

Pensions  
(1967 folder)

THE FIVE YEAR FEDERAL BUILDUP  
OF PENSION ISSUES

(A memorandum on the background of the private pension controversy)

by

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A federal blueprint showing the initial "building blocks" for the legislative "reform" of the private pension system was revealed by Treasury Assistant Secretary Stanley S. Surrey in an address made to the American Pension Conference on May 11 in New York City. Senator Ralph Yarborough (D-Tex.) had the entire text of Mr. Surrey's speech printed in the Congressional Record on May 24 with these remarks:

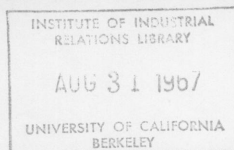
"Mr. YARBOROUGH. Mr. President, last week Assistant Secretary of the Treasury Stanley Surrey spoke before the American Pension Conference. His remarks on the problems which we are presently facing in the area of regulating private pension systems are both thoughtful and incisive.

The Subcommittee on Labor has before it various bills including my own, S. 1024 to amend the Welfare and Pension Plans Disclosure Act. Mr. Surrey's remarks indicate that the administration may well be on the way toward giving the country the benefit of its general recommendations in this very complex field. When hearings are held on the subject, it would be well for all of the administration's proposals to be before the Congress at the same time."

This background paper will briefly trace the events leading up to the releasing of this major trial balloon by Mr. Surrey and the comments of Senator Yarborough on the possibility of full hearings on wide-scale federal legislation to further regulate private pension plans.

ECONOMIC SECURITY AND THE INDIVIDUAL

Private pensions involve an entire spectrum of issues. These issues are but a part of a much larger issue that must be answered in the years ahead. How will responsibility for the economic security of the individual be shared by government, the employer, and the individual himself?



The average 20th century American survives on income -- earned income. The economic value of the individual's life -- his ability to earn income and save -- is subject to certain hazards. The major ones are death, disability, old age, and unemployment.

Until the 1930's, the responsibility for meeting these hazards was largely left to the individual. With the economic breakdown that came with the Great Depression, government and the business community assumed more responsibility in these areas through collective approaches. Social Security is a mandatory collective approach to provide a "floor-of-protection" to help the individual find economic security. Fringe benefits, of which pensions are a part, is the collective approach used by an employer for all his employees.

Today, in his quest for economic security, the average American enjoys three layers of protection. The bottom layer is provided by Social Security. The middle layer is the fringe benefits provided by his employer. The top layer is what he does for himself -- insurance, annuities, savings accounts in banks and building and loan associations, mutual funds, common stocks, corporate and government bonds, property or business ownership, and other forms of savings and investment.

The threat to this uniquely American system comes from the exponents of total security for the individual provided by government through social insurance based on pay-as-you-go tax redistribution. This Great Welfare Society would offer one layer of protection. There would be no employer provided layer and no individually provided layer. The government would provide for all the economic hazards faced by the individual. In doing this, taxes on corporations could be so heavy that little in the way of fringe benefits could be offered. Furthermore, withholding taxes would be so heavy on the individual, he would tend to consume all take-home pay and have little, if anything, left for savings.

Fringe benefits now cost American businessmen a staggering \$75 billion plus each year -- four times as much as the dividends paid to stockholders. Furthermore, the most recent Chamber survey shows that fringe benefits costs are shooting up almost twice as fast as wage rates. In the area of pensions alone, employers have put almost \$100 billion in assets in trust to help guarantee income and financial independence to employees in retirement. Currently, about three million persons are receiving monthly checks that amount to \$3 billion a year from these private retirement plans. These plans continue to grow each year in the number of employees covered, the benefits offered and the assets placed in trust.

If anyone wanted to destroy our present private approaches to economic security, the logical place of attack would be our private pension plan system with its close to \$100 billion dollars held in trust for employees. This pension plan system not only acts as a brake on run-away social security, it also provides new capital formation in the private sector to stimulate business growth and create new jobs.

If the Federal Government were to "takeover" the private pension system, or stunt its growth, then the way would be clearer for total welfare state concepts to be used. The implications for individual initiative, limited government, collective bargaining and the private enterprise economic system are obvious. The ultimate question is whether the Federal Government should completely control both public and private plans for retirement. If it does, then after a lifetime of work, the average retired American may find his financial income and freedom dependent on year-to-year decisions made in Washington.

#### ADMINISTRATION ACTION IN THE PENSION AREA

##### President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs

In March 1962, following his Economic Report to the Congress, President Kennedy appointed a cabinet level committee to review legislation and administrative practice relating to private retirement and welfare programs. The President wanted a report by November 15, 1962 to use in drawing up the Administration's legislative program for the 1963 session of Congress.

A provisional report of the Committee was studied by the President's Advisory Committee on Labor-Management Policy. This Committee found that: "Wide latitude should be permitted in the establishment of private pension plans consistent with the concepts of the free economy and the divergent needs and circumstances of various firms and industries".

Individual members of the Committee made specific, critical comments about the recommendations in the Report. For example, Henry Ford II, Chairman of the Ford Motor Company, said, "I believe it follows that the widest possible scope should be given to private decision-making in the design of private pensions plans, consistent with the public interest in preventing abuses. The present Treasury regulations covering qualified pension plans already afford protection against abuses, and to my mind the Committee has not been presented with convincing evidence of the need to change them in the respects recommended in the report".

Arthur F. Burns, President of the National Bureau of Economic Research, Inc., said, "Although I have sympathy with the spirit of the recommendations in regard to funding, I feel it inadvisable to endorse any specific proposal until facts are fully developed on the cost implications for relatively small and financially weak firms".

W. Anthony Boyle, President of the United Mine Workers of America, said, "The proposed report to the President is based on the erroneous concept that Governmental specification of standards in private pension plans can be mandated by public law to a similar extent that such standards are fixed by law in public pension plans".

