security retirement benefits at the age of sixty-two are much less likely to have graduated from college³¹⁰ or to have been in white-collar occupations than

In general, African Americans report more potentially disabling health conditions, greater difficulties with function, and more severe health symptoms than do other ever-workers. Although Latinos tend to have fewer health conditions than other groups, they report disproportionately greater direct effects of those conditions (e.g., functional difficulty), as well as more severe indirect effects (e.g., chronic pain, impaired vitality), as do African Americans relative to Anglo/others.

Id.; John Bound et al., *Race Differences in Labor Force Attachment and Disability Status*, 36 GERONTOLOGIST 311, 315 (1996) (using data from the 1992 HRS finding that black men and women aged fifty-one to sixty-one are more likely to report being in poor or fair health compared to whites of the same age and gender).

307. How much of the poorer health status of blacks and Hispanics is due to income and employment status versus other factors is subject to debate. Compare Wray, *supra* note 306, at 307 (using data from the 1992 HRS, contending that "[a]lthough research on blacks and Latinos with disabilities is limited, we would suggest that their higher rates of disability reflect their overall position of economic disadvantage in the United States") with Bound et al., *supra* note 306, at 316. Also using data from the 1992 HRS, finding that:

When the demographic and detailed health characteristics are entered together . . . the coefficient is further reduced but not eliminated, with around 40% of the black/white gap remaining. The fact that including education and marital status in the health equations lowers the magnitude of the coefficients on race implies that race differences in education and marital status can statistically account for part, but not all, of the large health difference between middle-aged whites and blacks.

Id.

308. GAO, IMPLICATIONS, *supra* note 12, at 26 (using data from the HRS of workers aged fifty-three to sixty-three in 1994).

309. *Id.* at 29 (using data from the HRS of workers aged fifty-three to sixty-three in 1994); see also LEONESIO ET AL., *supra* note 112, at 9 (using data from the 1990 SIPP, finding that "[e]arly retirees with one or more health problems are somewhat more likely to list their race/ethnicity as black, African-American, Hispanic, or Latino than are those who report no health problems (13% versus 7%)").

310. College-educated workers are likely to be higher-income workers because income typically increases with education. See, e.g., BUREAU OF THE CENSUS, STATISTICAL BRIEF: HOW MUCH WE EARN—FACTORS THAT MAKE A DIFFERENCE, SB/95-17 (1995) (showing that within every age group earnings for both men and women increase as education increases); BUREAU OF THE CENSUS, STATISTICAL BRIEF: MORE EDUCATION MEANS HIGHER CAREER EARNINGS, SB/94-

are individuals who elect to postpone the receipt of Social Security benefits beyond the age of sixty-two,³¹¹ and that early Social Security beneficiaries with non-Social Security incomes below the poverty threshold are more likely to report a work-limiting disability than are early Social Security beneficiaries with non-Social Security income above the poverty threshold.³¹²

Thus, to the extent that Social Security disability benefits are not available to older workers with health problems, raising the Social Security retirement ages may have a disproportionately adverse effect on older workers with health problems, and older workers with health problems are more likely to be blue-collar and lower-income workers, blacks, and Hispanics than to be white-collar and higher-income workers and non-Hispanic whites.

2. Life Expectancy

Although life expectancy has increased significantly since the Social Security system was originally enacted and is expected to continue to increase,³¹³ not all demographic groups have the same life expectancy.³¹⁴ For

17 (1994) (showing that mean annual earnings steadily increase with level of education); *see also* 1998 HEALTH CHARTBOOK, *supra* note 305, at 146 fig.6 (showing that within gender, race, and ethnic groups, earnings steadily increase with educational attainment).

311. CBO, PAPER, *supra* note 12, at 14, 16 tbl.2; *see also* LEONESIO ET AL., *supra* note 112, at 11, 12 tbl.5. Based on data from the 1990 SIPP:

Table 5 shows that when early beneficiaries are classified by their most recent jobs, retirees with health problems are generally less likely to have been employed in white-collar occupations (defined as managerial, professional, technical, sales, or administrative occupations) and more likely to have worked in blue-collar jobs (defined as service, production, craft, and repair occupations, or working as operators, fabricators, or laborers).

Id. at 11.

