

Can Immigrants Save Social Security?

Many are not paying into the system

by Edwin S. Rubenstein

According to the latest Annual Report of the Social Security Trust Fund, payroll taxes will be insufficient to cover promised benefits starting in the year 2016. That year's shortfall will be more than \$20 billion. By 2020 the funding gap balloons to \$99 billion. The Social Security "problem" is largely demographic: Baby boomers will start to retire en masse shortly after 2010, leaving fewer workers to pay into the system. If present trends continue, either: payroll taxes must rise, pension amounts must fall, or both.

Many people believe that foreign workers offer a fairly painless way out of the Social Security dilemma. Immigrants pay billions in payroll taxes. Many, especially illegals, do not stick around to receive retirement benefits. Even non-U.S. citizens are required to pay Social Security taxes on income earned in the U.S. unless specifically exempt. So on balance immigrants and guest workers are a positive for the Social Security System, and by increasing their numbers we can reduce the funding shortfall. At least that's the assumption.

In reality many foreign workers, including highly-skilled employees here on H-1B visas, pay no Social Security taxes whatsoever. Since the 1970s the Social Security Administration has concluded so-called "Totalization Agreements" with about 18 different countries, under which foreign workers may have their Social Security deductions sent to their home country program (rather than the SSA), and vice-versa. One of the primary objectives of the agreements is to eliminate dual Social Security taxation as would occur when a worker sent to the U.S. by his employer must pay tax to

both the United States and his home country.

The agreements also protect people who have worked in both the U.S. and another country, but have not worked long enough in one country or the other to qualify for Social Security benefits. A U.S. worker employed temporarily in Canada, for example, shouldn't lose those quarters of employment vis a vis our SS system. Their contributions don't end up in the host country's coffer, but the employer is still obliged to pay them.

The U.S. collects the Totalization taxes for each foreign worker who has asked for totalization benefits and then a massive transfer of funds is made between the two governments. Therefore, although the H-1B pays a tax, they contribute nothing to the U.S. Social Security Trust Fund. Whether they pay more or less in pension contributions depends on the policies of their home country and the specifics of the Totalization agreement. It's a sure bet that most of the time the Totalization tax is less than what would have been paid to Social Security, so that the U.S. company saves money.

Currently the United States has Totalization agreements with eighteen countries that allow H-1Bs to be exempted from Social Security. These countries include Austria, Belgium, Canada, Finland, France, Germany, Greece, Ireland, Italy, Korea (South), Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Chile will soon have one. Of course if an Indian, as an example, immigrates to the UK or Canada and then gets an H-1B, he or she may be eligible for an exemption.

India and China — which are the home countries of more than half of all H-1Bs — are conspicuously absent from the list of nations covered by Totalization agreements, and for a very good reason: they have no Social Security systems. Exempting an Indian or Chinese H-1B from paying Social Security taxes would mean they would pay no Social Security taxes at all. That would be an insuperable competitive advantage for those H-1Bs

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and the companies that hire them. American workers with equal skills would be passed over in favor of tax exempt foreigners.

Yet such blatant tax discrimination takes place routinely in the American workforce. The machinations under which H-IBs avoid paying Social Security taxes are described in *The Great American Tax Dodge* by Donald L. Barlett and James B. Steele.¹

Visit most any large American company, say Barlett

“Because they are employed by the consulting firm that recruited them, many of these foreign workers are paid either in cash or by check — and no money is withheld for U.S. income tax, Social Security, Medicare, state, or local taxes.”

and Steele, and you’ll find two types of people working on the same computer project. One is a permanent company employee who pays taxes through withholding. The other is a temporary foreign employee who enjoys the kind of payday that an American worker can only dream about — a full paycheck with zero deductions.

How is it done? Consulting and contracting firms recruit so-called temporary workers in other countries, especially India, and bring them to the United States under the H-1B program. They farm out these foreign programmers to large U.S. companies that do not want to add permanent employees to their payrolls or to replace higher-paid American workers whose jobs have been eliminated. Still other clients are state governments that contract out computer work.

Because they are employed by the consulting firm that recruited them, many of these foreign workers are paid either in cash or by check — and no money is withheld for U.S. income tax, Social Security, Medicare, state, or local taxes. What’s more, they often live in rent-

free apartments with free meals, all courtesy of the consulting firm that hired them. Still others receive a paycheck that is banked in India, and, while they’re living and working in this country, they’re paid an “allowance” that is also free of all U.S. taxes.