Despite such criticism, the final Report of the President's Committee on Corporate Pension Funds was released in January 1965. It contained a large number of highly controversial recommendations for possible changes in the federal laws and regulations affecting private pension plans. Essentially, the Report contained a strong vote of confidence in the manner in which private pension plans had been conceived, established and administered without government involvement. However, the Report caused widespread concern because it appeared that the Federal Government was preparing to use its tax powers to further regulate private pension plans. It was feared that the operation and growth of the private pension plan system would be harmed if the recommendations were enacted into legislation.

Although the President's memorandum called for a study of private welfare (health and insurance) plans and programs, no such study was or is being made. In addition, President Kennedy had suggested that since the Welfare and Pension Plans Disclosure Act had been amended in 1962 to provide enforcement procedures and penalties for embezzlement, these subjects could be excluded from the Committee's consideration. Yet, the first Administration bill arising out of this Report's recommendations were the proposals made in 1967 to amend the Disclosure Act. The memorandum also asked for a study of how retirement and welfare funds effect efficient manpower utilization and mobility. Although the Report went into the problem of mobility, there is little evidence that pensions rank as a significant factor in this area. Reluctance to sacrifice seniority is the principal reason for workers' immobility. A study in the March 1967 edition of the Social Security Bulletin states that any evidence that pension rights inhibit mobility "is very weak". This fact has an important bearing on how much need there is for early vesting or portability of pensions.

The Report briefly acknowledged the importance of pension funds as a source of investment capital. Since in many industries it now takes \$25,000 dollars or more to create one new job, the contribution of pension funds in helping to create full employment opportunities for our increasing population is considerable. Unfortunately, the Report did not consider the public retirement systems for federal, state and local employees. It is obvious these programs must be considered in any objective study of the broad economic and social ramifications of private pension plans.

The Report made a decided effort to try to show that pensions are federally subsidized through tax laws. Little has been heard of this argument recently. It appears that this approach was used initially to justify further control of private pensions.

The Report concluded by calling for comprehensive long-range studies and research.

#### The Interagency Staff Committee

There was concern in late 1965 that the Administration would suggest legislation on pensions based on the Cabinet Committee Report. The Chamber arranged for management representatives and pension experts to meet with Administration officials to suggest in depth discussions of the recommendations contained in the Report. Thereafter, in 1966, the Interagency Staff Committee was reactivated. This Committee is comprised of representatives from five Federal Departments and four Federal agencies: Commerce, HEW, Justice, Labor, Treasury, Bureau of the Budget, Council of Economic Advisers, Federal Reserve System, and Securities and Exchange Commission.

Secretary of Labor W. Willard Wirtz, chairman of the President's Committee on Corporate Pension Funds, arranged for meetings of the Staff Committee with representatives of management, unions, life insurance companies, banks, actuaries, accountants and jointly administered plans. These meetings were held during the summer and fall of 1966. The agenda of these meetings covered vesting, fiduciary responsibilities, further disclosure, broadening participation in pension plans, funding and reinsurance. In August 1966, Secretary Wirtz wrote then Chamber President M. A. Wright thanking him for his role in helping to arrange the meeting with management representatives by stating: "I understand that the meeting proved quite successful and the Government representatives concerned feel that they have a much better understanding of the employers' views on matters affecting private pension plans".

The staff group is still involved in developing various study papers on the general question of public policy in private pension plans. A number of issues are still under active consideration, and this group is not making available to the public any additional materials at this time. A request for minutes, formal or informal, of the meetings held with the seven groups by this Committee was denied on the basis that public distribution had not been contemplated. Consequently, this Interagency Staff Committee appears to be the only group that is aware of the positions expressed by these various interested parties on the pension issues selected for discussion. There have been times when the so-called National Pension Dialogue has seemed more like a monologue.

Internal Revenue Service Announcement 66-58

To be designated a qualified plan under the 1954 Internal Revenue Code, the benefit structure of a retirement program cannot discriminate in favor of executives or highly paid employees. A formula is used to determine whether any such prohibited discrimination exists. Under this formula, an employer is permitted to take into account benefits provided by the Social Security System. The Cabinet Committee Report had recommended changes in this area.

In Announcement 66-58, dated September 19, 1966, the Internal Revenue Service requested background information from interested persons for developing a new integration formula. The Announcement contained a new suggested IRS formula. If such a formula were adopted, existing pension plans would have to be changed although they have been approved for tax qualification as being non-discriminatory. In addition, new plans, not yet approved, would have to meet the new formula.

A new Treasury regulation in this area would affect virtually every integrated pension or profit-sharing plan in the United States. Such a new requirement could mean either an increase in pension costs by as much as 40% or more, in some cases, or benefit decreases of 25% or more for some employees.

Over three thousand employers and pension experts responded to this request. In January 1967, the Treasury Department temporarily shelved its newly proposed formula and appointed an advisory panel to furnish advice to the Department on this problem. This panel will restudy the entire matter, evaluate the suggestions made and take into account action on pending social security legislation before making final recommendations.

(After 30 years, it is interesting to note that our federal civilian employees are still not covered by social security nor do they pay social security taxes. Changes in social security taxes and benefits and problems of integrating social security with another pension system do not personally affect federal government employees. The departmental officials who help develop Administration policy have not ordinarily had the month-to-month pocketbook discipline of seeing social security taxes withheld from their take-home pay. They are virtually in the position of saying "Do as we suggest, not as we do". Although various proposals have been made over the years to bring federal civilian employees under the social security system, they have all failed.)

The Federal Advisory Council on Employee Welfare  
and Pension Benefits Plans

The Federal Advisory Council on Employee Welfare and Pension Benefit Plans was created by Congress when it passed the Federal Welfare

and Pension Plans Disclosure Act. Congress specified that the Council should include representatives of the general public, labor, management, the insurance field, the corporate trust field and other interested groups. The duty of the Council is to advise the Secretary of Labor on how he should carry out his functions under the Disclosure Act. To retain control, Congress required that the Council's recommendations be transmitted to the Senate and House each year when the Secretary of Labor reports on his administration of the Disclosure Act.