312. CBO, PAPER, *supra* note 12, at 23–24 tbls.6–7 (showing that thirty-three percent of men and thirty-five percent of women receiving early Social Security retirement benefits with non-Social Security income below the poverty threshold report a work-limiting disability compared to twenty-one percent of men and eighteen percent of women receiving early Social Security retirement benefits and non-Social Security income above the poverty threshold). Social Security Disability Insurance beneficiaries are excluded from this analysis. *Id.* at 14; *see also* LEONESIO ET AL., *supra* note 112, at 16. Based on data from the 1990 SIPP, finding that:

Early OASI beneficiaries with health problems are more likely to be found in the lowest two quintiles [of income] (62%) than are those with no health problems (46%). The percentage falling into the lowest two quintiles is even greater for the Simulated SSA Disabled group (77%). Perhaps the most striking disparity involves median family income: the median for the most impaired group is about half of the median for beneficiaries with no health problems.

Id.

313. *See supra* notes 163–165 and accompanying text.

example, at age sixty-five, women have higher life expectancies than men,³¹⁵ whites have higher life expectancies than blacks,³¹⁶ higher-income workers have higher life expectancies than lower-income workers,³¹⁷ while Hispanics³¹⁸ and Asians³¹⁹ have higher life expectancies than whites. Critics of the current Social Security system contend that the system already discriminates against or disfavors blacks and lower-income workers because of their lower life expectancies.³²⁰ Raising the Social Security retirement ages could exacerbate those charges.³²¹

At first blush, raising the Social Security retirement ages would clearly seem to have a disproportionately adverse effect on groups with lower life

314. For a discussion of the relative gains in life expectancy by gender and racial group since the beginning of this century, see *Banner Year for U.S. Longevity*, STAT. BULL., Oct.-Dec. 1998, at 8.

315. See, e.g., 1998 HEALTH CHARTBOOK, *supra* note 305, at 89 fig.25 (showing that women at age sixty-five have higher life expectancy than men at every income level).

316. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 31 fig.6 (showing that in 1998 at age sixty-five, black men had a life expectancy of 13.6 years compared to 15.9 years for white men, and black women had a life expectancy of 17.6 years compared to 19.5 years for white women); see also Kathryn L. Moore, *Partial Privatization of Social Security: Assessing Its Effect on Women, Minorities, and Lower-Income Workers*, 65 MO. L. REV. 341, 369 n.115 (2000) [hereinafter Moore, *Partial Privatization of Social Security*] and authorities cited therein.

317. See, e.g., 1998 HEALTH CHARTBOOK, *supra* note 305, at 89 fig.25 (showing that life expectancy increases with income for both men and women at age sixty-five).

318. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 31 (showing that in 1998, at age sixty-five, Hispanic men had a life expectancy of 18.9 years compared to 15.9 years for white men, and Hispanic women had a life expectancy of 22.2 years compared to 19.5 years for white women); see also Moore, *Partial Privatization of Social Security*, *supra* note 316, at 369 n.118 and authorities cited therein.

319. See, e.g., GAO, IMPLICATIONS, *supra* note 12, at 31 fig.6 (showing that in 1998, at age sixty-five, Asian men had a life expectancy of 18.9 years compared to 15.9 years for white men, and Asia women had a life expectancy of 23.1 years compared to 19.5 years for white women); see also Moore, *Partial Privatization of Social Security*, *supra* note 316, at 369 n.119 and authorities cited therein.

320. See Moore, *supra* note 8, at 962-64.

321. See GAO, IMPLICATIONS, *supra* note 12, at 30 ("African American men and women will be further disproportionately affected by an increase in retirement ages because they have lower life expectancies than any other racial group."); Feldman, *supra* note 183, at 157 ("Raising the age for first benefits or full benefits across the board would most likely magnify the distributive impact of the differences in life expectancy."); Peter M. Wheeler & John R. Kearney, *Income Protection for the Aged in the 21st Century: A Framework to Help Inform the Debate*, 59 SOC. SECURITY BULL., Summer 1966, at 3, 13 (noting that inverse relationship between mortality and socioeconomic status supports the assertion that increasing the NRA would reduce disproportionately lifetime benefits to lower income workers). Cf. JOHN B. WILLIAMSON & SARA E. RIX, *SOCIAL SECURITY REFORM: IMPLICATIONS FOR WOMEN* 29 (Ctr. For Ret. Research at Boston Coll., Working Paper 1999-07, 1999) available at http://www.bc.edu/bc_org/avp/csom/executive/crr/papers/wp_1999-07.pdf ("In assessing the likely impact of this change [of raising the NRA], it is important to note that women live longer than men and, as a result, any increase in the retirement age will reduce the lifetime benefits paid to men more than it will reduce the lifetime benefits to women.").

