

# ***The United States in a State of Insoluble Insolvency: A Framework for Law, Policy, and Centralized Regulatory Review***

## ***AI Summary***

**Jim Tozzi**, often in collaboration with the **Center for Regulatory Effectiveness (CRE)**, coined and developed the term "insoluble insolvency".

Introduced through CRE writings, speeches, and forum posts beginning in the 2000s, the term is used to describe a specific macro-fiscal state:

- **Definition:** A condition in which a government's long-term fiscal obligations (such as entitlements and debt service) are so large that they cannot be solved by conventional remedies like tax increases, spending cuts, borrowing, or economic growth.
- **Context:** Unlike traditional insolvency, Tozzi argues this is a mathematically and politically unsolvable crisis that requires a fundamental redesign of fiscal and regulatory governance rather than mere policy adjustments.

While economists have long discussed "structural insolvency" or fiscal sustainability, "insoluble insolvency" is specifically Tozzi's formulation to describe a terminal, systemic end-state.

# Insoluble Insolvency: Fundamentals and Challenges

Jim Tozzi

## Introduction

This Article advances and formalizes the concept of “**insoluble insolvency**” as a distinct condition in sovereign finance. While conventional insolvency presumes the availability of corrective pathways, insoluble insolvency describes a system in which **no politically feasible, economically sufficient, or institutionally credible solution set exists** to restore fiscal balance. The United States, this Article argues, exhibits emerging characteristics of such a condition.

This is not a claim of imminent default. Rather, it is a claim about **the structure of constraints**: that the traditional toolkit of fiscal stabilization—taxation, expenditure restraint, growth acceleration, inflation, and debt restructuring—no longer forms a coherent or viable solution space when considered jointly.

The implications extend beyond fiscal policy. Insoluble insolvency reshapes **regulatory governance, administrative law**, and the function of centralized review institutions such as the Office of Information and Regulatory Affairs (OIRA).

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## I. Defining Insoluble Insolvency

Insoluble insolvency can be defined as:

**A condition in which a sovereign’s intertemporal budget constraint cannot be satisfied through any combination of policy instruments that is simultaneously economically sufficient and politically sustainable.**

This definition contains three essential elements:

1. **Intertemporal imbalance**: The present value of obligations exceeds the present value of feasible revenues.
2. **Policy infeasibility**: Available corrective tools cannot be deployed at required magnitudes.
3. **Constraint interaction**: Attempts to apply one tool undermine the viability of others.

Unlike standard debt distress, which invites optimization, insoluble insolvency implies **the absence of an interior solution**.

## II. The Collapse of the Policy Solution Set

Historically, sovereigns have relied on four primary adjustment mechanisms. Each is now constrained in ways that, collectively, may render the system insoluble.

### A. Fiscal Consolidation

Sustained primary surpluses sufficient to stabilize debt require either large tax increases or deep spending cuts. In the United States, structural drivers—particularly entitlement growth—combine with political fragmentation to render such adjustments **non-credible over relevant time horizons**.

### B. Growth Acceleration

Economic growth can reduce debt burdens by increasing the denominator of the debt-to-GDP ratio. However, demographic aging, productivity plateaus, and capital allocation distortions limit the plausibility of growth rates sufficient to offset current trajectories.

### C. Monetary Accommodation

Inflation and interest rate suppression can erode real debt burdens. Yet persistent reliance on monetary financing risks **credibility loss**, capital flight, and endogenous increases in borrowing costs. The strategy becomes self-limiting.

### D. Debt Restructuring

For sovereigns issuing debt in their own currency, explicit restructuring is politically and institutionally disfavored. Implicit restructuring mechanisms—such as financial repression—function as partial substitutes but generate **allocative inefficiencies and distributional conflict**.

Taken together, these constraints suggest that the feasible policy set may be empty in a meaningful sense.

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## III. Formalizing the Constraint

Debt sustainability is conventionally expressed through the condition:

- Stability requires that the primary surplus offsets the gap between interest rates and growth.

In an insoluble insolvency regime:

- The required surplus exceeds political capacity.
- Growth cannot be raised to compensatory levels.

- Interest rates cannot be durably suppressed without destabilizing side effects.