The Council was asked last year to consider further changes in the Disclosure Act. In December 1966, the Council unanimously agreed "that Congress acted wisely in placing primary reliance in the original 1959 Act and in the 1962 Amendments on insuring integrity of plan performance through meaningful public disclosure of plan operations. The Council further believes that the will and intent of Congress as expressed specifically in the 1962 Amendments to the Act with respect to prohibitions against giving the Secretary of Labor any added powers -- 'to regulate or interfere in the management of any employee welfare or pension benefit plan' -- should be preserved".

The Council wants to see all welfare and pension plans administered in accordance with the highest standards of fiduciary conduct. The Council does not think, however, there should be a Federal statute for pension trustees unless it can be shown that "existing state law is inadequate and cannot be reasonably expected in the near future to provide assurance of satisfactory fiduciary performance".

Based on the recommendations of the Council, it is clear that all the members are opposed to giving the Secretary of Labor additional controls over private pension plans although they do wish to see any proven deficiencies in the Disclosure Act corrected. The Council report reflected a growing concern about burdensome and unnecessary Federal regulation and interference in all employee benefit plans. In effect, the unanimous report of this Council was saying to the Federal Government, "slow-down or stop" in your takeover of private pension plans.

#### EEOC and Sex Discrimination in Pension Plans

In May 1967, the Equal Employment Opportunity Commission held hearings on charges of discrimination arising out of differentials based on sex in employee pension and retirement plans. Apparently, the Commission had received complaints from retired women that they were not allowed to work as long as men and other complaints from working men that they could not retire as early as the ladies. Because of the Commission's duties under Title VII of the Civil Rights Act of 1964, a number of questions were raised on whether it should take action or attempt to establish guidelines in this area.

The Chamber recommended to the Commission that, prior to taking a formal position on these complex matters, a clearer understanding of Congressional intent should be sought. The Chamber also agreed to arrange meetings with management experts on pensions so the Commission could benefit from in depth discussions of the questions it had raised.

### CONGRESSIONAL ACTION

#### Major Hearings

1. Subcommittee on Employment and Retirement Incomes of the Special Committee on Aging - In March 1965, Senator Randolph's Subcommittee explored the possibilities of extending private pension plan coverage. Chamber testimony emphasized the importance of government encouragement for the establishment of new plans and freedom from hampering federal restrictions. Finding No. 4 of this Committee, which was contained in the Report issued in June 1965, stated: "The Federal Government is not doing all it can do and should do to encourage and stimulate the extension of private pension coverage". Following that finding, the Subcommittee made a series of helpful recommendations. The specific recommendations on the Self-Employed Individuals Tax Retirement Act of 1962 (H.R. 10 plans) were particularly significant in advancing the objective of this Subcommittee: to provide more and better private pensions and more adequate income for the elderly.
2. The Senate Permanent Subcommittee on Investigations - This Subcommittee released its report on "Diversion of Union Welfare-Pension Funds of Allied Trades Council and Teamsters Local 815" on June 30, 1966. The report by Senator McClellan's subcommittee pointed to what it considered "serious flaws and loopholes" in present employee benefit plans. Stating that additional safeguards are needed for the protection of beneficiaries, the report called for amendments to the Welfare and Pension Plans Disclosure Act in four broad areas.
3. The Subcommittee on Fiscal Policy of the Joint Economic Committee - In April and May 1966, Congresswoman Martha Griffiths' Subcommittee held hearings covering both public and private pension plans. Mrs. Griffiths planned further pension hearings but decided to take a broader approach. A Joint Economic Committee Print entitled "Old Age Income Assurance: An Outline of Issues and Alternatives" was prepared by the Committee's staff economist, Dr. Nelson McClung. It was intended to promote debate. It contained statements about private pensions such as the following:



- "By throwing a few cents to workers, managements can feather their own nests with dollars."
- "There is no good reason, from the standpoint of the public interest in pensions, why plans should be identified with employers or unions. Indeed, there are good reasons for keeping the funds and all aspects of pension administration clearly separate from employer and union."

After the Print was released, academicians, pension experts and other interested parties were invited to submit papers which will be included in a compendium on this subject. The last report indicated that at least 50 such papers will be published this summer. Thereafter, it is expected that Mrs. Griffiths will hold further hearings.

(Dr. McClung is no longer on the staff of the Joint Economic Committee. He is now working at the Treasury Department in Assistant Secretary of Treasury Surrey's Office for Tax Policy. It is expected, however, that Dr. McClung will complete the work on the compendium.)

4. Senate Finance Committee - In August 1966, a one-day hearing was held by this Committee on Senator Hartke's bill to establish a federal reinsurance program for all private pension plans. Research studies made by the Social Security Administration covering pension plans terminated in 1961 and 1962 showed few persons affected by such terminations. Many questions were raised on both the need for such a program and whether this problem could or should be handled by an insurance mechanism.
5. Subcommittee on Labor of the Senate Committee on Labor and Public Welfare - In March 1967, this Subcommittee held hearings on the age discrimination in employment bills (S. 788, S. 830). The Chamber testimony showed a need to include in these bills an exemption for pension, insurance and similar employee benefit plans. Without this exemption, the bill would make the majority of pension plans unlawful. The Subcommittee has now included such an exemption.
6. Subcommittee on Employment and Retirement Incomes of the Special Committee on Aging - In April 1967, Senator Randolph's Subcommittee held hearings on "Reduction of Retirement Benefits Due to Social Security Increases". The Committee wanted to consider whether it should recommend that tax penalties be imposed on employers who reduced pension contribution or benefits because of an increase in social security benefits. (It is anticipated that this Subcommittee and another subcommittee of the Special Committee on Aging may hold further hearings this summer on pension issues such as early retirement.)