expectancies: “they would experience [larger] percentage decline[s] in their expected lifetime benefits [than would groups with higher life expectancies] because [the groups with lower life expectancies] will have fewer years in which to collect benefits.”³²² To illustrate, if retirement ages were raised, African American men and women at age twenty can expect 8.6 and 13.4 years of retirement, respectively, if they retire at age sixty-five. In contrast, the comparable projected numbers for whites at age twenty are 12.5 years for men and 16.8 years for women. The expected number of years of retirement at age twenty with a retirement age of seventy is 5.8 years for African American men, 8.8 years for white men, 9.7 years for African American women, and 12.6 years for white women. “African American men who retired at a new NRA of age 70 would receive benefits for 33 percent fewer years compared with 30 percent fewer for white men, and African American women would receive benefits for 28 percent fewer years compared with 25 percent fewer for white women.”³²³ Determining how raising the Social Security retirement ages would interact with life expectancies, however, is more complex than it first appears.

If the NRA were increased and the EEA were to remain the same, and most workers were to continue to retire at the EEA,³²⁴ raising the NRA could theoretically have a smaller adverse impact on groups with lower life expectancies than on groups with higher life expectancies. This is because actuarial reductions are based on the “average” life expectancy,³²⁵ and groups with life expectancies that are lower than the average are relatively advantaged by the actuarial reductions while groups with higher than average life expectancies are relatively disadvantaged by the actuarial reductions.³²⁶

322. GAO, IMPLICATIONS, *supra* note 12, at 30.

323. *Id.* at 30–31.

324. See *supra* note 132 and accompanying text (showing that more than half of workers currently retire at the EEA).

325. See *supra* note 119. Technically, the actuarial reductions are based on a unisex rule of thumb, not average life expectancy. E-mail from Brian A. Jones, Consulting Actuary, College of Insurance, to Kathryn Moore, Associate Professor of Law, University of Kentucky College of Law (Feb. 19, 2001) (on file with author).

326. The size of the early-retirement reduction for workers is intended to be “actuarially fair” in the sense that the total value of the reduced monthly benefits that an average worker could expect to receive between age 62 and death is similar to the total value of the full monthly benefits he or she could expect to receive over that time by delaying initial benefits until age 65. For example, ignoring discounting, a worker who retired at age 62 and expected to live 15 more years would be equally well off receiving reduced benefits of \$800 per month for 15 years or unreduced benefits of \$1,000 per month for 12 years (starting at age 65). In either case, those benefits would total \$144,000. Because of discounting, however, the break-even point for life expectancy is higher than 15 years. Using the Social Security Administration’s (SSA’s)

Of course, raising the NRA should encourage all workers to extend their working lives,³²⁷ and thus most workers might cease to collect Social Security retirement benefits at the EEA if the NRA were increased—even without an increase in the EEA. Moreover, even if members of groups with lower life expectancies might theoretically be advantaged by taking actuarially reduced benefits at the EEA, not all members of groups with lower life expectancies could actually handle actuarial reductions in their retirement benefits based on a higher NRA. Some groups with lower life expectancies, such as blacks³²⁸ and lower income workers,³²⁹ rely heavily on Social Security retirement benefits for their retirement incomes, and any greater absolute reduction in their Social Security retirement benefits could push their income below the poverty line.

If the EEA were raised (particularly in conjunction with an increase in the NRA), and all workers were forced to retire at a later age, such an increase would again seem to have a disproportionately adverse impact on subpopulations with lower life expectancies because “they would experience [larger] percentage decline[s] in their expected lifetime benefits [than would groups with higher life expectancies.]”³³⁰ To some extent, the reduction in total lifetime Social Security benefits for groups with lower life expectancies might not be as great as it might first appear. Men, blacks, and lower-income workers are more likely to collect disability benefits than are women,

inflation-adjusted discount rate of 2.8 percent, a 62-year-old worker would earn the same total amount from early reduced benefits or delayed full benefits if he or she lived for about 17 more years (to age 79). However, although the life expectancy for 62-year old men is approximately 17 years, for women it is about 21 years. With that longevity, a 62-year-old woman would theoretically accrue greater total benefits by waiting until normal retirement age to begin collecting them.