This widespread practice surfaced during a little-noticed civil lawsuit in which one consulting firm accused another of raiding its employees from India. The legal action was filed by Tata Consultancy Services, a division of Tata Sons Ltd., of Bombay, against Syntel Inc. of Detroit in U.S. District Court in Detroit in 1990. The dispute dragged on for years, during which time numerous Tata and Syntel employees, most of whom had come to the United States from India on temporary visas, testified about the tax-free life of foreign programmers.

Among those questioned was Sujatha Subramanian, a female programmer from India, who, like others, was brought to the United States by Tata but later left to join Syntel. Technically, she was employed by a company in India called Leading Edge, which subcontracted her to Syntel, which assigned her to computer projects at Ford and Chrysler. She received a paycheck from Leading Edge that was deposited in rupees in a bank in India and she received a living allowance from Syntel in U.S. dollars. The following exchange is with a Tata lawyer.

Attorney: *What other kind of benefits are you receiving?*

Subramanian: *None from Syntel.*

Attorney: *None? Do you get your cost of living allowance from them?*

Subramanian: *Yes. And I’m covered by health, covered for health and medical. . . .*

Attorney: *Do you pay taxes here in the United States?*

Subramanian: *No.*

Attorney: *Only in India?*

Subramanian: *Yes. . . .*

None of this is to suggest that every Syntel programmer pays no taxes. Some eventually go on the company payroll and are treated like other permanent workers — taxes are withheld from their paychecks. But court records show that for many, such is not the case. In this, Syntel is not alone.

In 1998, an Indian programmer in Chicago, worried

that he might lose his bid for American citizenship, wrote a letter to the U.S. Department of Labor expressing concern over his off-the-books income.

Employed by a computer consulting firm in Chicago and farmed out to Ameritech, the programmer explained that when he came to this country he had been compelled to become part of a complex scheme by the consulting firm to evade taxes. He was not clear on all the elements that made up the fraud, but a key component was that his pay came partly in cash.

When interviewed by Barlett and Steele he said:
They told me that in this way neither they have to pay taxes nor I have to pay taxes on that amount. When I objected it, they told me that most of the other employees are paid in similar way. I asked my couple of colleagues ... everyone communicated that they are paid in same way. Part of the payment [almost 30 percent of the salary] they receive is not taxable and paid to them every month. Now I realize that this practice ... is illegal. I don't want to be part of this system, but presently I do not have any alternatives.

Where, you might ask, is the IRS in all of this? The answer is: Nowhere. "Immigration is a big problem for IRS," a former high-level Treasury Department official confided to Barlett and Steele. "It doesn't know how to track foreign workers."

An estimated 500,000 foreigners are in the U.S. on temporary H-1B visas under the 50-year-old program designed to fill employer needs unmet by U.S. residents for professionals and specialists with a bachelor's or higher degree, including architects, engineers, accountants, doctors, college professors and even fashion models. Nearly fifty-four percent are involved in computer-related fields, according to a recent federal study. Their median income is about \$50,000, and half are expected to earn between \$40,000 and \$60,000.

Admittedly, H-1Bs represent a narrow slice of the immigrant workforce. (Technically they are "guest workers" rather than immigrants.) But their high earnings makes them valuable potential contributors to Social Security. With median income of \$50,000, the half million H-1Bs could potentially contribute \$1.9 billion to the pension system, or enough to fund benefits for more than 95,000 retirees.

Foregone payroll taxes are just the tip of the

iceberg. H-1Bs are entitled to every social service funded by U.S. taxpayers. They use our city parks, roads, and other infrastructure. And after working six years without paying Social Security taxes many H-1Bs get Green Cards, qualifying them for Social Security benefits when they retire. No effort is made to collect back payroll taxes. And what about those American workers who lose their jobs, their health insurance, and Social Security points because companies prefer the cheaper H-1Bs?

Recent immigration laws have raised the H-1B quota and made it easier for displaced H-1Bs to stay in the country. That's good for companies that employ guest workers, but ordinary Americans and their Social Security System are worse off because of it.

NOTES

1. *The Great American Tax Dodge: How Spiraling Fraud and Avoidance Are Killing Fairness, Destroying the Income Tax, and Costing You*, by Donald L. Barlett and James B. Steele (Little, Brown and Co., 2000).

Mexico May Have to Import Oil by 2030

Mexico may be forced to import oil by the year 2030 due to falling production from mature fields, according to a report by the International Energy Agency (IEA).

Currently Mexico is the world's fifth largest oil exporter. Pemex, the national oil monopoly, exports about 1.65 million barrels a day from a total production of 3.1 million barrels per day.

The IEA report predicts that Mexican production will peak in 2010 at about 4.1 million barrels per day, then begin to decline a decade later.