### H.R. 10 LEGISLATION

On April 18, 1966, in a Committee Print entitled "Data on Self-Employed Retirement Deduction for Taxable Year 1964", the Committee on Ways and Means of the House of Representatives published a Treasury Department report on H.R. 10 plans. Members of Congress were shocked to learn that less than 40,000 persons had availed themselves of the benefits provided by the Self-Employed Tax Retirement Act. It was well known that there were over six million self-employed persons who employed over nine million individuals. Some authorities have estimated that close to twenty million are self-employed or work for the self-employed.

Although the Treasury Department strongly objected to changes in the law, it was obvious to the members of Congress that restrictive tax provisions were destroying the opportunity for millions of persons in the self-employment segment of our economy to build effective retirement income. By an overwhelming vote of 291-0, the House of Representatives moved to ease the inequitable and restrictive tax provisions contained in the Self-Employed Tax Retirement Act. Subsequently, the Senate voted favorably and the easing of these tax provisions has been provided for in Public Law 89-809 of the 89th Congress. The removal of these restrictive tax provisions will not be effective until the end of 1967. Already, additional widespread interest in creating H.R. 10 plans has been in evidence.

### PENSION BILLS IN THE 90TH CONGRESS

1. Welfare and Pension Plan Protection Act of 1967 (S. 1024)(H.R. 5741) - On February 16, 1967, President Johnson broke his silence on pension issues by asking for additional Federal policing of pension and welfare funds as part of his package of legislative proposals "To Protect the American Consumer". In asking for amendments to the Welfare and Pension Plans Disclosure Act, he avoided all the major controversial issues such as vesting, funding, portability of pension credits and reinsurance of pension plans.

Four days after his message, identical Administration bills were introduced into the House and Senate. Senator Yarborough (D-Tex.), Chairman of the Senate Subcommittee on Labor, and Representative Perkins (D-Ky.), Chairman of the House Education and Labor Committee sponsored the bills and plan hearings on them. Among the provisions

asked for are: Federal standards for fiduciary responsibility of pension trustees, annual independent audits of welfare and pension plans, a 10% limitation on investments in securities of the employer company, and expanded investigatory and enforcement powers for the Secretary of Labor. The Act would be changed from a "Disclosure" to a "Protection" Act and the door would be opened for the Secretary of Labor to regulate welfare and pension plans.

2. Pension and Employee Benefit Act of 1967 (S. 1103) - Chiding President Johnson's "Welfare and Pension Plan Protection Act of 1967" for not going far enough, Senator Jacob K. Javits (R-N.Y.) introduced a comprehensive private pension plan bill to set federal minimum standards for all retirement plans. Apparently the Senator accepted the highly controversial recommendations of the President's Committee on Corporate Pension Funds as a "bible" in this field. His legislation would establish a United States Pension Commission as an independent agency of the executive branch of the Federal Government. The five member commission would be given broad powers to set minimum standards for the administration of pension plans and to protect the rights of participants. The bill includes provisions for mandatory requirements for vesting, funding and reinsurance and a portability system. Senator Javits does not consider his bill a cure-all but offered it "as a basis for discussion--a way of bringing the pension dialog down to earth".
3. Senator McClellan's Pension Bill (S. 1255) - On March 13, Senator McClellan introduced into the Senate a revised version of his 89th Congress bill, S. 2627. In his speech, he noted four specific areas where he thinks further strengthening of the Administration Bill (S. 1024) is required. At the moment, it appears that Senator McClellan will probably present his views at the S. 1024 hearing before the Senate Subcommittee on Labor in the hope that the language of his bill in these specific areas may be amended into the Administration Bill.

(This means basically that there are three important Congressional approaches to amending the "Welfare and Pension Plans Disclosure Act": the Administration Bill, the McClellan Bill and appropriate portions of the Javits Bill.)

4. General Accounting Office - In March, the Comptroller General sent to Congress a report on the administration of the Welfare and Pension Plans Disclosure Act and the Labor-Management Reporting and Disclosure Act of 1959. The report was critical of the manner in which the Department of Labor has administered these Acts. The audit was based on departmental procedures followed in fiscal years 1965 and 1966.

The report called for specific improvements in five areas. The Comptroller General indicated a need for the Labor Department to:

- Develop and maintain up-to-date lists of entities required to report under the two disclosure laws.
- Update mailing lists so that reporting entities will receive the forms necessary for reporting the information required.
- Follow up on reports known to be delinquent.
- Promptly incorporate into disclosure files changes in plan descriptions.
- Make a more effective verification of reported data.

In addition, the report indicated a need for improvement in the Department's monitoring of bonding requirements.

5. Other Bills - In addition to the bills discussed above, several dozen other bills on private pensions have been introduced into the 90th Congress. One Senate Resolution was introduced by Senator Sparkman asking for a complete study of private pension plans to determine the feasibility of amending the social security and internal revenue laws to establish a central fund for complete portability of pension rights of employees. A list of these bills is attached (see Exhibit A).
6. Legislative Action - The key pension bill for the 90th Congress is the Administration Bill (S. 1024, H.R. 5741). It is not possible at this date to determine when the first hearing will be held or whether it will be in the House or Senate. The House version has been referred to Representative John H. Dent (D-Pa.), Chairman of Subcommittee No. 4 of the Committee on Education and Labor. Congressman Dent has a heavy schedule with his studies of the effects of low cost imports on the American labor market and other important bills which have been referred to him, such as the EEOC Bill, the Coal Mine Safety Bill and the Age Discrimination in Employment Bill.

It appears more likely that hearings on the Administration Bill will first be held in the Senate before Senator Yarborough's Subcommittee on Labor. Such hearings could be held within the next thirty days. It had been assumed that such hearings would be based primarily on S. 1024. Apparently, however, some understanding has been reached with Senator Javits that his omnibus bill will be discussed at the same hearing. The Administration, however, has taken no position on vesting, funding, reinsurance and portability of pensions.

This may explain why Mr. Surrey raised the trial balloon on these issues during his recent speech and why Senator Yarborough had the speech included in the Congressional Record.