CBO, PAPER, *supra* note 12, at 4–5 (footnote omitted). This analysis does not take into account spouse and surviving spouse benefits. *Id.* at 5 n.6.

327. See *supra* notes 139–151 and accompanying text.

328. See SOC. SEC. ADMIN., *supra* note 255, at 133 tbl.VIII.5 (showing that while twenty-seven percent of black Social Security beneficiaries aged sixty-five or older receive total income that falls below the poverty line, without Social Security the income of sixty-six percent of these beneficiaries would fall below the poverty line); see also James P. Smith, *Racial and Ethnic Differences in Wealth in the Health and Retirement Study*, J. HUM. RESOURCES S158, S179 (1995) (using data from the HRS, finding that Social Security “represents over 40 percent of the wealth of black and Hispanic households,” while it only “comprises one-quarter of the total wealth of white households”).

329. See SOC. SEC. ADMIN., *supra* note 255, at 97 tbl.IV.A.2 (showing that, on average, Social Security benefits represent seventy-seven to eighty-one percent of the total income of aged units in the two lowest quintiles of income).

330. GAO, IMPLICATIONS, *supra* note 12, at 30; see also *supra* note 322 and accompanying text.

whites, and higher-income workers.³³¹ Thus, once disability benefits are taken into account, workers with lower life expectancies might not be as adversely affected by an increase in the retirement ages as considering retirement benefits only would suggest. Nevertheless, increased disability benefits are unlikely to eliminate all of the differential impact, and workers with lower life expectancies are likely to be disproportionately adversely affected by an increase in the EEA in conjunction with an increase in the NRA.

Thus, in sum, it appears that on the whole raising the Social Security retirement ages is likely to have a greater adverse impact on groups with lower life expectancies, such as men, blacks, and lower-income workers, than on groups with higher life expectancies, such as women, whites, Hispanics, Asians, and higher-income workers. If only the NRA were raised, members of the groups with lower life expectancies could reduce some of this differential impact by collecting benefits at the EEA. Not all members of the groups with lower life expectancies, however, are likely to be able to handle such reductions in benefits. Specifically, blacks and lower-income workers are less likely to be able handle such reductions in retirement benefits than are higher-income white men.

If the EEA were raised, taking early retirement benefits would not be an option to avoid the disproportionately adverse impact of an increase in the EEA. Nevertheless, to the extent that men, blacks and lower-income workers are more likely to collect Social Security disability benefits, they may not be as disproportionately adversely impacted by an increased EEA as it might first appear. Despite these complexities, on the whole, increasing the retirement ages is likely to have a greater adverse impact on members of groups with lower life expectancies than on those with higher life expectancies.

3. Relative Reliance on Social Security

Raising the Social Security retirement ages is also likely to have a greater impact on workers who rely on Social Security for a larger portion of their retirement income than it is on workers who have other sources of income at retirement. More than ninety percent of all aged units sixty-five or older, that is, married couples living together or nonmarried people,³³² received Social Security benefits in 1998.³³³ The importance of those benefits,

331. See Moore, *supra* note 8, at 967-74.

332. SOC. SEC. ADMIN., *supra* note 255, at iii.

333. *Id.* at 14 tbl.I.

however, varied greatly. For those in the highest quintile of income, Social Security benefits, on average, represented twenty-three percent of total income.³³⁴ For those in the two lowest quintiles of income, in contrast, they constituted, on average, between seventy-seven and eighty-one percent of total income.³³⁵ Obviously, increasing the Social Security retirement ages is likely to have a bigger impact on those who rely more heavily on Social Security for their retirement income than on those who do not.

