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**Fact Sheet**

**F.A.Q. What Does “Executive Action” On Immigration Have To Do With Social Security and Medicare?**

President Obama set off a firestorm of controversy announcing an ambitious set of “executive actions” to protect illegal immigrants from deportation. The non-partisan Congressional Budget Office recently released a report confirming that many of those affected by the policy changes would be eligible for Social Security, Medicare and a wide array of federal benefits. Here are answers to frequently asked questions about executive action on immigration and how it affects Social Security and Medicare:

Q: What executive actions did the President announce?

A: On November 20, 2014, President Obama announced sweeping action that would allow up to 4.9 million undocumented immigrants who have lived in the United States for at least five years to apply for protection from deportation, and to work legally in this country — at least temporarily. Legal work authorization means the government would issue valid Social Security numbers to those who qualify for the program.

Q: Why is the action so controversial?

A: The president exercised special powers of the White House — instructions called “executive action” — that can have the binding force of law but do not require Congressional approval. While presidents in the past have exercised executive powers to make immigration changes, the sweeping scale of President Obama’s actions far surpassed that of presidents before him. The actions come after Congress reached an impasse on passing immigration reform legislation last year.

Q: How will the program make people eligible for Social Security and Medicare? Don’t they have to become citizens?

A: No. Citizenship is not a requirement to become eligible for either Social Security or Medicare. All that’s required is legal work authorization, and a valid Social Security number, which undocumented immigrants would receive under the new executive action. After working for a long enough period, usually about ten years, individuals become eligible for Social Security retirement benefits when they meet age requirements. If they are eligible for Social Security, individuals automatically become eligible for Medicare at age 65, or after a two-year wait if disabled.

Q: So why the concern if immigrants will be paying into Social Security and Medicare? Won’t the payroll taxes boost the program in the meantime?

A: A new report from the non-partisan Congressional Budget Office says that new payroll taxes would boost Social Security and Medicare’s financial condition in the short term. But in the long term, federal spending would increase significantly as those affected by immigration policy changes become eligible for Social Security and Medicare.

TSCL’s concern is not over taxes collected under valid Social Security numbers. The concern is over the use of earnings under invalid or fraudulent Social Security numbers to determine benefits. Earnings reported under invalid numbers most often occur when noncitizens work without legal authorization. Due to a loophole in current law, Social Security uses all earnings to determine benefits, even those from jobs worked under invalid and fraudulent Social Security numbers. Social Security thus pays benefits for the rest of the individual’s life that may be based, at least in part, on work under fraudulent Social Security numbers. TSCL believes this policy rewards people for document fraud.

Q: Can you give an example?

A: Here’s a theoretical one: Let’s say the undocumented immigrant parents of four U.S. -born children have lived in the U.S. for twelve years and are found eligible for work authorization and Social Security numbers. Prior to getting her Social Security number, the mother worked as a housekeeper and was paid in cash. No taxes were paid into Social Security or Medicare. Because none were paid, and no wages were reported, the mother does not have any Social Security coverage yet.

With work authorization, and if she starts a job under her valid Social Security number, her employers are required to withhold taxes and report earnings into the system. Under this situation Social Security will receive new taxes and the mother would become eligible for retirement benefits based on her own account with about ten years of covered work. She could file a claim for benefits once she meets age requirements.

Now let’s say her husband, a construction worker, makes about $30,000 a year. He purchased fake papers on the black market and gave his employers what looked like a Social Security number. Under current law employers are not required to verify the Social Security numbers of employees. Employers are, however, required to withhold taxes and report wages to the Social Security Administration, which they do.

When the Social Security Administration received copies of the husband’s W2 with the invalid Social Security number that didn’t match the name and numbers on record, the Social Security Administration placed it a special file called the Earnings Suspense File. There it stays, and more are added every year until the reports can be matched with the worker. This can occur any time, even years later, when a claim is filed.

Now, when the husband receives his valid Social Security number, he has already worked 12 years and would be eligible to file a claim for Social Security benefits in the future. If he kept copies of the W2s with the phony number, he can file a claim for retirement benefits as early as age 62, or disability benefits sooner, if he meets the medical and other criteria. At 65, or two years after becoming disabled, he would also qualify for Medicare. In addition to a retirement or disability benefit of his own, his spouse, his ex-wife, and children may also become entitled to benefits on his account as well.

When people file a claim for benefits, Social Security determines both entitlement to, and the amount of, benefits based on earnings history, NOT the amount of taxes paid in. Under current law, all earnings for which there is evidence are used to determine an individual’s benefits, even if the earnings were for jobs worked under invalid and fraudulent Social Security numbers. Thus executive action on immigration could open Social Security and Medicare to significant long-term costs based on work performed while illegal.

TSCL polls indicate that a wide majority of older Americans are opposed to this policy. TSCL strongly supports legislation that would ban the use of earnings under invalid and fraudulent Social Security numbers from being used to determine benefits.