#### THE SURREY PROPOSALS

In his remarks to the American Pension Conference, Treasury's Assistant Secretary Stanley S. Surrey asked for a constructive sharing of thoughts on what he believed would be the legislative proposals of the Interagency Staff Committee. He is not a member of this committee but is represented on it by his Deputy Tax Legislative Counsel, Mr. William T. Gibb. Mr. Surrey made it clear that he was not speaking for the Administration, the Cabinet Committee or other Government officials. The proposals he spelled out are still under study.

It is important to carefully read the introduction to the proposals to see what Mr. Surrey was saying and what he was not saying.

1. Mr. Surrey stated that the original Report of the President's Committee showed the importance to the country of the private pension system but indicated there was need for improvement.
2. He purposely avoided "broad philosophical points" and concentrated on the nuts and bolts of concrete proposals. He assumed, apparently, there should be federal control of vesting and funding plus a federal reinsurance mechanism.
3. He did not really discuss public policy toward private pensions. Will such proposals stimulate the continued growth and expansion of private pensions plans or will they inhibit and retard healthy growth? What is better for the public -- more control or less? more flexibility or less? These issues were not developed to any degree.
4. He did not attempt to support his proposals with statistical studies or research to prove a need for further federal regulation. Indeed, important research going on in this area is not completed.
5. There was no discussion of the costs to employers and employees of his proposals.
6. "Constructive views" are those which offer positive suggestions for changing existing statutes or regulations. Opposition to changes in federal law (or new law) is "negative in tone" and disappointing to Government officials.

In brief, Mr. Surrey said to the business community that it should assume there is going to be federal control of vesting and funding and a federal reinsurance mechanism. Assuming there will be such controls, he asked for help on the "mechanics". How should the legislation be drafted? Mr. Surrey then discussed the following six areas:

Additional Disclosure - Mr. Surrey briefly noted that the proposals on fiduciary responsibility and additional disclosure are incorporated in the Administration Bills (S. 1024, H.R. 5741).

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Industry has always supported helpful legislation and meaningful regulation of private pensions, including the 1958 Disclosure Act and the 1962 amendments to that Act. The current Administration bills are being carefully considered to see to what extent the changes advocated are necessary, will be helpful and can be supported. It is unfortunate that these proposals are becoming mixed up with the controversial issues of vesting, funding and reinsurance. Additional regulation should be confined strictly to areas of proven abuse. Businessmen and pension experts think the rifle rather than the shotgun approach should be used in any new pension legislation.

Broadening of Employee Coverage - Mr. Surrey stated that the recommendation to eliminate the option the employer has to limit a pension plan to the salaried and clerical group has been dropped from "our current agenda . . . . it was decided that it would not be appropriate to proceed with this recommendation at this time".

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Note the careful wording and the use of "at this time". Vesting, funding and reinsurance appear to be only the initial building blocks. Further controls can be put aside until later.

Vesting - The original Report suggested a mandatory vesting schedule of 50% after 15 years of service and 100% after 20 years.

Mr. Surrey proposed 10 year vesting. In some cases, service before age 25 could be disregarded. New plans would not be required to meet any vesting standard for employees leaving during the first five years. Transitional features would stretch out the full impact for 12-13 years. Other optional features were suggested by Mr. Surrey.

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The majority of private pension plans provide for vesting; the

trend is to more and earlier vesting; it is considered desirable. Mr. Surrey would make it mandatory. There was no discussion of the cost of mandatory vesting. There would be no latitude for collective bargaining (other desirable features in pensions might be preferred by unions or employees before 10 year vesting is reached). No evidence was offered that the absence of 10 year vesting is an important factor affecting labor mobility.

There was no discussion of contributory plans. For example, it has been estimated that about 90% of federal employees who leave federal service withdraw their contributions to the civil service retirement system, preferring not to vest. Would employees be locked in on 10 year vesting? There was no discussion of the suggested Federal portability fund which would receive the assets of the vested pensions of employees who left their employer. Full consideration was not given to the fact that because of cost factors earlier vesting will hurt departing employees at the expense of those who remain to retire. Finally, there is the question of whether the cost of 10 year mandatory vesting would result in fewer private pensions for our American citizenry.

Funding - The original Report suggested full funding of current service liabilities and not more than 30 year amortization of past service liabilities.

Under the Surrey proposal, plans would be given 25 years to reach a goal of "assets equal to vested liabilities". Each plan would have a funding target to meet each year in terms of a percentage of assets at market to vested liabilities. This target would be increased at an annual rate equal to 4% of vested liabilities. Adjustments in the schedule would be permitted to account for amendments to the plan which substantially alter liabilities. To ease the transition for existing plans a more gradual schedule would be applied for the first few years after the legislation is enacted. A report would have to be made to the Government every three years. Penalties would be applied to plans that were unable to meet the funding requirements.

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Mr. Surrey mentioned the study of funding being made by the Pension Research Council of the University of Pennsylvania. This study will be completed toward the end of this year. The Department of Health, Education and Welfare has contributed funds to this major research project. It is difficult to understand why the Federal Government should get locked in on funding legislation before evidence is available upon which a sound judgement could be based.

The social security trust funds have assets slightly over \$20 billion for liabilities far exceeding those of private pension plans which have assets of close to \$100 billion. The Civil Service Retirement Fund for federal employees has unfunded liabilities of \$48 billion. When the Pension Research Council's study is released, it will be interesting to compare the funding performance of private plans with the performance of federal and other governmental plans.

No one disagrees with the importance of proper funding of pension plans. Present Treasury requirements are that minimum funding must be equal to current service costs plus interest on past service costs. In the absence of evidence of large scale underfunding, why should federal requirements be increased? Furthermore, it is difficult to see how the plan proposed would not have to be based on specific actuarial and cost assumptions, yet it is claimed the Government will not get involved in this area. Such added requirements could lead to pension fund investment control. Finally, there is no full discussion of what effect such requirements would have on the establishment of new plans or the liberalization of existing plans. Is this not an unnecessary burden that could well deprive American workers of the opportunity for more and larger pensions?