In a recent study, Julia Lynn Coronado, Don Fullerton, and Thomas Glass, used estimated earnings profiles for a sample of people taken from the panel study of income dynamics to calculate the distributional impact of various social security reform proposals.³³⁶ Among the proposals they considered was an increase in the NRA from age sixty-seven to 68.4 years.³³⁷ In their analysis, they assumed that individuals would work until the NRA, however defined, and found that such a change would have a larger absolute impact on higher-income groups than lower-income groups but an overall regressive effect when the decline in net benefits is divided by the income of each group.³³⁸

To the extent that individuals who rely disproportionately on Social Security for their retirement income can extend their working lives, they may be able to adjust to an increase in the Social Security retirement ages by working longer. Indeed, beneficiaries aged sixty-five or older in the highest quintile of income relied on earnings for twenty-four percent of their income, on average.³³⁹ To the extent that they are unable to extend their working lives, however, increasing the retirement ages is likely to have a disproportionately adverse effect on these individuals unless they can rely on Social Security disability benefits or SSI benefits to replace some of the income they would lose from increased retirement ages.³⁴⁰

334. *Id.* at 97 tbl.VI.A.2.

335. *Id.*

336. See generally Julia Lynn Coronado et al., *Distributional Impacts of Proposed Changes to the Social Security System*, in TAX POLICY AND THE ECONOMY 13, at 149 (1999). Among other things, their study allowed for differential mortality by gender, race, and lifetime income. *Id.*

337. They selected age 68.4 because it would have same impact on the social security program as a proposal to eliminate the drop-out years provision, the first proposal they studied. *Id.* at 175.

338. *Id.* at 175-76; see also WILLIAMSON & RIX, *supra* note 321, at 29 ("Those with low earnings, who were most dependent upon Social Security for retirement income, would feel the impact on their standard of living more than would those who are less dependent upon Social Security for retirement income.").

339. SOC. SEC. ADMIN., *supra* note 255, at 99 tbl.VI.A.2.

340. According to a recent Social Security Administration study, early Social Security retirement beneficiaries with health problems "are much more likely to be poor or near-poor," and thus depend on Social Security retirement benefits for a large portion of their income than those without health problems. LEONESIO ET AL., *supra* note 112, at 17 (using data from the 1990 SIPP).

IV. CONCLUSION

Raising the Social Security retirement ages is not a costless solution to Social Security's long-term funding deficit. Nor are proposals to raise the retirement ages popular with the public.³⁴¹ Indeed, solid majorities of Americans have repeatedly rejected proposals to increase the Social Security retirement ages in polls conducted over the last twenty years or so.³⁴²

Nevertheless, such proposals merit serious consideration. The Social Security system is facing a long-term funding deficit, and there is no easy way to resolve this problem. Hard choices must be made, and there is no painless way to solve Social Security's long-term deficit.³⁴³

Many early Social Security retirement beneficiaries with health problems would not be eligible for Social Security disability benefits under current law. *See supra* notes 287-290 and accompanying text.

341. *See, e.g.*, MICHAEL TANNER, THE CATO INST., PUBLIC OPINION AND SOCIAL SECURITY PRIVATIZATION 1 (SSP No. 5, Aug. 6, 1996) available at <http://www.cato.org/pubs/ssps/ssp5.html> (noting that in a poll conducted by Public Opinion Strategies, "more than two-thirds (69 percent) [of Americans] believe that Social Security will require 'major' or 'radical' change within the next 20 years," but they "reject most . . . reforms such as raising the retirement age, raising payroll taxes, or reducing benefits"); Dallas L. Salisbury, *Social Security: Retirees Can't Live Without It, It Can't Survive Without Reform*, 13 BENEFITS Q. 8, 13 (1997) (according to EBRI's 1996 Retirement Confidence Survey, seventy-two percent of workers strongly or somewhat oppose raising the Social Security retirement age to seventy); Alice Ann Love, *Idea of Social Security Choice Appeals Most to Young Adults*, LEXINGTON HERALD-LEADER, Apr. 4, 1998, at B8 (according to a "telephone poll of 1,013 adults . . . taken for AP from March 27 through March 31 by ICR of Media, Pa. . . . seventy-seven oppose further increases in the retirement age, already scheduled to rise gradually from 65 to 67 for people born after 1937"); *see also Social Security: Gore, Bradley Adhere to Stance Against Raising Benefits Eligibility Age*, *supra* note 193, at 17-18 (stating that "[p]olls show raising the retirement age to be very unpopular with voters"). *But see* Elizabeth A. White, *Social Security: Public Is Interested in Private Accounts, but Concerned About Logistics*, *Phillips Says*, Pens. & Ben. Rep. (BNA) No. 25, at 1161 (May 18, 1998) ("[E]ighty-two percent of the [simulated eight member presidential commissions in the Concord Coalition project] agreed to increase the Social Security normal retirement age."); *Social Security: More Americans Prefer Raising Tax to Cutting Benefits, Actuaries' Survey Finds*, Pens. & Ben. Rep. (BNA) No. 25, at 807 (Apr. 6, 1998). According to a Yankelovick Partners omnibus poll surveying 1,019 Americans eighteen and older:

46% of Generation Xers . . . said they preferred gradually raising the retirement age from 67 to 70 rather than gradually reducing Social Security benefits and 43% of Generation Xers expressed a preference for gradually reducing Social Security benefits by 20 percent when asked to choose between a retirement age increase and reduced [benefits].

Id.

342. Lawrence R. Jacobs & Robert Y. Shapiro, *Myths and Misunderstandings About Public Opinion Toward Social Security*, in FRAMING THE SOCIAL SECURITY DEBATE: VALUES, POLITICS, AND ECONOMICS 355, 381-83 (R. Douglas Arnold et al. eds., 1998) (finding that with rare exceptions, in eighteen polls conducted between 1977 and 1997, solid majorities of Americans rejected proposals to increase retirement age).

343. Proposals to reform Social Security typically take one, or a combination, of three forms: (1) increases in taxes, (2) reductions in benefits, or (3) a fundamental restructuring of the system;

Increasing the NRA to age sixty-eight could resolve about twenty percent of Social Security's long-term funding deficit while increasing the NRA to age seventy could eliminate about twenty-six percent of the program's long-term deficit.³⁴⁴ Because raising the NRA could play such an important role in reducing the program's long-term deficit, it merits serious consideration as an element in any comprehensive plan to reform Social Security.³⁴⁵

If Congress elects to increase the Social Security NRA, it should increase the EEA in tandem with the NRA. Increasing the Social Security NRA without a concomitant increase in the EEA would unnecessarily increase the risk that some older workers—and their dependents—end their lives in poverty. Increasing the EEA would prevent older workers from electing to take dramatically reduced Social Security retirement benefits and thus ending their lives in poverty.

Of course, increasing the EEA could create hardship for some older individuals. First, some older individuals may be unable to extend their working lives for health reasons. Recent studies of early Social Security retirement beneficiaries show that about twenty to twenty-five percent of such beneficiaries report work-limiting disabilities.³⁴⁶ The current Social Security disability program is likely to provide disability benefits for some, but not all, of these individuals. According to a recent Social Security Administration study, about sixty-six percent of early Social Security retirement beneficiaries who report activity limitations that are similar to activity limitations reported by individuals who receive Social Security disability benefits would not qualify for Social Security disability benefits.³⁴⁷ To enhance income protection for these older individuals, Congress should

that is, partial privatization. The first two forms, increases in taxes and reductions in benefits, involve obvious costs. Proponents of partial privatization often suggest that partial privatization is a painless way to resolve Social Security's long-term deficit. As I have argued elsewhere, however, partial privatization is not a costless panacea to Social Security's long term deficit. See Moore, *supra* note 1; Moore, *Partial Privatization of Social Security*, *supra* note 316; Kathryn L. Moore, *Redistribution Under a Partially Privatized Social Security System*, 64 BROOK. L. REV. 969 (1998); see also ERISA INDUS. COMM., THE VITAL CONNECTION: AN ANALYSIS OF THE IMPACT OF SOCIAL SECURITY REFORM ON EMPLOYER-SPONSORED RETIREMENT PLANS 29 (1998) (stating that contrary to popular conception, "[c]reation of individual Social Security accounts by itself does not solve the financial imbalance in Social Security"); Olivia S. Mitchell, *Why Reforming Social Security Is So Difficult*, 4 TIAA-CREF INVESTMENT F. 13, 14 (2000) ("Investing payroll taxes in stocks is no panacea.").