The system therefore lacks a **stable equilibrium path** under plausible assumptions.

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## IV. Regulatory State Adaptation

When fiscal tools fail, the state does not become inert. Instead, it adapts. One underexplored adaptation is the **migration of fiscal pressure into the regulatory state**.

Centralized regulatory review, particularly within **Office of Information and Regulatory Affairs**, becomes a critical transmission mechanism.

### A. Regulation as Shadow Fiscal Policy

Regulations can impose costs functionally equivalent to taxation without appearing in the budget. Compliance burdens, cross-subsidization mandates, and risk-avoidance requirements effectively **reallocate resources** in ways that substitute for explicit fiscal measures.

### B. Distortion of Benefit-Cost Analysis

Under conditions of fiscal stress, benefit-cost analysis risks becoming **endogenously biased**:

- Discount rates may be adjusted to favor near-term fiscal relief
- Baseline assumptions may understate long-term liabilities
- Distributional impacts may be reframed to justify regulatory extraction

These shifts challenge the integrity of analytical frameworks developed under more stable fiscal conditions.

### C. Information Quality and Administrative Law

The **Information Quality Act** (also known as the Data Quality Act) becomes more salient—and more contested—when underlying fiscal assumptions are unstable. Agencies face incentives to **shape evidentiary records** in ways that align with implicit fiscal objectives.

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## V. Institutional Implications

Insoluble insolvency is not merely a budgetary condition; it is an **institutional transformation**.

## A. Executive Branch Dynamics

Centralized review institutions gain relative influence as coordination becomes more critical. Informal mechanisms—guidance, interagency review, and analytical framing—take on heightened importance.

## B. Congressional Constraints

Legislative gridlock reinforces the shift toward administrative solutions. Fiscal decisions are increasingly embedded in **statutory interpretation and regulatory design**, rather than explicit appropriations or tax legislation.

## C. Judicial Review

Courts reviewing agency action may confront records shaped by latent fiscal imperatives. Doctrines of deference intersect with questions about **analytical integrity and institutional competence**.

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## VI. End States and Transition Paths

A regime of insoluble insolvency is inherently unstable over long horizons. Potential transition paths include:

1. **Implicit Default:** Gradual erosion of obligations through inflation and regulatory extraction
2. **Explicit Restructuring:** A discrete, politically disruptive adjustment
3. **Institutional Reset:** Adoption of new fiscal rules or external constraints
4. **Stagnation Equilibrium:** Prolonged low-growth environment with persistent distortion

Each path carries distinct legal and regulatory implications.

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## VII. Coexistence with a Functioning Private Sector

A substantial portion of the U.S. economy is expected to remain functional under evolving fiscal conditions, but it will operate within a structurally altered policy and financial environment.

This transition is likely to occur gradually rather than abruptly, creating a prolonged period in which legacy fiscal and monetary systems coexist with emerging alternatives.

For corporations, this “coexistence” environment introduces new strategic considerations, including sustained pressure on the cost of capital, increased policy uncertainty, and the potential emergence of parallel financial instruments and settlement systems.

Firms that proactively adapt their capital structure, treasury strategy, and regulatory engagement to this evolving landscape **are likely to be better positioned than those that assume a continuation of prior fiscal conditions.**

Over time, this **coexistence framework** will probably include the expanded use of non-traditional financial instruments, including digital and **blockchain-based systems**, operating alongside—but not necessarily replacing, at least in the immediate future, existing sovereign structures.

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## **Conclusion**

The concept of insoluble insolvency provides a framework for understanding a class of fiscal conditions that traditional models treat inadequately. It shifts the analytical focus from optimization within a feasible set to the **absence of a feasible set itself.**

For administrative law and regulatory policy, the implications are profound. Institutions such as OIRA are not merely evaluators of regulatory proposals; they become **sites of fiscal substitution**, where the pressures of an unsustainable budget constraint are translated into regulatory form.

Recognizing this condition is the first step toward addressing it. Whether through institutional reform, fiscal innovation, or structural adjustment, the alternative is to allow the system to evolve implicitly—through mechanisms that are less transparent, less accountable, and ultimately more destabilizing.

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