Reinsurance - The original Report suggested further study of the feasibility of insuring private pension plans. The Report stated such a proposal was "attractive" but recognized the large number of difficult questions involved.

Mr. Surrey proposed that a common fund should be established to meet any particular plan's unfunded liabilities in the event of its termination while moving towards full funding of vested liabilities. Each plan would make contributions based on the amount of its unfunded vested liabilities. If a plan were terminated for business reasons, amounts from the common fund would be available to make up the difference between its funding target and vested liabilities not covered by plan assets. The termination protection would not apply to the extent an employer had not met his prescribed funding target, either because of a deficiency in contributions or an abnormal drop in the value of the assets in the fund.

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The most recent study of termination of pension plans covers the period 1955-1965. This study was supposed to prove the need for reinsurance. Conducted by the Bureau of Labor Statistics and published in the June 1967 edition of the Monthly Labor Review, it shows that about 20,000 employees a year can be affected by terminations -- about one-tenth of one percent of total pension plan coverage. These figures include business mergers and sales where employees are transferred to other pension



plans and suffer no loss. Also included are business dissolutions where the pension plan is fully or almost fully funded and there is no loss, or only a nominal one, to plan participants or beneficiaries. The study concludes as follows:

"Reasonably accurate estimates of the magnitude of benefit losses cannot be obtained from any government reporting system now in operation. Unless such reporting systems are changed, only a special survey program can produce more reliable data."

Therefore, we still do not appear to have the basic facts required to support sound judgement on the need for federal reinsurance and related proposals.

Many serious questions about the feasibility of an insurance mechanism remain unanswered. The Chamber had suggested at the Hartke Reinsurance Bill hearing that if the severe technical difficulties and formidable problems involved could be solved, this function could be carried on as an integral part of the private enterprise system and not necessarily as a federal monopoly.

Social Security-Pension Integration - Mr. Surrey gave assurances that Treasury's Advisory Panel was giving serious consideration to the comments received following IRS Announcement 66-58. He indicated that final results must await Congressional action on the current social security proposals.

(SPECIAL NOTE: Mr. Surrey performed an outstanding public service in making known the current thinking in Administration circles on pension issues. One can only be sympathetic with the position he is in. As important as tax policy on pensions is, one would not ordinarily expect the tax collector to lead the way in determining public policy toward a nation's retirement goals. The problem of collecting revenue and qualifying pension plans is difficult enough. Actually, Mr. Surrey explained current thinking and asked only for constructive advice on his specific proposals. Such constructive advice can be addressed to him at the United States Treasury Department, Washington, D. C. Additional copies of his speech may be obtained from the Office of Information, U. S. Treasury Department, Washington, D. C.)

#### WHERE DID THE PRESIDENT'S COMMITTEE REPORT GET OFF THE TRACK?

Like a phoenix, the President's Committee Report keeps destroying itself and then rising again from its own ashes. Why? In Washington circles,

a number of persons who have followed the discussions have offered many theories and guesses. One theory is that, having put in the time, the Government officials involved would like to salvage some concrete legislation from their efforts. Another theory is that with so many agencies and departments involved there is some spirited rivalry for a little empire building. Another theory is that those who do not understand the private pension system think it needs more federal control even though the evidence to support the need for such additional control is lacking. Some think \$100 billion is simply too much money to escape being completely regulated. Some believe private pensions are under attack because their huge assets are a roadblock to further runaway social security increases. Some believe in the domino theory: that once pensions are fully controlled, all other fringe benefits will fall under federal control. These theories are all speculative and there is no conclusive evidence supporting any one of them.

It is obvious, however, that problems of the elderly and their retirement income are increasingly important to the Nation. Yet, it is important to distinguish between our present retired population and those still working.

Disregarding the very elderly, our present retired citizens are between the ages of 65 and 90. This means most of them retired between about 1942 and 1966. It is important to keep four factors in mind about these particular citizens: the depression, the post war inflation, the growth of social security, and the growth of private pensions. Their savings and retirement income were seriously hurt by the depression and inflation; they got in on only the beginnings of social security and private pension plans. Many a man in this group will see a grandson or granddaughter graduate from high school or college this year, immediately begin to work and receive a starting income larger than the grandfather ever earned in his lifetime.

The new affluent "generations" have higher incomes, higher social security benefits, more private pensions, more savings and investments. It should be clear that solutions for retirement problems for the present affluent working generations should not be based on the problems that beset our present retired generation.

During the course of discussions held by Administration officials in Washington during the last five years, there appears to be a lack of a comprehensive approach to retirement income problems. The President's Committee sidetracked the study of welfare plans and concentrated on pensions. This presents problems. It is necessary to look at the entire picture. From either the employer or the employee or the union standpoint, it is impossible to pick out one economic security need or one employee benefit and disregard the others.

Employers must consider all the economic security needs of all their employees. Different "generations" of employees are interested in different benefits. The average employer's problem is to have the freedom necessary to allocate a reasonable percentage of payroll for each specific fringe benefit out of the total fringe payment he can afford. In doing this, the employer has to keep a careful eye on take-home pay particularly during inflationary times when taxes are increasing. It would be easy to increase any one benefit if the employer, at the same time, could decrease the costs of another benefit or arbitrarily reduce take-home pay. But this cannot be done.

Another disturbing feature of the Washington discussions on pensions is the idea that complete retirement income must be provided by government and employers. No room is left for individual savings. This idea seems to be based on a completely erroneous theory that the average American does not have enough sense to save and provide for his own retirement. This does not square with the facts. Savings are at an all time high. Furthermore, recent studies show clearly that coverage by private pension plans actually stimulates individual savings. If the idea of being completely cared for by the federal government was directly presented to the average American, he would take a patient but firm "please-Mother-I'd-rather-do-it myself attitude" toward it.