344. See *supra* notes 108–109 and accompanying text.

345. For examples of comprehensive reforms proposals introduced in the 105th Congress that include increases in the Social Security NRA, see S. 2313, 105th Cong. § 12 (1998); S. 1792, 105th Cong. § 9 (1998); H.R. 4256, 105th Cong. § 12 (1998); H.R. 3082, 105th Cong. § 201 (1997); H.R. 2768, 105th Cong. § 605 (1997).

346. See *supra* note 276 and accompanying text.

347. See LEONESIO ET AL., *supra* note 112, at 14.

consider easing the SSDI rules for workers over age sixty-one. For example, Congress might ease, if not eliminate, the Social Security disability program's recent work requirement for individuals over age sixty-one and perhaps also ease the definition of disability for these individuals.

Older individuals with health problems are not the only individuals who might have difficulty extending their working lives. Not all early retirees leave their employment voluntarily at age sixty-two. For example, workers in dying industries or working for employers who are downsizing may be forced to leave their employment involuntarily at age sixty-two—or even before age sixty-two. Although the ADEA formally prohibits age discrimination in employment, older workers typically have greater difficulty finding new employment than do younger workers.³⁴⁸ If Congress elects to raise the EEA, it should try to enhance employment opportunities for these older individuals. For example, Congress might devote money to the training of older individuals to assist them in gaining and retaining employment.³⁴⁹

Finally, if Congress increases the EEA, it should make SSI aged benefits available at age sixty-two to ensure that all older individuals are adequately protected by a minimum safety net. These proposed changes would reduce some of the savings inherent in raising the Social Security NRA, but should not eliminate all of the savings and would be a way to reduce Social Security's long-term deficit without imposing a disproportionate cost on particularly vulnerable populations.

Absent an immediate politically viable comprehensive reform proposal, Congress should probably wait a few years before enacting any increase in the Social Security retirement ages to see how the country adjusts to the currently scheduled increase in the Social Security NRA. The principal advantage of enacting a delayed increase in the retirement ages is to give workers time to adjust to such a change.³⁵⁰ At present, however, it appears that most workers are unaware of the currently scheduled increase in the

348. See *supra* notes 204–207 and accompanying text.

349. Cf. Toshio Aritake, *Foreign Plans: Japan to Urge Employers to Extend Retirement Age*, Pens. & Ben. Rep. (BNA) No. 26, at 2363 (Oct. 4, 1999) (discussing Japanese program to grant government subsidies for computer training and other retraining sessions for employees between the ages of forty-five and sixty-four); see also GAO, *IMPLICATIONS*, *supra* note 12, at 32 (“For example, older minority workers could be helped by policies to direct federal job training resources to facilitate their efforts to obtain bridge jobs.”).

350. Cf. 129 CONG. REC. 4597 (1983) (statement of Rep. Pickle) (arguing that his proposal to increase the Social Security NRA was best because it phased the change in over a long period of time and thus permitted workers to adjust to that change); NAT'L COMM'N ON SOC. SEC. REFORM, *supra* note 69, at Statement 1, at 1 (noting that “[g]iven sufficient notice, coming generations of beneficiaries can adjust to a later retirement age just as earlier generations adjusted to age 65”).

NRA,³⁵¹ and thus there appears to be little point in providing workers with ten years or more of advance warning of a further increase in the retirement ages. In addition, any increase in the NRA and the EEA should be gradual, like the currently scheduled increase in the NRA, to reduce inequity in the treatment of cohorts.³⁵²

351. See, e.g., CBO, PAPER, *supra* note 12, at 11 n.18 (“many people seem to be unaware that the NRA will increase from 65 to 67”); Alice Ann Love, *In 2000, Social Security Retirement Age Begins a Gradual Climb to 67*, CHI. TRIB., Nov. 30, 1999, at 2 (noting that “Don Blandin, president of the American Savings Education Council, said people attending retirement seminars he conducts across the country are shocked when he tells them they won’t be eligible for full Social Security benefits at age 65” and that “a poll of Americans over age 25, taken this year by the Employee Benefit Research Institute, found that almost 6 in 10 think that they will be eligible for Social Security benefits before they actually will”).

352. Cf. *supra* note 83 (discussing the Pickle amendment and fact that phased in change offers additional advantage of eliminating any “notch” problem whereby benefits decrease substantially from one year to the next).