It is difficult to say exactly where the Cabinet Committee Report got off the track. It may have been at the very beginning when it was decided that private pension plans could be isolated from other economic security programs and handled separately. It may have been later when the Interagency Committee became involved in the "mechanics" of further regulation and forget about the need for management discretion and flexibility to meet the economic security needs and demands of all employees. The positive approach would be to consider the needs of those not covered by private pension plans, to find ways to spread the benefits of private pensions to employers and employees who do not now have them. The federalization of private pensions is a negative approach.

Our private enterprise economic system has provided our citizenry with the highest income and standard of living that has ever existed. Social security and private pension plans and related fringe benefits will be improved and will continue to help the individual and the family meet their economic security needs. It is imperative, however, that management have discretion in providing pension and other fringe benefits.

It is equally imperative that the American citizen retain the freedom to manage the economic value of his life beyond the floor of protection offered by the Federal Government and the employee benefits provided by his employer. A complete takeover by the Federal Government of control of all retirement income could destroy this freedom. Without such individual economic freedom, there would be no political freedom -- no free society.

NEED FOR A NATIONAL DIALOGUE

On April 24, 1967 Congressman Thomas B. Curtis (R-Mo.) gave a speech in the floor of the House of Representatives entitled "Private Pension Programs". He summed up the issues as follows:

In spite of the work of the President's Commission on Corporate Pension Funds and the additional studies of the Labor Department and the studies performed by the Congress, such as the hearings of the Joint Economic Committee in 1966, there needs to be considerably more data obtained and a much more developed dialog on this subject before the Congress can determine the best course of action to follow. . . .

The bills introduced by Senator Javits and others may hopefully lead to a thoughtful development of the facts and issues and a resolution of the problems in this area. The future of the private pension plan as a moving force in our economy and as an efficient mechanism for providing for retirement is at stake. . . .

It is my hope that an expanding and in depth dialog will progress on the role that private pension plans, social security, and all of our retirement programs should play in a comprehensive retirement program for the elderly.

EMPLOYER ACTION CALLED FOR

It is clear to most employers that we need a government climate, free from hampering restrictions, which encourages the establishment of new pension plans, especially by small employers, and the improvement of existing plans. The Federal Government should offer encouragement and positive support not criticism and negative controls.

Employer action is called for to help dispel the climate of uncertainty and confusion about private pension plans that now exists in Washington. What is needed is a better understanding of private pension and fringe benefits. Businessmen need to do a better job of communicating the values of pensions and other employee benefits to all employees, active and retired, and to the public. Most important, employers need to explain to their Congressmen the importance of private pension plans to the citizens of the District or State they represent.

Washington, D. C.  
June 1967



## Chamber of Commerce of the United States

HUMAN RESOURCES DEVELOPMENT GROUP

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NATIONAL 8-2380

June 1, 1967

### 90TH CONGRESS PENSION BILLS (corrected to 6/1/67)

#### SENATE

S. Res. 69 - Senator Sparkman (D-Ala.) - A resolution authorizing the Committee on Finance to make a complete study of private pension plans to determine the feasibility of amending the social security and internal revenue laws to establish a central fund for complete portability of pension rights of employees. (Introduced January 26, 1967 and referred to the Senate Finance Committee)

S. 186 - Senator Smathers (D-Fla.) - An act cited as "Social Security Amendments of 1967" and which includes under Sec. 7 a penalty of loss of tax qualification for any pension plan which reduces the amount of contributions or benefits for any employee because of increases in monthly social security benefits brought about by this act. (Introduced January 11, 1967 and referred to the Senate Finance Committee)

S. 788 - Senator Javits (R-N.Y.) - A bill to prohibit arbitrary discrimination in employment on account of age, and for other purposes. (Introduced February 1, 1967 and referred to the Committee on Labor and Public Welfare) (Hearing 3/15/67 before Subcommittee on Labor)

S. 830 - Senator Yarborough (D-Tex.) - A bill to prohibit age discrimination in employment. (Introduced February 3, 1967 and referred to the Committee on Labor and Public Welfare) (Hearing 3/15/67 before Subcommittee on Labor)

S. 1024 - Senator Yarborough (D-Tex.) - A bill to amend the Welfare and Pension Plans Disclosure Act. (Introduced February 20, 1967 and referred to the Committee on Labor and Public Welfare) ADMINISTRATION BILL

S. 1103 - Senator Javits (R-N.Y.) - A bill to provide additional protection for the rights of participants in employee pension and profit-sharing-retirement plans, to establish minimum standards for pension and profit-sharing-retirement plan vesting and funding, to establish a pension plan reinsurance program, to provide for portability of pension credits, to provide for regulation of the administration of pension and other employee benefit plans, to establish a United States Pension and Employee Benefit Plan Commission, and for other purposes. (Introduced February 28, 1967 and referred to the Committee on Labor and Public Welfare)

S. 1123 - Senator Dirksen (R-Ill.) - A bill relating to the status under the Internal Revenue Code of 1954 of the Local 738, International Brotherhood of Teamsters - National Tea Company Employees' Retirement Fund (Introduced February 28, 1967 and referred to the Committee on Finance)

S. 1250 - Senator McClellan (D-Ark.) - A bill to amend the Labor-Management Reporting and Disclosure Act of 1959 so as to strengthen the reporting and disclosure provisions thereof relating to labor relations consultants and certain other intermediaries between management and labor. (Introduced March 10, 1967 and referred to the Committee on Labor and Public Welfare)

S. 1255 - Senator McClellan (D-Ark.) - A bill to amend the Welfare and Pension Plans Disclosure Act for the purpose of providing additional protection for the interests of participants in and beneficiaries of employee welfare and pension benefits plans. (Introduced March 13, 1967 and referred to the Committee on Labor and Public Welfare)

S. 1635 - Senator Hartke (D-Ind.) - A bill to establish a self-supporting Federal program to protect employees in the enjoyment of certain rights under private pension plans. (Introduced April 26, 1967 and referred to the Committee on Finance)

S. 1719 - Senator McGee (D-Wyo.) - A bill to amend the Internal Revenue Code of 1954 to provide the same benefits for employees of public hospitals with respect to certain pensions and profit-sharing plans as those presently provided for employees of private nonprofit hospitals, other charitable organizations, and public and private schools. (Introduced May 9, 1967 and referred to the Committee on Finance)

#### HOUSE

H.R. 171 - Rep. Holland (D-Pa.) - A bill to establish a National Commission on Older Workers. (Introduced January 10, 1967 and referred to the Committee on Education and Labor)

H.R. 275 - Rep. Boggs (D-La.) - A bill to amend section 72 of the Internal Revenue Code of 1954 to permit retired employees to elect use of either subsection (b) or subsection (d) to report income from employees' annuities. (Introduced January 10, 1967 and referred to the Committee on Ways and Means)

H.R. 686 - Rep. Holland (D-Pa.) - A bill to establish a self-supporting Federal reinsurance program to protect employees in the enjoyment of certain rights under private pension plans. (Introduced January 10, 1967 and referred to the Committee on Ways and Means)

H.R. 688 - Rep. Holland (D-Pa.) - A bill to amend the Internal Revenue Code of 1954 to provide that employers having pension plans under which payments are correlated with social security benefits shall be subject to an additional tax in cases where increases in such benefits result in a reduction in their own contributions under such plans and are not passed on to their retired employees. (Introduced January 10, 1967 and referred to the Committee on Ways and Means)

H.R. 692 - Rep. Holland (D-Pa.) - A bill to amend the Welfare and Pension Plans Disclosure Act to require adequate reporting of the turnover of participants in pension plans. (Introduced January 10, 1967 and referred to the Committee on Education and Labor)

H.R. 1119 - Rep. Pucinski (D-Ill.) - A bill to amend the Welfare and Pension Plans Disclosure Act to require more complete disclosure of certain investment transactions. (Introduced on January 10, 1967 and referred to the Committee on Education and Labor)

H.R. 2076 - Rep. Farbstein (D-N.Y.) - A bill to amend the Bankruptcy Act to increase the amount of wages entitled to priority to \$2,000, to provide that pension, welfare, and other fringe benefits shall be treated as wages, and to increase the priority period from three months to twelve months with respect to certain wage components. (Introduced January 12, 1967 and referred to the Judiciary Committee)

H.R. 3317 - Rep. Joelson (D-N.J.) - A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to assist in providing means for portability of credits under certain private pension plans, and for other purposes. (Introduced January 23, 1967 and referred to the Committee on Ways and Means)

H.R. 3564 - Rep. Nelsen (R-Minn.) - A bill to amend section 7701 of the Internal Revenue Code of 1954 to clarify the tax status of certain professional associations and corporations formed under State law. (Introduced January 24, 1967 and referred to the Committee on Ways and Means)

H.R. 3989 - Rep. O'Neill (D-Mass.) - A bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of payments under retirement plans of certain exempt organizations. (Introduced January 26, 1967 and referred to the Committee on Ways and Means)

H.R. 4462 - Rep. Dingell (D-Mich.) - A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to assist in providing means for portability of credits under certain private pension plans, to require ten year vesting, and for other purposes. (Introduced February 1, 1967 and referred to the Committee on Ways and Means)

H.R. 5716 - Rep. Fino (R-N.Y.) - A bill to provide for a study by the Secretary of Labor with respect to establishing a Federal program to attain "portability" of private pension credits. (Introduced February 20, 1967 and referred to the Committee on Education and Labor)



H.R. 5741 - Rep. Perkins (D-Ky.) - A bill to amend the Welfare and Pension Plans Disclosure Act. (Introduced February 20, 1967 and referred to the Committee on Education and Labor) ADMINISTRATION BILL

H.R. 5906 - Rep. Wydler (R-N.Y.) - A bill to amend the Welfare and Pension Plans Disclosure Act to make it a crime to fail to make required contributions to employee pension benefit plans and to permit the Secretary of Labor to bring civil actions to recover such contributions. (Introduced February 21, 1967 and referred to the Committee on Education and Labor)

H.R. 6355 - Rep. Fino (R-N.Y.) - A bill to amend the Internal Revenue Code of 1954 to provide that employers having pension plans under which payments are correlated with social security benefits shall be subject to an additional tax in cases where increases in such benefits result in a reduction in their own contributions under such plans and are not passed on to their retired employees. (Introduced March 1, 1967 and referred to the Committee on Ways and Means)

H.R. 6498 - Rep. Dent (D-Pa.) - Identical to H.R. 5741 above.

H.R. 6697 - Rep. Curtis (R-Mo.) - A bill to encourage the use of private benefit plans in lieu of social security by providing that individuals who are eligible for certain benefits under such plans shall not be entitled to social security benefits or subject to social security taxes. (Introduced March 7, 1967 and referred to the Committee on Ways and Means)

H.R. 8279 - Rep. Corman (D-Calif.) - A bill to amend the Internal Revenue Code of 1954 and the Social Security Act to assist in providing means for portability of credits under certain private pension plans, and for other purposes. (Introduced April 10, 1967 and referred to the Committee on Ways and Means)

H.R. 9304 - Rep. Eilberg (D-Pa.) - A bill to establish a self-supporting Federal reinsurance program to protect employees in the enjoyment of certain rights under private pension plans. (Introduced April 26, 1967 and referred to the Committee on Ways and Means)

H.R. 9307 - Rep. Kupferman (R-N.Y.) - A bill to establish a self-supporting Federal program to protect employees in the enjoyment of certain rights under private pension plans. (Introduced April 26, 1967 and referred to the Committee on Ways and Means)

H.R. 9778 - Rep. Harrison (R-Wyo.) - A bill to amend the Internal Revenue Code of 1954 to provide the same benefits for employees of public hospitals with respect to certain pensions and profit-sharing plans as those presently provided for employees of private nonprofit hospitals, other charitable organizations, and public and private schools. (Introduced May 9, 1967 and referred to the Committee on Ways and Means)